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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

INSTRUMENT # 2005021845

**DECLARATION OF CONVENANTS AND RESTRICTIONS**  
**SMITH CREEK VILLAGE TOWNHOME ASSOCIATION, INC.**

**THIS DECLARATION** is dated for purposes of reference only this 18th day of April, 2005, by **Perimae & Associates, LLC**, a North Carolina limited liability company, hereinafter called "Developer."

**WITNESSETH:**

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create therein a residential community with open spaces and other common areas for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas; and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer had deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which, should be delegated and assigned the powers of maintaining and administering the community properties and common areas and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated or will incorporate within one month hereafter under the laws of the State of North Carolina, as a nonprofit corporation, **SMITH CREEK VILLAGE TOWNHOME ASSOCIATION, INC.** (the "Association"), for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Developer declares that the real property described in Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as ("covenants and restrictions")) hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the contract shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to **SMITH CREEK VILLAGE TOWNHOME ASSOCIATION, INC.**
- (b) "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration
- (c) "Common Properties" shall mean and refer to those areas of land now of hereafter shown on any recorded subdivision plat of the Properties (excepting that small section reserved by the Developer further described in Article II, Section 2(a) below) or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of the Properties, including improvements if any constructed thereon, as well as Limited Common Area ("LCA") which is intended to be reserved for the use and benefit of the Owner to whose living unit said LCA attaches.
- (d) "Declarant" may be used interchangeably with "Developer" and shall mean Perimae and Associates, LLC.

*E. Davis* **RETURNED TO**

- (e) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined.
- (f) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family, whether as owners or tenants.
- (g) "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof.
- (h) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui que trust unless and until there has been a transfer of title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (i) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.
- (j) "Mortgage" shall include the note holder or cestui que trust secured by a "deed of trust."

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Properties. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, is more particularly described as all of that property shown as Smith Creek Village, Revision Plat, Townhome Development, in a map thereof recorded April 27, 2005 in Map Book 47, Pages 303, New Hanover County Registry.

Section 2. Additions to Existing Property.

- (a) Expansion. Additional lands may become subject to this Declaration, including but not limited to a small area located upon said plat described as all of that land south of L9, west of L8, North of the southeasternmost lot line, and east of a line running parallel to L8 to the southeasternmost lot line from a point fifteen feet (15') east of the intersection of L9 and L10 on said plat, which small area is reserved and retained hereby by the Declarant for future development and/or sale. The additions authorized hereunder may be made in one or more phases. Said additions shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property desired to be annexed, which Supplemental Declaration shall extend the scheme of these covenants and restrictions to such property by adopting these Covenants and Restrictions by reference. Such Supplemental Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as such are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration as described in Section 1 of this Article. Any annexation made hereunder must be completed on or before December 31, 2010. Any such amendment shall specify the date upon which dues and assessments are payable for Lots annexed thereby.
- (b) Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit or undeveloped and undesignated land which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, and the vote for such Lot and Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

Class B. The Class "B" Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot or Living Unit in which it holds interests required for membership. The Class "B" Member may appoint the member of the Board of Directors during the Class "B" control period. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events:

- (a) When ninety percent (90%) of the total number of lots have been conveyed to persons other than the Declarant or Builders; or
- (b) January 1, 2010; or
- (c) When in its discretion, the Class "B" member so determines and voluntarily relinquishes such right.

From and after the happening of the earlier to occur of these events, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easement of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Properties, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated and/or intended for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit. In addition, every Class A Member shall have the right and privilege of using the designated parking spaces for the benefit of his or her Living Unit. Additionally, every Member shall have an exclusive right and easement of enjoyment in and to the type of property included in the Common Properties known as Limited Common Area, and identified as "LCA" on said plat, for the particular unit owned by that member only.

