

31
90

BK: RB 5919

PG: 2262-2293

RECORDED:

09-22-2015

02:18:07 PM

BY: CAROLYN JOHNSON

DEPUTY



2015029067

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$90.00

STATE OF NORTH CAROLINA

DECLARATION OF ROGUE TOWNES

COUNTY OF NEW HANOVER

THIS DECLARATION, made this 22nd of September, 2015, by UPPER 90 OF WILMINGTON, LLC, hereinafter called "Declarant" (whether one or more persons, firms or corporations). The designation Declarant as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.)

WITNESSETH:

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

BEING A PORTION of Lot 5 in Block 279 in the City of Wilmington, also being that tract having Tax ID Number R04813-002-012-000, described as Tract 7 in Deed in Book 684 Page 369 and in that Deed in Book 5768 Page 815 in the Register of Deeds of New Hanover County, and as is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property" or "Townhouse Property").

NOW, THEREFORE, Declarant hereby declares that all of the said property is to be known as "Rogue Townes" (Townhomes) which shall be held, sold, and conveyed subject to the terms and provisions of this Declaration, and portions of Chapter 47F of the North Carolina General Statutes, which is for the purpose of protecting the value and desirability of the property, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

RETURN TO: CALDER LAW

A. Act. The North Carolina Planned Unit Development Act, Chapter 47F of the North Carolina General Statutes, portions of which shall apply to this development.

B. Additional Properties. Shall mean and refer to any lands adjoining the Properties or within a one-mile radius thereof, which now are owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the properties by the Declarant and subjected to this declaration. No additional properties may be annexed without prior approval of HUD/VA, if so required. The annexation of such additional properties shall become effective by the recording in New Hanover County by the Declarant of an amended declaration for each new section or phase annexed.

C. Allocated Interests. The undivided interests in the Common Elements, the Common Expense liability, and in the Association allocated to each Unit, as the same may change from time to time.

D. Assessment. A share of the funds required for the payment of Common Expenses that from time to time is assessed against the Unit Owner by the Association.

E. Association. The non-profit corporation known as Rogue Townes Association, the entity responsible for the operation of the Townhouses development pursuant to this Declaration and the Act, which entity includes all of the Unit Owners acting as a group in accordance with this Declaration and the attached By-Laws.

F. Board of Managers or Board. Shall mean the Officers of the Association, as defined in the attached By-Laws.

G. By-Laws. The By-Laws for the Association as they exist from time to time. The initial By-laws are attached as Exhibit C.

H. Building. All structures and improvements now or hereafter erected upon the property.

I. Common Elements or Common Areas. These terms shall be used interchangeably to mean and refer to all portions of the Townhouse property other than the Units, as is designated on the plat(s) of the development, such as the alley.

J. Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

K. Common Expense Liability. The liability for Common Expenses allocated to each Unit pursuant to the Act, this Declaration, and the By-Laws, if applicable.

L. Townhouse Units. The real estate portions of which are designated for separate ownership and the Limited Common Areas associated with each unit.

M. Townhouse Documents. This Declaration, the By-laws, the Rules and Regulations, if any, and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

N. Declarant. Upper 90 of Wilmington, LLC, and its grantees, successors and assigns. The term Declarant shall be synonymous with the term "Developer".

O. Declaration. This Instrument as it may be from time to time amended or supplemented.

P. Development Rights. Those rights hereby reserved by the Declarant to make additions to or to change the configuration of the Townhouse Units and to change or revise the Common Elements or Limited Common Expenses within the Townhouse development, if applicable.

Q. Limited Common Elements or Limited Common Areas. These terms shall be used interchangeably to mean and refer to those portions of the Common Elements that are allocated for the exclusive use of a particular Unit, as more specifically defined herein. Any driveway or deck that serves only one Unit is defined as being a Limited Common Area the use of which is limited to the Owner, Guests, Invitees, Tenants, and other users of the Unit to which it is attached.

R. Property or Townhouse Property. The real estate above, together with the Building and improvements located thereon, and such additional improvements thereon as may be subsequently subjected to this Declaration by Supplemental Declaration in the manner herein provided.

