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NEW HANOVER COUNTY, NC

MORGHAN GETTY COLLINS

REGISTER OF DEEDS

NC FEE \$170.00

Declaration of Covenants, Conditions
and Restrictions for Nalu Townhomes

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR NALU TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NALU TOWNHOMES is made and entered into this the 1 day of August, 2023, by CAROLINA BEACH VILLA, LLC, a North Carolina limited liability company with its principal office in New Hanover County, North Carolina, hereinafter referred to as "Declarant";

WITNESSETH:

Declarant is the owner and developer of that certain real property located in New Hanover County, North Carolina, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), which Property is being developed by Declarant into nine(9) unit dwellings to be known as Nalu Townhomes "Nalu Townhomes" or the "Project").

Declarant desires to develop the Project into nine (9) Townhome lots of various sizes ("Townhome Lots"). Declarant desires to provide for the preservation and enhancement of property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject those portions of the Property which are developed into nine (9) Townhome Lots to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described. Although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those herein contained) may be imposed with regard to the various phases or sections of nine(9) Townhome Lot Areas which may be developed in the Project and that separate owners' associations may be established for some or all of the various phases of the Project, Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the nine (9) Townhome Lots in the Project, with the express reservation that, at the option of the Declarant, additional restrictions may be imposed with regard to the various phases or sections of the nine(9) Townhome Lots Areas contained in the Project.

Declarant reserves the right to create, cause to be created or to permit others to create one or more Clubs to be located within the Project, which Club or Clubs shall not be subject to these covenants, conditions and restrictions except to the extent provided for herein.

NOW, THEREFORE, Declarant hereby subjects those portions of the Property which the Declarant in its sole and absolute discretion hereinafter elects to subdivide into nine (9) Townhomes Lots and designate Townhome Lot Areas by the filing of Plats in the Office of the Register of Deeds of New Hanover County, North Carolina and only those portions that the Declarant elects to subdivide into nine (9) Townhome Lots, to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) the portion of the Property which shall be divided into nine (9) Townhome Lot Areas shall be held, sold and conveyed subject to the easements, covenants, conditions, restrictions, charges and liens of this Declaration all of which are for the purpose of enhancing and

protecting the value, desirability and attractiveness of the Project. Subject to the above described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the portion of the Property which shall be subdivided into nine(9) Townhome Lots and shall be binding on all parties having or acquiring any right, title or interest in the Property which shall be subdivided into nine (9) Townhome Lots and shall inure to the benefit of each owner of a nine (9) Townhome Lot located within the Property or any part thereof.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE DECLARANT HAS MADE AND MAKES NO REPRESENTATIONS OR COMMITMENTS AS TO THE USE OF THE PROPERTY DESCRIBED IN EXHIBIT A ATTACHED HERETO (PROPERTY) AND RESERVES THE RIGHT TO DEVELOP THE PROPERTY FOR SUCH USES AS THE DECLARANT SHALL, FROM TIME TO TIME DETERMINE IN ITS SOLE DISCRETION TO BE APPROPRIATE AND PROPER. NO PRELIMINARY PLAT, SCHEME, MARK UP, REPRESENTATION OR OTHER COMMUNICATION, WRITTEN OR ORAL, SHALL BIND OR OBLIGATE THE DECLARANT TO USE THE PROPERTY IN ANY MANNER UNLESS AND UNTIL A PLAT SHALL BE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF NEW HANOVER COUNTY, NORTH CAROLINA, DESIGNATING A PARTICULAR USE. NO PORTION OF THE PROPERTY SHALL BE SUBJECT TO THIS DECLARATION EXCEPT THE SINGLE DWELLING LOT AREAS WHICH SHALL BE DESIGNATED BY PLATS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF NEW HANOVER COUNTY, NORTH CAROLINA, STATING THEREON THAT THE PROPERTY SHOWN ON SAID PLAT IS SUBJECT TO THIS DECLARATION.

ARTICLE I

DEFINITIONS

The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

Section 1. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of New Hanover County, North Carolina with regard to a certain phase, section or portion of the Property, as more particularly described in Article II, Section 3 hereof.

Section 2. "Annual Assessments" shall have the meaning as set forth in Article V, Section 3 hereof.

Section 3. "Annual Budget" shall mean the budget prepared by the Homeowners' Association each year covering the estimated costs of operating the Homeowners' Association as more particularly described in Article V, Section 4 hereof.