Section 2. Title to Common Properties. The Developer must relinquish the legal title to the Common Properties to the Association prior to the transfer of any Lot or Living Unit included within the Properties. Furthermore, Developer reserves for the benefit of Developer, and for the benefit of the Association and the owners of all Lots, the right to utilize all drainage ways, retention ponds and similar common facilities and utilities for the benefit of all of the property currently owned by Declarant and any other adjacent properties which may be owned by Developer in the future.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continue enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;
- (b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;
- (c) the right of the Association, as provided in its Articles of Incorporation and By-Laws, to suspend the voting rights of any member of any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (d) the legal right of an Owner of property shown on the same plat to include portions of the Common Properties as may be necessary for said Owner to qualify under governmental requirements such as setback lines, open space, parking or other aspects which may be needed for issuance of a building permit to be secured to rebuild a damaged Living Unit; and
- (e) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or entity for such purposes and subject to such conditions as may

be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast not less than two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purposes or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

Section 4. Stormwater Retention. The North Carolina Department of Environmental Management has required there to be constructed a stormwater retention pond for the benefit of the property described in Section 1 of this Article. The Association shall maintain in good and usable condition, and in accordance with regulations and standards adopted and/or imposed by the North Carolina Department of Environmental Management, the stormwater retention pond and distribution system located on property subjected to this Declaration.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation for Assessments. Declarant, for each Lot or Living Unit owned within the Properties hereby covenants, and each Owner of any Lot or Living Unit within the Properties, by acceptance of a deed for a Lot or Living Unit, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association:

- a. annual assessments or charges;
- b. special assessments for capital improvements and other purposes stated in this Declaration;
- c. default assessments (as hereinafter defined) which may be assessed against a lot pursuant to the Declaration and the Articles of Incorporation and Bylaws of the Association (hereinafter referred to as the "Documents") for Owner's failure to perform an obligation under the Association Governing Documents or because the Association has incurred an expense on behalf of the Owner under the Documents; and
- d. to the appropriate governing taxing authority or the Association a pro rata share of ad valorem taxes levied against the Common Areas.

All assessments, together with fines, interest, costs, reasonable attorneys' (and legal assistants') fees, and other charges allowed under this Declaration, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made until paid.

Each such assessment, together with fines, interest, costs, reasonable attorneys' (and legal assistants') fees, and other charges allowed under the Documents will also be the personal and individual obligation of the Owner of such Lot as of the time when the assessments fall due, and two or more Owners of a lot or living unit will be jointly and severally liable for such obligations. If an assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment thereof becomes due. No Owner may except himself, herself or itself from liability for any assessments by abandonment of his lot or living unit or by waiver of the use or enjoyment of the common areas and easements.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and (2) of the Lots and Living Units situated upon the Properties. Without Limitation, such uses shall include satisfaction of the Association's obligations regarding the Common Properties to pay hazard and liability insurance, ad valorem taxes, the payment of governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Determination of Annual Assessments. Notwithstanding any provision to the contrary contained herein, should the Association's Board of Directors determine that the Annual Assessment for the next succeeding assessment period will exceed the Annual Assessment for the current assessment period by more than ten percent (10%), then, in such event, such increase in the Annual Assessment shall be approved by a vote of two-thirds (2/3) of the Owners voting in person or by proxy at a duly called meeting of the members of the Association, at which a quorum of members is present in person or by proxy, prior to its adoption by the Board of Directors of the Association.

Section 4. Rate of Assessments. Assessments for each lot and living unit shall be equal for all lots and living units.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any

construction, reconstruction, repair or replacement of a capital improvement upon the Common Properties including fixtures and personal property related thereto, provided that any such assessment shall have the Assent of not less than two-thirds (2/3) of the votes of each class of members who are voting in person or proxy at a meeting duly called for this purpose.

