

White & Allen, P.A., 304 North 35th Street Morehead City, NC 28557

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

**DECLARATION OF COVENANTS AND RESTRICTIONS
WINDFARE TOWNHOMES**

THIS DECLARATION, dated for reference only this the ____ day of _____, 2020, by WINDFARE TOWNHOMES, LLC (formerly known as WINDFARE CONDOMINIUMS, LLC,) a North Carolina corporation, whose mailing address is 8504 Towneley Place, Raleigh, NC 27615, (hereinafter referred to as "Declarant");

WITNESSETH:

Declarant is the owner of certain property located in Atlantic Beach, North Carolina more particularly described in Paragraph 2.1 herein which it has developed as a townhouse residential community. Developer desires to provide for the preservation of the values and amenities for such use and for the maintenance of common areas; and, to this end, desires to subject said property, 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, Declarant and each subsequent owner thereof. Declarant deems it desirable for the efficient preservation of such 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 facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. To this end, Declarant has incorporated or will incorporate within one (1) month of recording of this declaration under the laws of the State of North Carolina, as a nonprofit corporation, Windfare Townhouse Owners' Association, Inc., (the "Association"), for the purpose of exercising the functions aforesaid;

NOW THEREFORE, Declarant declares that the real property described in Paragraph 2.1 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

1.1 The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. "Association" shall mean and refer to Windfare Townhouse Owners' Association, Inc.;
- b. "Common Element" shall mean and refer to those areas of land (i) shown on the Plat and Plans as "Common Area" or "Open Space", excluding Lots or Living Units, which have been or are hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of Lots;
- c. "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserve, all as provided for in the Declaration.
- d. "Declarant Control Period" shall mean that period of time measured from the date of the recording of this Declaration with the Carteret County Register of Deeds continuing therefrom until December 31, 2030;
- e. "Development" shall mean and refer to the Lots and Common Elements subject to the terms of this Declaration;
- f. "Limited Common Elements" shall mean those portions of the Common Elements allocated within this Declaration for the exclusive use of one but fewer than all of the Lots, specifically including HVAC systems, docks and piers, utilities and driveways serving a particular Lot which are located within the Common Elements;
- g. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family, whether Owners or tenants.
- h. "Lot" shall mean and refer to the lots shown as such on the Plat and Plans and specifically exclude the Common Elements as heretofore defined;
- i. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Paragraph 3.1, hereof;
- j. "Occupant" shall mean any person or persons in possession of a Living Unit, including Owners, the family members, lessees, guests, and invitees of such person or persons, and family members, lessees, guests and invitees.

k. "Owner" shall mean and refer to any person or entity who is the record owner of a fee or undivided fee interest in a Lot or Living Unit. A tenant or lessee shall not be considered an "Owner".

l. "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or other legal entity, including any combination thereof.

m. "Plat and Plans" shall mean that plat and plans regarding the Properties shown on that map entitled "WINDFARE-TOWNHOME LOTS ___ THRU _____", Phase One, prepared by The Cullipher Group, P.A. and recorded in Map Book _____, Page _____, Carteret County Registry. The future development property may be subdivided into Townhouse Lots and made subject to this Declaration. The property may be subdivided in the discretion of Declarant before being subjected to the Declaration.

n. "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration;

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION;
ADDITIONS THERETO

2.1 **Properties.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to

That certain real property located in the Town of Atlantic Beach, Carteret County, North Carolina, shown as Phase 1, Lots ___ and _____, and Common Area #1 on the plat captioned "WINDFARE-TOWNHOME LOTS ___ THRU _____", Phase One, prepared by The Cullipher Group, P.A. and recorded in Map Book _____, Page _____, Carteret County Registry, (hereinafter "Plat") subject to the covenants, conditions, easements and restrictions herein set forth and which are for the benefit of, binding upon and shall run with the land, and are for the benefit of Declarant, the Association and the Owners, their heirs, personal representatives, successors and assigns, as well as any other property made subject to this Declaration under Article XI below;

The future development property may be subdivided into Townhouse Lots and made subject to this Declaration. The property may be subdivided in the discretion of Declarant before being subjected to the Declaration.

2.2 **Description of Townhomes.** In Phase 1, all Townhomes will be either a "Type 1" or a "Type 2" model. A "Type 1" model (also referred to either as "Shackleford Plan" or "Sand Dollar Plan") is a three-story townhome containing two (2) bedrooms, a living room, kitchen and three and one-half (3 1/2) bathrooms containing approximately 2,069 square feet. A "Type 2" model (also referred to either as "Bird Shoal plan" or "Wade Shore Plan") is a three-story townhome containing two (2) bedrooms, a living room, kitchen and three and one-half (3 1/2) bathrooms containing approximately 1,758 square feet. Both types have optional elevators. It is anticipated that once the project is built the lots will have the following types:

Lot Number	Model Type
1A-7A	Type 1
1B-7B	Type 1
8A-9A	Type 2
8B-9B	Type 2

These types are subject to change prior to being added as a phase to this Declaration.