Section 4. "Articles" shall mean and refer to the Articles of Incorporation of the Homeowners' Association, a copy of which is attached hereto as Exhibit B, as the same may be amended from time to time.

Section 5. "Assessment" shall mean charges by the Homeowners' Association as more particularly described in Article V hereof.

Section 6. "Association" shall mean and refer to any one of the Owners' associations which may be formed in connection with an Additional Declaration with regard to the ownership and/or maintenance of property within the various subdivisions, phases or sections developed or to be developed in the nine (9) Townhome Lot Areas.

Section 7. "Board" shall mean the Board of Directors of the Homeowners' Association.

Section 8. "Bylaws" shall mean and refer to the Bylaws of the Homeowners' Association, a copy of which is attached hereto as Exhibit C, as they may now or hereafter exist.

Section 9. "Club" shall mean a club or recreational area which Declarant may establish on the Property as set forth in Article XIII, Section 1 hereof.

Section 10. "Club Facilities" shall mean recreational facilities located at any Club, including without limitation a clubhouse, tennis courts and swimming pools as more particularly described in Article XIII, Section 1 hereof.

Section 11. "Club Owner" shall mean and refer to the entity owning any Club or Club Property.

Section 12. "Common Area" and "Common Areas" shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee or easement, from time to time by the Homeowners' Association for the common use and enjoyment of the Owners and the Occupants, including without limitation the Roadways, until accepted for maintenance by a public authority and that property identified and designated as "Common Area" on any recorded plat or plats of the nine (9) Lot Areas.

Section 13. "Corporation" shall mean NALU TOWNHOME HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation.

Section 14. "Declarant" shall mean CAROLINA BEACH VILLA, LLC, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

Section 15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Poplar Ridge as it may be amended and/or supplemented from time to time as herein provided.

Section 16. "Design and Development Guidelines" shall have the meaning set forth in Article X, Section 2 hereof.

Section 17. "Entrance Monument Easements" shall mean and refer to the easements reserved by Declarant and granted to the Homeowners' Association in Article XI, Section 6 hereof over, across and under certain areas of the Property, for the installation and maintenance of entrance monuments for the Project, all as more particularly described in Article XI, Section 6 hereof.

Section 18. "Improvements" shall have the meaning as set forth in Article X, Section 3 hereof.

Section 19. "Lot" shall mean and refer to any numbered or lettered tract of land shown on any plat of a nine (9) Lot Area which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until a plat of the area on which the same is located is recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 20. "Maintenance Areas" shall mean those portions of the property as more particularly described in Article X, Section 5 hereof.

Section 21. "Member" shall mean and refer to each Owner who is a member of an Association formed with regard to a phase of the Property in which such Owner's property is located, all as more specifically provided in Article IV, Section 1 hereof.

Section 22. "Mortgage" shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

Section 23. "Mortgagee" shall mean the owner and holder of a mortgage at the time such term is being applied.

Section 24. "Occupant" shall mean and refer to any person occupying all or any portion of a Lot, for any period of time, regardless of whether such person is a tenant of the Owner of such Lot.

Section 25. "Other Use Areas" shall mean areas within the Project which are not in nine (9) Townhome Lot Areas which may be established and developed by Declarant and which may contain multi-family, commercial, professional, institutional, business or other uses.

Section 26. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of a nine (9) Townhome Lot Area, but excluding those having such interest merely as security for the performance of an obligation.

Section 27. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), association, trust or other legal entity.

Section 28. "Phase" shall mean and refer to any phase, section or portion of nine (9) Townhome Lot Areas of the Property for which a separate plat or plats are recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 29. "Plat" shall mean and refer to any plat of nine (9) Townhome Lots which are located within the Property or any part of it which has been recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 30. "Project" shall mean the mixed use community to be known as Poplar Ridge into which the Property is being developed by the Declarant including the nine (9) Townhome Lot Areas which are subject to these Declarations.

Section 31. "Property" shall mean and refer to that certain real property located in New Hanover County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II, Section 2 hereof.

Section 32. "Homeowners' Association" shall mean NALU TOWNHOME HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation.

Section 33. "Homeowners' Association Member" shall mean and refer to any Person who is a member of the Homeowners' Association as set forth in Article IV, Section 1 hereof. Homeowners' Association Members shall include the Declarant for so long as Declarant owns any part of the Property, and all Owners of Lots.