S. Supplemental Declaration. A document filed by Declarant to change the configuration of the Townhouse Units, to change or revise the Common Elements or Limited Common Elements within the Townhouse in the manner provided herein, or to add additional phases or sections, if applicable.

T. Special Declarant Rights. Shall mean rights reserved for the benefit of the Declarant including without limitation the right (i) to complete improvements intended or planned by Developer for the property or additional property;(ii) to exercise any development or other right reserved to the Declarant by this Declaration of otherwise, (iii) to maintain within the Planned community sales offices, management offices, construction offices/trailers, signs advertising the Planned community, and models; (iv) to use the common elements for the purpose of making improvements within 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 a master association;(vii) to appoint or remove any officer or executive Board member of the Association or any other Master Association during the Declarant control period; (viii) to maintain Architectural Control until such time as Declarant sells or transfers all Lots in the

subdivision; (ix) to expand the development as set forth herein; and (x) to delegate any or all of the Declarant's rights permanently or for limited time periods.

U. Unit or Townhouse Unit. A part of the Property that is to be subject to private ownership, as designated herein, on the exhibits attached to this Declaration and in the recorded plat in **Map Book 60 at Page 72** of the New Hanover County Registry.

V. Unit Owner or Owner. A person or entity, or any combination thereof, that owns a Unit.

W. Plats or Plans: the plats and plans filed with the New Hanover County Register of Deeds, including those plats or plans for the Townhouses entitled "Rogue Townes" being duly recorded in **Map Book 60 at Page 72** of the New Hanover County Registry, as the same may amended from time to time by the unanimous consent of the Unit Owners.

ARTICLE II DESCRIPTION OF BUILDING

The Declarant is the owner of a Building containing four (4) Units located upon the Property. The Declarant hereby dedicates the aforesaid land and Building to Townhouse ownership. A plat of survey of the Property by Bateman Civil Survey Company, Registered Land Surveyor, showing the location of said Building is described in Exhibit B and is attached hereto and made a part hereof. The Units are designated as 802 Unit A, 802 Unit B, 802 Unit C and 802 Unit D. The number of Units in the first Phase is four (4), and maximum number of units in this phase of the Townhouse development may be four (4).

All Units have access to all of the Common Elements designated on the Plats and Plans recorded in the New Hanover County Registry.

The Common Areas, Common Elements, and facilities are shown upon the Plats and Plans recorded in the New Hanover County Registry.

The Limited Common Expenses and facilities are also shown on the Plats and Plans of the Property recorded in the New Hanover County Registry, referenced above.

Each Unit shall be conveyed and treated as an individual Property capable of independent use and fee simple ownership, and the Unit Owners of each Unit shall also own, as an appurtenance to the ownership of each said Unit conveyed, an undivided interest in the Common Area, set out as follows, and as it changes from time to time, and a one-hundred percent interest in the Limited Common Area associated with the Unit, as shown on the said Plat, if any.

Initially 802 Unit A shall own a one-fourth interest in the Common Areas.

Initially 802 Unit B shall own a one-fourth interest in the Common Areas.

Initially 802 Unit C shall own a one-fourth interest in the Common Areas.

Initially 802 Unit D shall own a one-fourth interest in the Common Areas.

Each unit shall have one vote in the operation of the Townhouse. If other units are added, all units will have an equal share in the Common Areas, and have one vote in the operation of the Townhouse.

Limited Common Expenses and facilities shown on the aforesaid-recorded plat of the Property as recorded in the New Hanover County Registry. Each Unit Owner will have the exclusive right to possession and use of the Limited Common Elements designated for use by each Unit.

ARTICLE III USE RESTRICTIONS

The use of the Property shall be in accordance with the following provisions:

A. The ground floor, only, of all units may be utilized for General Office and Retail uses that are allowed as a matter of right under the applicable zoning, and are approved by the Declarant, and after the period of Declarant control, the Association. All of the upper floors, the non-ground level floors, of the Units shall be used and occupied for residential purposes only, including residential rental purposes, and for no other purposes. No Unit may be divided or subdivided into a smaller Units nor any portion thereof sold or otherwise transferred without the consent of all Unit Owners.