Section 6. Change in Basis of Assessments. The Association may change the basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of not less than two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

Section 7. Quorum for any Action Authorized Under Sections 3, 4, 5, and 6. The quorum required for any action authorized by Sections 3, 4, 5, and 6 of this Article V shall be as follows:

At the first meeting called, as provided in Section 3, 4, 5, and 6 of this Article V, the presence at the meeting of Members, or of proxies, entitled to cast makes sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 3, 4, and 5, and the required quorum at any such subsequent meeting shall be two-thirds of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Assessments: Due Dates. The Regular assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first Regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular assessment against each lot at least thirty (30) days in advance of each Regular assessment period. Written notice of the Regular assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto; failure to provide a written notice shall indicate that the assessment is unchanged from the previous assessment.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment, or installment thereof, which is not paid within thirty (30) days after its due date, will be delinquent. In the event that an assessment, or installment thereof, becomes delinquent, or in the event a Default assessment is established under this Declaration, the Association, in its sole discretion, may take any or all of the following actions:

- a. assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;
- b. charge interest from the date of delinquency at the maximum rate allowed by law;
- c. suspend the voting rights of the Owner during any period of delinquency;
- d. accelerate all remaining assessment installments for the annual assessment period in question so that unpaid assessments for the remainder of the annual assessment period will be due and payable at once;
- e. bring an action at law against any Owner personally obligated to pay the delinquent assessment charges; or
- f. file a claim of lien with respect of the lot or living unit and foreclose the lien against the lot or living unit in the same manner as provided for the foreclosure of a mortgage under the statutes of the State of North Carolina.

The remedies provided under Declaration will not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and a late fee of \$15.00 per month will apply for monthly assessments not received by the fifteenth (15<sup>th</sup>) of each month.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments, which thereafter become due, nor from the lien of any such subsequent assessment.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein; (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1, hereof.

Section 13. Successor's Liability for Assessments. All successors, except as provided hereinabove in Section 11, Article V, to the fee simple title of a lot will be jointly and severally liable for the prior Owner or Owners thereof for any and all unpaid assessments, fines, interest, late charges, costs, expenses, and attorney's (and legal assistants') fees against such lot without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. Any successor will be entitled to rely on a written statement of status of assessments received by such successor from the Association or its managing agent. The Association agrees that it will furnish to any owner or his designate, a written statement setting forth the amount of unpaid assessments then levied against the lot in which the Owner or his designate has an interest. The information contained in such written statement shall be conclusive upon the Association, the Board of Directors, and every owner as to the person or persons to whom such statement is issued and who rely on it in good faith when such statement is signed by an officer of the Association or the managing agent for the Association. The Association or Managing Agent may charge a reasonable fee for this service.

Section 14. Working Capital At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an equal amount to a two months estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment or regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

## ARTICLE VI

### RIGHTS OF FIRST MORTGAGEES

Section 1. Inspection of Books and Records. First Mortgagees shall have the right, upon request and during normal business hours, to examine the books and records of the Association.

Section 2. Notice of Default. Upon its written request, the holder of a first mortgage upon a Lot or Living Unit shall be entitled to written notification of any default by the Owner of said Lot of Living Unit in the performance of his obligations pursuant to these covenants or the By-Laws of the Association, if such default is not cured within thirty (30) days.

Section 3. Payments by First Mortgagees. One or more first Mortgagees of Lots or Living Units may, jointly or singly, in respect to the Common Properties, pay taxes or other charges which are in default and have or may become a charge against same, pay overdue hazard insurance premiums or secure new hazard insurance coverage after policy lapse. The parties making such expenditures shall be entitled to immediate reimbursement from the Association.

Section 4. Prohibitions. Without having first received written approval from at least seventy-five (75%) of the first Mortgagees (based upon one vote for each Mortgagee) of the Lots or Living Units, the Association may not:

- (a) fail to maintain hazard insurance on insurable improvements upon the Common Property in an amount equal to one hundred percent (100%) of the current insurable replacement cost; or
- (b) use hazard insurance proceeds from losses to any Common Properties for other than the repair, replacement or reconstruction of such improvements.