Section 34. "Roadways" shall mean and refer to the roads, streets, entranceways and cul-de-sacs in the nine (9) Townhome Lot Areas as shown on the plats thereof, and where indicated any other roads, streets, entranceways and cul-de-sacs on the Property, all to be privately maintained by the Homeowners' Association or an Association until accepted for maintenance by a public authority as set forth in Article VII, Section 6 hereof.

Section 35. "Single Dwelling Lot Area" shall mean those nine (9) Townhome Lots and that portion of Common Areas as shall be shown on a plat of a portion of the Property recorded in the Office of the Register of Deeds for New Hanover County, North Carolina, and specifically designated as being subject to this Declaration.

Section 36. "Townhome Lots" shall mean lots of various sizes as shall be shown on plats of portions of the Property recorded in the Office of the Register of Deeds for New Hanover County, North Carolina, and specifically designated as being subject to this Declaration upon which lots shall be located no more than one single family residence.

Section 37. "Special Assessment" shall have the meaning set forth in Article V, Section 6 hereof.

Section 38. "Special Individual Assessment" shall have the meaning set forth in Article V, Section 7 hereof.

Section 39. "Subdivision" shall mean and refer to any phase, section or portion of nine (9) Townhome Lot Areas of the Property for which a separate plat or plats are recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 40. "Supplementary Declaration" shall mean and refer to any Supplementary Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of New Hanover County, North Carolina to bring additional property within the coverage of this Declaration and the jurisdiction of the Homeowners' Association, as more particularly described in Article II, Section 3 hereof.

Section 41. "Turnover Date" shall have the meaning set forth in Article V, Section 1 hereof.

ARTICLE II

PROPERTY

Section 1. Property Made Subject to this Declaration. The property made subject to this Declaration shall be that portion of the Property and only that portion of the Property which shall hereafter be subdivided by the Declarant into nine (9) Townhome Lot Areas pursuant to plats of such nine (9) Townhome Lot Areas which shall be filed for record in the Office of the Register of Deeds of New Hanover County, North Carolina, by the Declarant from time to time. No portion of the Property shall be subject to this Declaration until such time as a plat of that portion of the Property subdividing it into nine (9) Townhome Lot Areas shall be filed of record. After the filing of a plat, the nine (9) Townhome Lots shown on ~~the~~ that shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Homeowners' Association, any association, each owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration shall thereafter apply to said platted property. No person shall have any right to go upon any portion of the Property which is undeveloped and/or reserved for future development by the Declarant whether or not such undeveloped property shall be posted with "no trespass" or similar signs.

Section 2. Additional Property. Declarant shall have the right, at its election without the consent of any owner or owners, to bring within the coverage of this Declaration and the jurisdiction of the Homeowners' Association any additional property. Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds of New Hanover County, North Carolina, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property. Each such supplementary declaration shall extend the scheme of this Declaration and the jurisdiction of the Homeowners' Association to such additional property and thereby subject such additional property to assessment for its just share of the Homeowners' Association's expenses. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect a different character of the additional property and as are not inconsistent with the provisions of this Declaration. Nothing contained in this Section 2, however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

Section 3. Additional Declarations. In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any phase, section or portion of the nine(9) Townhome Lot Areas to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of New Hanover County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of an Association to govern the ownership and/or maintenance of the portion of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not an Association is formed pursuant to such Additional Declaration, the Homeowners' Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines,

charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

Section 4. Merger or Consolidation. Upon any merger or consolidation of an Association with another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phase(s) or section(s) of the Property over which such Association has jurisdiction) and the applicable Additional Declarations affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Multi-family Uses of Portions of the Property. The Declarant reserves the right to develop such portions of the Property as Declarant shall from time to time desire into multi-family or other uses ("Other Use Areas") which may be subjected to separate covenants, conditions and restrictions governing the use of such portions of the Property. In the sole discretion of the Declarant, the Other Use Areas may be made subject to associations which may be formed in connection with the uses to which the Declarant shall elect to make of those portions of the Property. **THOSE PORTIONS OF THE PROPERTY WHICH SHALL NOT BE NINE (9) TOWNHOME LOTS OR WITHIN NINE (9) TOWNHOME LOT AREAS AND THE ASSOCIATION(S) FORMED IN CONNECTION WITH OTHER USE AREAS SHALL NOT BE SUBJECT TO THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NINE (9) TOWNHOME LOT AREAS.**