Initially, hours of non-residential uses shall be limited to 8:00 to 6:00 daily, with the exception of Special Events, such as once a month open houses on Fridays or Saturdays, when hours of operation may be extended to 9:00 P.M. General office use for non-medical professional offices such as Architects, Lawyers, Accountants, CPAs and similar is preferred. No retail sale uses, other than one Art Gallery, will be allowed, nor shall any uses prohibited by Section 18-196(c) of the Wilmington City Code be allowed. Uses requiring a Special Use Permit under Section 18-196(d) are prohibited. All persons other than the unit owners must park on the public streets.

Any and all signage for any use must follow applicable municipal codes and ordinances, and be approved by the Declarant, and after the period of Declarant control, the Association. All Signage must be inside the Unit, and is limited to two signs per Unit. No signs may be lit, or illuminated, and no sign may be no more than one foot high by three feet wide in size. There is no prohibition against tasteful political signs in and about the units and premises. There is no prohibition against flying or displaying the American flag from balconies. However, the duration of display and location of political signs and flag display may be regulated by the Declarant, and after the period of Declarant control, the Association. No other signs or advertising may be places in or about the premises.

Notwithstanding any of the above, the Declarant, and after the period of Declarant control, the Association may set rules for the commercial uses and signage allowed. In no

event shall any otherwise allowed display block or hinder access to any unit, or foot traffic in the vicinity.

B. The Common Elements, Common Areas and facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.

C. No use or practice shall be permitted on the Townhouse Property that reasonably could be considered the source of annoyance to residents or interfering with the peaceful possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No Owner shall permit any use of his/her Unit or of the Common Elements that will increase the rate of insurance upon the Townhouse Property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed, including, but not limited to noise limits and limitations on days and times allowed for work related construction.

D. Reasonable regulations concerning the use of the Townhouse Property may be made and amended from time to time by the unanimous consent of the Unit Owners of Rogue Townes Association (herein referred to as the "ASSOCIATION").

E. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit. Except as may be provided in this Declaration, each Unit Owner shall have the exclusive right and duty to maintain and repair said Owner's Unit. Each unit is responsible for a prorata share of the costs of roof replacement/re-shingling the common roof when it is reasonably necessary. Each Unit Owner is responsible for maintenance of the exterior of their unit, and their driveway. Each unit is responsible for a prorata share of the costs associated with repair, maintenance and replacement of the common landing at the front stair case. Each unit is responsible for a prorata share of the costs associated with repair, maintenance and replacement of the party wall between the units. However, in the event the owner(s) of one unit, or their guests, invitees, tenants, or similar are responsible for damage to the roof or common landing which causes the need for repair or replacement, that unit is responsible for the costs of such repair or replacement. Also if damage to any Unit arises from an occurrence in another unit, such as water leaks, the owner of the unit where the damage/leak occurred shall be responsible for the costs of repair to both his/her unit and the other unit damaged; the costs shall be an assessment on the unit where the damage arose, and a lien on the unit where the damage/leak occurred.

F. No Unit Owner shall alter any Common Element or the party wall between the units without the prior written consent of all members of the ASSOCIATION. No Unit Owner shall fix any object to the Common elements (including fences, flowers, trees, shrubs or other vegetation) or in any manner change the appearance of the Common Elements without first obtaining the written consent of all members of the ASSOCIATION.

G. No Unit Owner shall permit any structural modification or alteration to be made to any Unit, nor alter or cause any changes to be made to or alter the appearance of the exterior of any building (including painting, installing television, satellite dish, radio antennae, or similar), without first obtaining the written consent of all members of the ASSOCIATION, except as may be otherwise allowed by law.

H. No timeshare units as defined by Chapter 93A of the North Carolina General Statutes or any successor statute shall be permitted within the Townhouse and no Unit may be conveyed pursuant to any such timesharing plan or scheme.

I. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Unit or in any dwelling except certain domestic household pets, such as may be otherwise provided by rules and regulations approved all members of the ASSOCIATION. Only owners of Units are allowed to keep pets in, on or about the units or common area. The rules and regulations may further regulate, permit or prohibit the kind and number of domestic household pets. Domestic household pets may not be raised, bred, kept or maintained for any commercial purposes. All household pets shall be kept on a leash at all times when outside the Units and animal waste must be immediately cleaned up and properly disposed of; failure to do so shall subject the offending unit owner to fines by the Association. Such pets may not be permitted to run at large at any time. Owners of pets on the Property shall control excessive barking or other disturbances caused by the pets.

J. All window coverings (i.e., curtain blinds, draperies, shades, etc.) shall be approved by the developer, and after the period of developer control, a majority of the members of the ASSOCIATION. At no time may any bed sheets, carpets, tapestries, blankets, or similar be used for window coverings.

K. Unit Owners shall not park or store any camper, trailer, boat trailer, trailer vehicle, or similar vehicle anywhere on the Property. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized trucks. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No stripped, wrecked or partially wrecked, or junk motor vehicle or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on the Property

L. No burning of wood, leaves, trash, garbage or household refuse or burning as a means of clearing brush shall be permitted on the Property.

M. Garbage and trash shall be disposed by Unit Owners in accordance with rules and regulations approved by all members of the ASSOCIATION, and the applicable municipal ordinances.

N. No laundry or wash shall be dried or hung outside any Unit.

O. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Unit Owner without the prior written approval of the ASSOCIATION. Permission may be requested from the Association

to temporarily have a POD in the driveway associated with a Unit, but the duration of its usage shall be limited to two weeks. Portable basketball hoops must be stored out of sight and off the common area when not actively in use.

P. No trash containers may be stored on the balconies or screened porches of Units. All trash containers and recycling bins shall be stored in each unit owner's garage except for the day of its pickup. Any trash, garbage, debris and large items on the common area may be removed by the Association, and the cost of removal be charged to the Unit as an assessment; in addition to such costs, the Association may charge a fine of up to \$50 per day for such violation. Outdoor furniture (if permitted under local law) may be stored on balconies or screened porches of Units if approved in advance by all members of the ASSOCIATION. Grills are NOT allowed on balconies, or within ten feet of the building.

Q. The ASSOCIATION is authorized to regulate parking by adopting the rules and regulations relating thereto, which rules and regulations will include the right to assign or reassign parking spaces if it deems it appropriate or necessary. All resident owned vehicles shall be parked in their unit garage. Parking on the common area driveway (alley) is strictly prohibited; any vehicles parked in the common area driveway (alley) may be towed, without warning, at the owner's expense. Visitors shall park on the public streets. No boats, trailers or recreational vehicles may be parked in the common area driveway (alley), and may be towed, without warning, at the owner's expense. The Speed limit in the common driveway is ten miles per hour. Residents may be fined for speeding and or reckless driving in and on the common driveway.

R. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner, or by any member of a Unit Owner's family, guests, invitees, licensees, agents, occupants, users, or tenants, then the expenses incurred by the ASSOCIATION for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner. If the Unit Owner fails to repay the expenses incurred by the ASSOCIATION within 30 days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment enforceable in accordance with Article IX herein.

S. Rentals of less than the whole unit is strictly prohibited. Leases must prohibit both indoor and outdoor pets at all times. The unit owner shall be responsible for all damage to the structure, common area, limited common area and similar that is caused by their Tenant. Unit owners must supply the Association with a copy of any and all leases of their unit.

Rogue Townhomes is designed as a owner occupied development. Before any unit owner may enter into a lease to rent out any portion of their Unit, the lease must be approved by the Developer, and after the period of Developer control, the Association. A copy of the signed approved lease, and acknowledged Rules and Regulations, must be delivered to the Association promptly after signing, along with the contact information for the Tenant,

including telephone numbers, mailing addresses and email addresses. The Developer, and after the period of Developer control, the Association, may terminate any lease and evict the tenant for the Tenant's failure to comply with the terms herein and the Rules and Regulations of the development. No lease will be approved if the Unit owners is delinquent on dues, fees, fines and/or assessments.

