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REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2005022221

RETURN TO *Hogue Hill Jones*

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR TOWNHOMES AT 1010 PINE  
GROVE ROAD**

**This Declaration**, made the 28<sup>th</sup> day of April, 2005, by 1010 PINE GROVE ROAD, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

**WITNESSETH:**

Whereas, Declarant is the owner of certain real property in the City of Wilmington, New Hanover County, North Carolina, known as "TOWNHOMES AT 1010 PINE GROVE ROAD" which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 47 Page 370, to which reference is made for a more particular description (the "Property").

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

**ARTICLE I.**

**DEFINITIONS**

SECTION 1. Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community (as hereinafter defined) pursuant to the provisions of this Declaration, whether such lands are now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others.

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Association shall mean and refer to TOWNHOMES AT 1010 PINE GROVE ROAD OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

SECTION 4. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned or enjoyed by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including, without limitation, any private roads and storm water retention ponds. Common Elements shall also include any areas designated on any plats for the Planned Community as "Open Space", "Common Area", "Common Element", "Recreation Area", "Amenity Area", or other similar designation.

SECTION 5. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 6. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise by law.

SECTION 7. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to 1010 PINE GROVE ROAD, LLC, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 8. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 9. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 10. Limited Common Elements shall mean areas and facilities which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Elements shall consist of (i) the exterior of all dwellings, including by way of illustration, but not limited to, roofs, exterior building surfaces, decks and porches, gutters and downspouts, (ii) yards and other improvements, including by way of illustration, but not

limited to, travelways, walkways, leaves, shrubs and grass but excluding privacy fences for each dwelling and that portion of the yard located within such privacy fencing.

SECTION 11. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner, together with any dwelling situated thereon.

SECTION 12. Lot Owner or Owner shall mean the Declarant or other Person who owns fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 13. Master Association means a master association as defined in the Act.

SECTION 14. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 15. Planned Community shall mean and refer to the Property plus any Additional Property made a part of it by the exercise of any Special Declarant Right.

SECTION 16. Purchaser means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 17. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 18. Special Declarant Rights means rights reserved for the benefit of a Declarant including without limitation the right (i) to complete improvements indicated on plats and plans filed with this Declaration; (ii) to exercise any development right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain sales offices, management offices; signs advertising the Planned Community, and models; (iv) to use easements through the Common Elements for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; (vii) to appoint or remove any officer or Executive Board Member of the Association or any Master Association during the Declarant Control Period; or (viii) to permit other land to be annexed to and made a part of the Planned Community in accordance with the terms of this Declaration.

SECTION 19. Stormwater Permit shall mean State Stormwater Permit # SW8 041034 issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR).

SECTION 20. Townhouse or Townhome shall mean the dwelling located on a Lot.

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners, and limiting the number of guests of Members;

(b) The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least 80 percent of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) easements as necessary in the lands constituting the Common Elements and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and drainage facilities (including the right of Declarant and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of the county where the Planned Community is located; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or

the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot). No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community) and improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible;

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to any Additional Property;

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.

**SECTION 3. Other Easements.** The following easements are granted by Declarant to others:

(a) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties;

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot 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 Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate;

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

**SECTION 4. Nature of Easements.** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference 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.

### **ARTICLE III**

#### **RIGHTS OF DEVELOPER**

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

**SECTION 1. The Architectural Control Committee.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property.

**SECTION 2. Plan of Development.** The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for Common Elements or amenities, and to take such steps as are reasonably necessary to make such replatted Lots or tracts suitable and fit as a building site or access area or roadway

or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development". Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by the filing of a supplemental declaration in the Register of Deeds office of the county where the Planned Community is located. Declarant is required by DWQ to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

**SECTION 3. Amendment of Declaration by the Declarant.** This Declaration may be amended without approval of the Lot Owners, i.e. the Members of the Association, by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property.
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to incorporate or reflect any platting change as permitted by Section 2 of this Article or otherwise permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban

Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum allowable built-upon area as permitted by DENR. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

**SECTION 4. Annexation of Additional Property.** Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of 67 percent of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is used for residential purposes, roads, utilities, drainage facilities, amenities and other facilities related thereto.

**SECTION 5. Sales Model.** So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models or other purposes relating to the construction, sale or rental of Lots and dwellings including the right to place "For Sale" or "For Rent" signs on any Lots. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose.

## **ARTICLE IV.**

### **HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** A Lot Owners' association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association shall be a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2. Membership.** Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

**SECTION 3. Voting Rights.** The Association shall have two classes of voting Membership.

*Class A.* Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

*Class B.* The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership; or

(b) on December 31, 2012; or

(c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period". During the Declarant Control Period, the Declarant shall have the right to designate and select the Executive Board of the Association and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

**SECTION 4. Government Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall

be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

SECTION 5. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment within 30 days of receipt of such bill to cover the amount thereof if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

## ARTICLE V.

### INSURANCE AND BONDS

SECTION 1. Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person that is not a Declarant, it shall be the duty of the Association to maintain in effect casualty and liability insurance as follows to the extent it is reasonably available:

(a) Amount and Scope of Insurance. All insurance policies upon the Common Elements (except personal property within a Townhome) shall be secured by the Board of Directors, or its designee on behalf of the Association which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than 80 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land excavation, foundations and other items normally excluded from property policies, 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 Planned Community and the improvements thereon 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 insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance or use of the Common Elements and legal liability arising out of lawsuits relating to employment contracts of the Association. If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot Owners;

(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, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees;

(2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(3) coverage may not be cancelled or substantially modified (including cancellation for nonpayment 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 Planned Community over which the Association has no control.

(5) the master policy on the Planned Community cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;

(6) the master policy on the Planned Community cannot be cancelled, 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;

(7) each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;

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

(c) Premiums. All premiums on such insurance policies and any deductibles payable by the Association upon loss shall be a common expense;

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors who shall hold any such insurance proceeds in trust for Lot Owners and lien holders as their interest may appear;

(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 "A" 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 Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof 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 Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any upon request of such mortgagee;

(f) Individual Policies. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the entire Planned Community, for the Lot Owners to purchase insurance policies covering each Lot and Lot Owner individually, then upon the assent of 67 percent of the Members (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the

insurance coverage for the entire Planned Community, may be turned over to the Members to purchase individual policies under such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the Planned Community is turned over to the individual Lot Owners under the provisions of this paragraph, then the Association shall be named as additional insured on each policy, each Lot shall be insured for its full replacement value and the provisions of this Section shall be modified accordingly;

(g) Distribution of Insurance Proceeds. Subject to the provisions of Section 47F-3-113(g) of the Act the proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) all reasonable expenses of the insurance trustee shall be first paid or provision may therefor;

(2) 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 distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

**SECTION 2. Fidelity Bond.** The Association may maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association, as follows (provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association):

(a) The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds;

(b) Fidelity bonds required herein must meet the following requirements:

(1) fidelity bonds shall name the Association as an obligee;

(2) the bonds shall contain waivers by the issuers of the bonds of all defenses upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense;

(4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and each institutional holder of a first lien on any Lot.

## **ARTICLE VI.**

### **COVENANTS FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Insurance Assessments;
- (d) Ad Valorem Tax Assessments; and
- (e) Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the

respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the maintenance, repair, improvement and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization, Master Association, or other association of which the Association is a member, and in addition, doing any other things necessary or desirable in the opinion of the Executive Board to keep the Common Elements and Limited Common Elements in good operating order and repair.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year. Within 30 days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the assessments to be paid in periodic installments. 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.

**SECTION 4. Special Assessments. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any