Section 6. Use of Common Areas. The Declarant contemplates as a part of the development of NINE (9) Townhome Lot Areas that it shall convey to the Homeowners' Association by deed or easement, areas of the Property or contiguous property which shall become a part of the Common Area or Common Areas which may be used for parks, trails, walking, jogging, biking, or other recreational uses. Declarant expressly reserves the right to grant to others, including the occupants or users of multi-family condominiums, planned unit developments, and apartments, the right to use the Common Areas for the purposes for which the Common Areas are designed. Declarant may, but shall not be required to, obligate the users, owners or the associations governing the Other Use Areas to which the right to use the Common Areas is granted, to make payments to the Homeowners' Association for the purpose of contributing to the maintenance and upkeep of the Common Areas as a condition of such use. The amount of the contribution to be made by such non-Member users shall be in the sole discretion of the Declarant.

Section 7. Changes to this Declaration or Additional or Supplementary Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify,

change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III

HOMEOWNERS' ASSOCIATION

A Corporation named NALU TOWNHOME HOMEOWNERS' ASSOCIATION, INC., will be formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of nine (9) Townhome Lots in the Project (the "Homeowners' Association"). Its purposes are to own, manage, maintain, and operate the Common Areas, Maintenance Areas and facilities located upon those Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of nine (9) Townhome Lots, all as set forth herein.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE HOMEOWNERS' ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS IN AN ASSOCIATION

Section 1. Membership in the Homeowners' Association. Each and every Owner of a nine (9) Townhome Lot shall automatically become and be a Homeowners' Association Member upon the first conveyance by Declarant to an Owner of a Lot within the Property. In addition, for so long as Declarant owns any part of the Property, Declarant shall be a Homeowners' Association Member. All owners of Lots shall be Homeowners' Association Members. The Bylaws shall control with respect to the determination of the proper exercise of voting rights with respect to a nine (9) Townhome Lot owned by two (2) or more undivided interests.

Section 2. Voting by Homeowners' Association Members. Members of the Homeowners' Association shall be all those Owners together with the Declarant. Each Owner/Member shall be entitled to one (1) vote for each Lot in which they hold the required ownership interest. When more than one (1) person or entity holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot. The Declarant/Member shall be entitled to fifteen (15) votes for each Lot in which it holds the required ownership interest.

Section 3. Voting, Quorum and Notice Requirements for the Homeowners' Association. Except as may be otherwise specifically set forth in this Declaration or in the Articles or Bylaws, the vote of a majority of all votes entitled to be cast by the Homeowners' Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Homeowners' Association Members. The number of votes present at a meeting of the Homeowners' Association Members that is properly

called and that will constitute a quorum shall be as set forth in the Bylaws. Notice requirements for all actions to be taken by the Homeowners' Association Members shall be as set forth herein or in the Bylaws. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Homeowners' Association Members shall be required in order for the Homeowners' Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Property or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE V

HOMEOWNERS' ASSOCIATION ASSESSMENTS

Section 1. Covenant for Assessments. Declarant, for each Lot owned by it after the Turnover Date, and each Owner of any Lot other than Declarant, by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree to pay to the Homeowners' Association:

- (a) annual assessments or charges, such assessments to be fixed, established and collected from time to time as herein provided;
- (b) special assessments for capital improvements and other purposes, such assessments to be fixed, established and collected from time to time as herein provided; and
- (c) special individual assessments levied against individual Owners, as may be fixed, established and collected from time to time as herein provided.

The assessments described in (a), (b), and (c) of this Section 1 (the "Assessments") together with interest thereon, late charges, attorneys' fees, court costs and other costs of collection thereof, as herein provided shall be a charge on the land and shall be a continuing lien upon each Lot, against which each such Assessment is made and shall also be the personal obligation of the Owner, at the time when the Assessment fell due, of the Lot, against which such Assessment is made. No Owner may exempt himself from liability for such Assessment or waive or otherwise escape liability for the Assessments by non-use of the Common Area or abandonment of his property. The personal obligation to pay any such Assessment, together with interest thereon, attorneys' fees, late charges, court costs and other costs of collection thereof, as herein provided, shall pass to the successors in title of such Owner whether or not expressly assumed in writing by such successors; provided however, that such personal obligation to pay Assessments and other costs and charges shall not pass to mortgagees or trustees under mortgages of such Owner who succeed to the title of such Owner.