ARTICLE IV
EASEMENTS

A. Each Unit shall be subject to an easement in favor of the other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Units, if applicable.

B. In case of emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Unit Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit, if reasonably required for the purpose of remedying or abating the causes of such emergency; such right of entry shall be immediate.

C. Easements over the Common Areas are hereby granted to utility providers for the purposes of installing and maintaining facilities for providing water, sewer collection, electricity, internet, cable, and similar services.

D. An easement is hereby granted to all police, fire, ambulance and similar persons and services, to enter upon the property in connection with performing their duties.

E. All easements and rights described herein are easements appurtenant, and shall run with the land by whomsoever owned, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

F. The Common Area is subject to a four foot wide private access easement along the eastern end of the subject property as defined in the deed to the developer.

G. The Common Area (the driveway) will subject to an access easement for the possible other phases of the development, if developed.

ARTICLE V
ENFORCEMENT

A. 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.

B. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions that shall remain in full force and effect.

ARTICLE VI
NOTICE

The name and address of the initial process agent to receive service of process in any matters affecting the Property is as follows:

Aaron Enright
500 Sericea Court
Wilmington, NC 28412-7528

The process agent may be changed by recording in the New Hanover County Registry a memorandum of change signed by the record Owners of all Units.

ARTICLE VII
TAXES

Each individual Unit and its undivided interest in the Common Elements and facilities shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and Undivided Interest in the Common Elements and facilities and shall not be affected by the consequence resulting from the tax delinquency of any other Unit Owner. Neither shall the Building, the Townhouses Property, nor any of the Common Elements and facilities be deemed to be a separate parcel for the purpose of taxation.

ARTICLE VIII
INSURANCE

Insurance Obtained by Unit Owners. It shall be the responsibility of each Unit Owner, at such Unit Owner's expense, to maintain all fire, flood, liability and extended property damage insurance on such Unit Owner's Unit and any personal property and furnishings, and to maintain public liability insurance covering such Unit Owner's Unit. In addition, a Unit Owner may obtain such other and additional insurance coverage on and in relation to the Unit Owner's Unit as the Unit Owner, in the Unit Owner's sole discretion, shall conclude to be desirable or reasonably obtainable. All Unit Owners shall provide the Association with copies of their insurance policies at the time they acquire their Unit, and provide updated copies at every annual meeting thereafter.

Renters Insurance. All tenants shall maintain renters insurance. The Unit Owner is responsible for providing the Association with copies of the insurance policies at the

time they lease their Unit, and provide updated copies when changing Tenants or at every annual meeting thereafter.

Insurance Obtained by the Association. To the extent necessary or desirable, the association shall obtain liability insurance to cover losses not insured by the policies of the Unit Owners, particularly those potentially arising from occurrences on the Common Area.

ARTICLE IX ASSESSMENTS

Assessments against Unit Owners by the Board of Managers, or by a Unit Owner who is attempting to enforce the applicable provisions against a Unit Owner who is in default under their obligations, made pursuant to this Declaration shall, if not paid when due, create a lien in favor of the association against the Unit of the defaulting owner as provided in Chapter 47F, of the North Carolina General Statutes, and shall be collectable as provided therein.

The initial assessments are \$180.00 per quarter. Every Common Expense not covered by the monthly dues shall automatically create a Special Assessment against all Units for a prorata share of the expense, unless the expense would otherwise be the responsibility of only one Unit, in which case it shall automatically create a Special Assessment against the applicable Unit. Dues shall be payable January 1, April 1, July 1 and October 1, and shall be late 15 days after their dues date. If \$25.00 Late Payment Penalty shall be automatically assessed for any payment not made within 15 days of its due date, and for every month thereafter until the dues and penalties are paid in full. All dues and penalties are personal obligation of the Unit owner and liens on their Unit.

The first purchaser of a unit shall pay a Working Capital assessment equal to two quarters dues (\$360.00).

Each Unit shall have separate electricity, trash collection, water and sewer, telephone, cable, and other utility billings.

There will be an insurance assessment equal to the Unit's prorata share of the common area liability insurance premium(s) for the year, if applicable.