## ARTICLE VII

### ARCHITECTURAL REVIEW COMMITTEE

Section 1. Review by Committee. No building, fence, wall or other structure nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties by other than the Developer nor shall any exterior addition to or change or alteration 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 in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Review Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

## ARTICLE VIII

### EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, patio fences (painting excepted), trees, shrubs, grass, walks and other exterior improvements -- such exterior maintenance shall NOT include doors, windows, window screens, door and window frames, rear decks, or glass surfaces.

Section 2. Special Assessment for Capital Improvements. In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement for exterior maintenance of any Lot or Living Unit, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day. Further, the Owner shall cooperate with reasonable requests by the Association for access through the living unit to access the inside of the fenced patio of any Lot to provide routine maintenance and or service to obviate the necessity of climbing over the patio fence.

## ARTICLE IX

### USE RESTRICTIONS

Section 1. Land Use and Building Type. All lots shall be used for residential purposes except that so long as the Declarant shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals, offices, models or other usage for the purpose of selling or leasing lots and the clubhouse within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. Co-ownership of lots shall not be prohibited. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VII of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Junk Vehicles. No inoperable vehicles or vehicle without current registration and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

Section 4. Outside Furniture. No furniture shall be permitted in the common areas. No furniture shall be permitted on the front porch of each unit except porch furniture and plants. Porch furniture shall be permitted in the courtyard of each unit. All grills and accessories must be kept in the courtyard areas.

Section 5. "For Sale" Signs Prohibited. No "For Sale" signs or any other signs shall be permitted on any lot or in the common areas and facilities, except Declarant or its designee may place "For Sale" signs for as long as Declarant shall retain ownership of any unsold lot (s).

Section 6. Temporary Structures. No structure of a temporary character, trailer basement, tent, shack, garage, barn or other outbuilding shall be used on any lot any time as a residence whether temporarily or permanently.

Section 7. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot or in parking spaces, at any time, unless by consent of the Association.

Section 8. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted. If any pet shall be determined by the Board of Directors to be a nuisance, the Board shall have full authority to have such pet permanently expelled from the properties.

Section 9. Outside Antennas. No outside radio or television antennas shall be erected on any lot or dwelling unit within the Properties unless permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 10. Window Coverings. All drapes, curtains or other similar materials hung at window, or in any manner so as to be visible from the outside of any building erected upon any lot, shall be of a white or neutral background or material, unless the Board of Directors approves another color.

Section 11. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white or non-frost lights or bulbs.

## ARTICLE X

### COMMON AMENITIES

The Association may impose uniform standards for mail collection facilities (which may be a central facility or individual receptacles), waste disposal containers, newspaper boxes, mailboxes and such other common features typically installed on the exterior of a Living Unit, or on Common Properties. The owner of each Lot shall comply fully with all such standards adopted by the Association.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Rules. The Board of Directors shall have the authority to adopt rules for the use of the Common Properties and conduct of owners, family members, guest and invitees and shall furnish a written copy of said rules to the Owners. Any violation of such rules shall be punishable by fine as defined in the North Carolina Planned Community Act (47-F) and/or suspension of the voting rights of the violating Owners. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common Properties.

Section 2. Duration. 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 land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, and thereafter for successive periods of ten (10) years unless an instrument signed by the then Owners of sixty-seven percent (67%) of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. (For purpose of meeting the sixty-seven percent (67%) requirements, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.) No such agreement to change shall be effective, however, unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed change is sent to every Owner at least ninety (90) days in advance of any action taken, and provided, however, that at all times during the existence of these covenants and restrictions that those areas set forth and set aside as Common Properties shall be retained for those purposes.

Section 3. Amendment. These covenants and restrictions may be amended during the first twenty (20) year period by the vote of not less than sixty-seven percent (67%) of each class of Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which including the subject matter of thirty (30) days in advance. Thereafter, these covenants and restrictions may be amended by the vote of at least sixty-seven percent (67%) of each class of members cast in person or by proxy including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance. Matters mentioned elsewhere in these covenants requiring the approval of first

mortgagees or requiring a greater percentage of Members for approval shall be so governed. Any such amendment shall become operative and binding upon all Members and their properties when set forth in an amended Declaration of Covenants and Restrictions and recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 5. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any liens or charges created by these covenants; and failure by the Association or 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.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect.