Section 2. Purpose of Homeowners' Association Assessments. The assessments levied by the Homeowners' Association shall be used for the purposes of the carrying out of the rights and powers of the Homeowners' Association pursuant to the terms and provisions hereof and promoting the enjoyment and welfare of the nine (9) Townhome Lot Areas and, in particular, but without limitation, for the following:

- (a) Until accepted for maintenance by a public authority, maintenance of the Roadways;
- (b) Maintenance of any other Common Areas within the nine(9) Townhome Lot Areas to the extent repair and maintenance thereof shall not have been delegated to or required of an Association having jurisdiction thereover;
- (c) Payment of all ad valorem taxes levied against the Common Areas and any other property owned by the Homeowners' Association;
- (d) Payment of all premiums on all insurance carried by the Homeowners' Association pursuant hereto or pursuant to the Bylaws;
- (e) Payment of all legal, accounting and other professional fees incurred by the Homeowners' Association in carrying out its duties as set forth herein or in the Bylaws, including all costs and expenses of the Board not paid by the collection of fees by the Board pursuant to Article X, Section 8;
- (f) Carrying out the powers and duties of the Board, as more particularly described in Article V hereof;
- (g) Carrying out all other purposes and duties of the Homeowners' Association and the Board as stated in the Articles, the Bylaws and in this Declaration;
- (h) Paying for the cost of rubbish removal services, if any, provided to the Lots.

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Homeowners' Association the annual assessments levied by the Homeowners' Association (the "Annual Assessments") as hereinafter set forth.

- (a) The Homeowners' Annual Assessment provided for herein as to any Lot shall commence as of the date of the conveyance by Declarant to an Owner other than Declarant of such Lot. The Homeowners' Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the calendar year from the date of such conveyance.
- (b) Subject to the provisions of (a) above, the Homeowners' Annual Assessments as to each Lot shall be due and payable on January 1 of each calendar year. Provided that the Board, without the approval of any Homeowners' Association Member or Owner, may provide that the Annual Assessments be paid in installments due other than annually, and thereafter the Annual Assessments shall be paid in such manner and on such dates as may be fixed by the Board, in its sole discretion.

Section 4. Amount of Annual Assessments.

(a) It shall be the duty of the Board annually to prepare a budget (the "Annual Budget") covering the estimated costs of operating the Homeowners' Association during the coming year, taking into consideration, among other things, the then current development and/or maintenance costs to be borne by the Homeowners' Association, estimated increases in development and/or maintenance costs and the future needs of the Homeowners' Association (which may include a reasonable contingency fund).

(b) The initial Annual Budget has been set by Declarant and, based upon such Annual Budget, the Annual Assessments until August 14, 2023, shall be \$1000.00 per Lot owned by any Owner other than Declarant. The Annual Assessments for each and every calendar year thereafter shall be set by the Board in accordance with (c) below.

(c) The Homeowners' Annual Assessment to be levied on each Lot for a calendar year shall be in an amount as set by the Board in accordance with the following:

(i) For calendar year 2024 and thereafter, the Board, by a vote in accordance with the Bylaws, without a vote of the Homeowners' Association Members, may increase the Homeowners' Annual Assessment to be levied against each Lot by a maximum amount equal to ten percent (10%) of the previous year's Homeowners' Annual Assessment.

(ii) If the Homeowners' Annual Assessment to be levied against each Lot is not increased by the maximum amount permitted under the terms of this Section 4(c), the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Homeowners' Annual Assessment to be levied against each Lot may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board, without a vote of the Homeowners' Association Members. Provided, however, that after the Turnover Date the Homeowners' Annual Assessment to be levied against each Lot may be increased without limitation if such increase is approved by a vote of no less than a majority of all votes entitled to be cast by Homeowners' Association Members, taken at a duly held meeting of such Homeowners' Association Members in accordance with the Bylaws.

(d) The Board shall fix the amount of the Homeowners' Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount of and due date of each installment of such Homeowners' Annual Assessment to each Owner at least thirty (30) days prior to January 1 of such calendar year.