The lien created by this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the lien of any assessment, except that the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of any assessment against the Unit that first became due prior to such sale or transfer.

Fees, late charges, fines and interest charged pursuant to the Act and this Declaration are enforceable as assessments under the Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first

installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing. The ASSOCIATION'S lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina. The Trustee for such foreclosure shall be a person or entity appointed by the non-defaulting Unit Owner.

All monetary fines, penalties, interest or other charges or fees levied against a Unit Owner pursuant to this Declaration, or any expense of the ASSOCIATION that is the obligation of a Unit Owner or that is incurred by the ASSOCIATION on behalf of the Unit Owner pursuant to this Declaration, and any expense (including without limitation attorneys' fees) incurred by the ASSOCIATION as a result of the failure of a Unit Owner to abide by this Declaration, constitutes a **"Default Assessment,"** enforceable as provided in this Declaration and in accordance with the Act. Any installment of an assessment, which is not paid when due, shall be delinquent. If such an assessment installment becomes delinquent, or if any Default Assessment is levied, the member of the ASSOCIATION other than the defaulting member may unilaterally cause the ASSOCIATION to take any or all of the following actions (in the non-defaulting member's reasonable discretion):

- (a) Assess a late fee for each delinquency equal to \$25.00 or four percent (4%) of the amount due, whichever is greater;
- (b) Charge interest from the date of delinquency at an interest rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the maximum legal rate allowed in the state of North Carolina per annum (the "Default Rate");
- (c) Suspend the voting rights of the Unit Owner or the right of the Unit Owner to use any recreational amenity of the Townhouses during any period of delinquency;
- (d) Accelerate all remaining assessment installations for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- (e) Bring an action at law against any Unit Owner personally obligated to pay the delinquent assessment charges;
- (f) File a statement of lien with respect to the Unit and foreclose as set forth in more detail below.

Any assessment or portion thereof that is not paid when due shall be delinquent. If any delinquent assessment or any portion thereof is not paid within fifteen (15) days after the due date, the same shall bear interest from the date of delinquency at the Default Rate and in addition, a late fee may be assessed as provided above. The non-defaulting member may bring an action in the name of the ASSOCIATION (and at the expense of the ASSOCIATION) against the Unit Owner personally obligated to pay the same, and may foreclose the lien against the Unit in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The non-defaulting member may cause the ASSOCIATION to bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. The sale or

transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments.

ARTICLE X
ARCHITECTURAL CONTROL

A. No building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon the Townhouses Common Area or Limited Common Area, nor shall any exterior addition or change therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved by unanimous approval of the Owners at a duly called meeting at which the Owners of all Units are present.

B. The exterior color of a Unit cannot be changed unless the color scheme of the entire Townhouse building is similarly changed. Any such change requires the unanimous approval of the owners at a duly called meeting at which the Owners of all Units are present.

C. No Unit owner or Tenant may make any modifications, structural changes, wiring changes, plumbing changes or mechanical alterations to the common elements, landscaping or party walls without the specific approval, of the changes, in writing, by the Developer, and after the period of Developer control the Association. No Unit owner or Tenant may install antennas, satellite dishes, and similar, without the specific approval, of the installation, in writing, by the Developer, and after the period of Developer control the Association.

D. The front patio areas shall be kept in a neat and orderly manner that does not obstruct other Unit owners or passers-by.

ARTICLE XI
BINDING EFFECT

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the ASSOCIATION or the owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

ARTICLE XII
AMENDMENT

This Declaration may be amended at any time and from time to time by an instrument in writing executed by the Declarant so long as Declarant owns all the units, or if such amendment is required to bring the Declaration into conformity with governmental, quasi-governmental (FNMA, VA, FHA, FHLMC), or lender rules, regulations and requirements.

Such Amendment(s) shall be effective upon the recording of such Amendment(s) in the Office of the Register of Deeds for New Hanover County.

This Declaration may be amended at any time and from time to time by an instrument in writing executed by all the Owners of all Units of Rogue Townes, and shall be effective upon the recording of such Amendment(s) in the Office of the Register of Deeds for New Hanover County.