Section 7. Insurance. It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

- a. Amount and Scope of Insurance. All insurance policies on the common areas shall be procured by the Board of Directors, or its designee of behalf of the Association with full authority, which shall obtain such insurance against (1) Loss or damages by fire or other hazards normally insured against, and (2) such other risks including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and use as the Properties and the improvements thereon, all under such terms and conditions as the responsible authority shall deem appropriate but for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation or maintenance of the common areas, and protection against lawsuits relating to employment contracts of the Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities.
- b. Insurance Provisions. The Board of Directors shall make diligent efforts to insure that said insurance policies provide for the following:
  - (1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, directors, agent or employee of the Association, the Lot owners and their employees, agents, tenants and invitees, Board as insurance trustee, or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors.
  - (2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
  - (3) Coverage may not be canceled or substantially modified (including cancellation for non payment of premium) without at least thirty days prior written notice to the named insured and all mortgagees.
  - (4) Coverage will not be prejudiced by act or neglect of the Lot owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association had no control.
  - (5) The insurance policy on the common areas cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Lot owners.
  - (6) The insurance policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Lot owner or any mortgagee.
- c. Premiums. All insurance policy premiums on the common areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an addition annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for herein, an amount sufficient to pay the annual cost of all such insurance premiums.

- d. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board of Directors.
- e. Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "B" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the association, and shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the lot owners upon request. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee at any time.

Section 8. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the association in the following manner:

- a. Expense of Trust. All reasonable expenses of the insurance trustee shall be first paid or provisions made therefor.
- b. Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be retained by the Association for such common expenses or purposes as the Board shall determine.

Section 9. Insurance Coverage on Lots and Living Units. Each owner of a lot or living unit shall insure his or her lot/living unit for 100% of building replacement cost. Upon demand of the Association each owner of a lot/living unit shall provide an insurance certificate evidencing such insurance in full force and effect within 10 days of the request.

Section 10. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

IN WITNESS WHEREOF, **Perimae and Associates, LLC** has caused this instrument to be duly executed as of the day and year first above written.

PERIMAE & ASSOCIATES, LLC  
 BY: James W. Hatcher  
 James W. Hatcher, Member-Manager

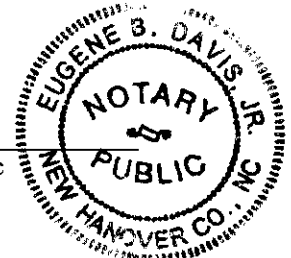
STATE OF NORTH CAROLINA  
 COUNTY OF NEW HANOVER

BY: John Jordan  
 JOHN JORDAN, Member Manager

I, Eugene B. Davis, Jr., a Notary Public, do hereby certify that James W. Hatcher and John Jordan, Member-Managers of PERIMAE & ASSOCIATES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing document,

WITNESS my hand and notarial seal, this the 18th day of April, 2005.

Eugene B. Davis, Jr.  
 Notary Public



My Commission Expires:  
20 Nov 2006



REBECCA P. SMITH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration: 04/27/2005 04:11:32 PM  
Book: RE 4777 Page: 657-667  
Document No.: 2005021845  
DECL 11 PGS \$41.00

Recorder: JACQUELINE NELSON

\*\*\*\*\*  
State of North Carolina, County of New Hanover

The foregoing certificate of EUGENE B DAVIS JR Notary is certified to be correct. This 27TH of April 2005

REBECCA P. SMITH, REGISTER OF DEEDS

By:   
Deputy/Assistant Register of Deeds

\*\*\*\*\*  
YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

**\*2005021845\***

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