(e) Should any Lot be conveyed by Declarant during a calendar year beginning prior to the Turnover Date, then the purchaser of such Lot shall pay to the Homeowners' Association at closing the amount of the Homeowners' Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. Should any Lot be conveyed by

Declarant during a calendar year beginning after the Turnover Date or be conveyed by any Owner other than Declarant during any calendar year, then the Homeowners' Annual Assessment applicable to such Lot shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(f) Declarant shall have the discretionary authority to reduce the Homeowners' Annual Assessment on any Lot owned by an Approved Builder on which no structure has been completed until such time as the Approved Builder sells or otherwise transfers ownership of its Lot.

Section 5. Payments by Declarant in Lieu of Annual Assessments. Notwithstanding the provisions of this Article V, for calendar years beginning prior to the Turnover Date, in lieu of the payment of Annual Assessments, Declarant shall be responsible for paying for each such calendar year that portion of the annual expenses of the Homeowners' Association (but not including any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant, if any. For calendar years beginning after the Turnover Date, Declarant shall be responsible for paying Annual Assessments in the same manner as any other Owner of a Lot or Tract located in the Project, as more particularly described in this Article V.

Section 6. Special Assessments. In addition to the Annual Assessments described in Sections 3 and 4 above, the Board, without a vote of the Homeowners' Association Members, may levy in any assessment year or years a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Homeowners' Association which are not paid for out of funds on hand in the Homeowners' Association or out of the Annual Assessments collected by the Homeowners' Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the Roadways and Utilities serving nine (9) Townhome Lot Areas. Notwithstanding the above, all fees and costs incurred by the Homeowners' Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Homeowners' Association Members entitled to cast no less than two-thirds (2/3) of all votes entitled to be cast by the Homeowners' Association Members. Special Assessments shall be assessed pursuant to this Section 6 against the Owners of Lots. Provided, however, that Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval. The due date of any Special Assessment levied pursuant to this Section 6 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner at least thirty (30) days prior to the date such Special Assessment is due.

Section 7. Special Individual Assessments. The Board may levy special assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas including the Roadways and other improvements occasioned by the acts of Owner(s) and not the result of ordinary wear and tear or (ii) for payment of fines, penalties or

other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including without limitation, penalties assessed by the Board pursuant to the Design and Development Guidelines, reimbursement to the Board for any sums it expends on an Owner's behalf pursuant to the Design and Development Guidelines, and reimbursement to the Homeowners' Association for all expenses incurred in connection with the enforcement of the provisions of Article IX. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 7 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 8. Omission of Homeowners' Association. The omission of the Board, before the expiration of any year, to fix the Annual Assessments hereunder for that or the next year, shall not be deemed to waive or modify in any respect any of the provisions of this Declaration, or to release any Owner from the obligation to pay the assessment due from such Owner for that or any subsequent year, and the Annual Assessments fixed for the preceding year shall continue until new Annual Assessments are fixed.

Section 9. Collection Agent. At the option of the Board, a representative of the Homeowners' Association designated by the Board may act as collection agent for any and all Assessments (whether Annual Assessments, Special Assessments or Special Individual Assessments) imposed by the Homeowners' Association against the Owners.

Section 10. Owner's Personal Obligation for Payment of Assessments. The Annual Assessments, Special Assessments, and Special Individual Assessments provided for herein shall be the personal and individual debt of the Owners (as of the due date of the applicable Assessment payment) of the Lots to which such Assessments related. No Owner may exempt himself from liability for such Assessments by non-use of his property or the Common Area or otherwise. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by the law, whichever is less, on the amount of the Assessment from the due date thereof until the date such Assessment and interest is paid, together with all costs and expenses of collection, including reasonable attorneys' fees. In addition, the delinquent Owner shall also pay such late charges as may have been theretofore established by the Board to defray the costs arising because of late payment.

Section 11. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article V but unpaid shall, together with interest and late charges as provided in this Article V and the cost of collection, including reasonable attorneys' fees, become a continuing lien and charge on the portion of the Property and improvements thereon owned by the defaulting Owner as of the Assessment due date and shall bind such property and improvements then in the hands of the Owner, and the defaulting Owner, his heirs, devisees, personal representatives, successors, and assigns. The aforesaid lien shall be superior to all other liens and charges against such property and the improvements thereon, including the lien of any mortgage. Provided,