The parties hereto may file Supplemental Declarations from time to time authorizing, approving, and detailing the reconfiguration, renovation and remodeling of the Townhouses Units, Common Elements, and Common Areas. In the event of any disagreement between the owners of the Units as to what is fair, proper and appropriate and in order to prevent a stalemate which would result in a detriment to all concerned parties it is agreed that any dispute or disagreement that can't be settled to the satisfaction of all Unit Owners within thirty days will be submitted to binding arbitration in accordance with the rules of the American Arbitration Association and settled in that manner.

ARTICLE XIII THE ASSOCIATION

A. Association Management Duties. Subject to the rights and obligations of the Owners as set forth in this Declaration and the Act, the ASSOCIATION shall be responsible for the maintenance, repair, replacement and improvement of the Common Elements (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The expenses, costs and fees of such management operation, maintenance and repair by the ASSOCIATION shall be part of the assessments charged under Article IX herein, and prior approval of the Owners shall not be required in order for the ASSOCIATION to pay any such expenses, costs and fees. The officers of the ASSOCIATION will exercise for the ASSOCIATION all powers, duties and authority vested in or obligated to be taken by the ASSOCIATION and not reserved to the members by this Declaration, the Act, or other applicable law.

B. Common Elements. The ASSOCIATION will maintain, repair and replace all of the Common Elements. The costs of such maintenance, repair and replacement shall be a Common Expense. All damage caused to a Unit or to a Limited Common Element by any work on or to the Common Elements done by or for the ASSOCIATION shall be repaired by the ASSOCIATION and the cost thereof shall be a part of the Common Expenses. Each Unit Owner shall be responsible for all maintenance, repair and replacement of the Limited Common Areas associated with their Unit.

C. Membership. Every Unit Owner shall be a member of the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of any Townhouses Unit. No Unit Owner, whether one or more persons, will have more than one membership per Unit owned, but all of the persons owning each Unit will be entitled to rights of membership and use and enjoyment appurtenant to such ownership.

D. Transfer of Membership. A Unit Owner shall not transfer, pledge or alienate his Membership in the ASSOCIATION in any way, except upon the sale or encumbrance of the Unit, and then only to the purchaser of his Townhouses Unit.

E. Class of Membership. The ASSOCIATION shall have one class of voting membership, composed of all Unit Owners including Declarant.

F. Voting Rights. Except as otherwise provided in the By-Laws, each member shall be entitled to vote in ASSOCIATION matters. Each Unit shall have one vote. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by one person or alternative persons as the Unit Owners among themselves determine. If more than one of the multiple owners is present at a meeting in person or by proxy, the vote allocated to their Unit may be cast only in accordance with the agreement of a majority in interest of the owners as evidenced by a written designation filed with the secretary of the ASSOCIATION. There is a majority agreement if any of the multiple owners casts the vote allocated to his Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

G. Officers. Until the sale of the last unit, Aaron Enright shall be the President, and Bill Gilligan shall be Secretary/Treasurer. After the sale of the last unit the then Unit Owners shall decide among themselves which shall hold each office.

In the event unanimous consent of the Unit Owners cannot be obtained with respect to any matter required to be submitted to a vote of the ASSOCIATION the matter shall be submitted to arbitration in accordance with Article XII herein.

IN TESTIMONY WHEREOF, the Declarant has caused this document to be executed by its duly authorized Member/Manager this the 22nd day of September 2015.

DECLARANT:
UPPER 90 OF WILMINGTON, LLC

[Signature] (SEAL)

Its: Member Managers

STATE OF NORTH CAROLINA COUNTY OF NEW HANOVER

I, Annette L. Corvelli, a Notary Public for the State and, County aforesaid, do hereby certify that Aaron T. Enright, known to me or proven to me by photographic identification, personally appeared his capacity as Member/Manager of Upper 90 of Wilmington, LLC this day and acknowledged the execution of the foregoing instrument the day and year above shown.

This the 22nd day September, 2015.

[Signature]
Notary Public

My Commission Expires: 06/30/2020