The Lots in this Phase One shall have the following models:

Lot Number	Model Type
3A and 3B	Type 1

In the event additional phases are added to the Development, Declarant reserves the right to modify, change or add additional models of buildings and to have varying numbers of lots in the additional phases.

2.3 **Townhome Boundaries.** The boundaries of each Townhome constructed on the Property shall be as shown on the recorded plat or plats; provided that the side boundary of each Townhome shall be a line consistent with and along the center of all firewalls separating a Townhome from another Townhome. In the event of any discrepancy between the boundaries of a Townhome, as described herein and the boundaries of such Townhome when shown on the recorded plats, the description of the boundaries of the Townhome set forth herein shall control. All of the area within the boundaries of each of the Townhomes, as herein described, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easement and restrictions of this Declaration.

2.4 **Additional Lands.** Declarant at the present time is submitting only Phase 1, consisting of Lots 3A & 3B and Common Area #1, which includes Channel Bay Drive, Windfare Townhomes as shown on the Plat, as described in 2.1 above, to these covenants. Declarant owns or may acquire Future Development Property which may be hereafter submitted as additional properties under this Declaration. Nothing herein shall subject any additional property to the terms and provisions herein unless and until an amendment to this Declaration is recorded submitting one or more additional phases. Declarant shall have until December 31, 2030 to submit all additional phases.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1 **Association.** To efficiently and effectively provide for the administration of the Properties by the Owners of the Lots, an association of all Owners has been organized pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as “WINDFARE TOWNHOME OWNERS’ ASSOCIATION, INC.,” and the Association shall administer the operation and management of the Properties and undertake and perform all acts and duties incident thereto in accordance with this Declaration.

3.2 **Powers.** In the administration of the operation and management of the Properties, the Association shall have and is hereby granted the authority and power to enforce the provisions of

this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board may deem to be in the best interests of the Association and to exercise all powers set forth in N.C.G.S. §47F-3-102, including the specific power to assign its rights to future income and to receive Common Expense assessments as provided in N.C.G.S. §47F-3-102(a)(15).

3.3 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by this Declaration 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 security for the performance of an obligation shall not be a Member.

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

Class A. Class A Members will be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot 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.

Class B. The Class B Member will be the Declarant. The Class B Member shall be entitled to nine (9) votes for each Lot owned by the Declarant. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events: (a) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership; but provided that the Class "B" membership shall be reinstated if thereafter, and before January 1, 2050 additional lands are annexed to the Property in accordance with this Declaration; (b) on January 1, 2030 or (c) such earlier date as the Declarant may choose to terminate the Class B Membership upon notice to the Association. From and after the happening of these events, whichever occurs earlier, the Class B Member will be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interests required for membership.

3.5 Board of Directors. The Association shall be governed by a Board of Directors. Subject to written waiver by Declarant or until Declarant's Class B membership is converted to Class A membership, Declarant shall appoint a majority of the members of the Board. As long as Declarant has the right to appoint a majority of the members of the Board, the Board shall consist of at least three (3) members. Declarant's appointees need not be members of the Association. Upon the conversion of the Declarant's membership interest into Class A membership, the Board will thereafter be selected in accordance with the Bylaws of the Association. All power and authority of the Association is exercisable by the Board of Directors.

Declarant may voluntarily surrender the right to appoint and remove members of the Board of Directors and Officers of the Association before the termination of such right as provided above, but in such event Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in an instrument signed by the Declarant and recorded with the Register of Deeds of Carteret County, North Carolina, be approved by the Declarant before becoming effective.

3.6 **Bylaws.** The Bylaws of the Association may be amended as set forth therein. In the event any provision of the Bylaws is inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control. A copy of the Bylaws is attached as Exhibit B.

3.7 **Powers of the Association.** In the administration of the operation and management of the Development, the Association, by action of the Board of Directors on behalf of the Association, is hereby granted the authority and power to enforce the provisions of the Declaration, to levy and collect assessments in the manner herein provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Lots and Common Elements as the Board may deem to be in the best interest of the Association and to exercise all powers contained in . N.C.G.S. § 47F-3-102 of the Act and as set forth in the Bylaws. Unless specifically limited by a provision of this Declaration or the Bylaws, any action allowed or required to be taken by the Association may be taken by a majority vote of the Board, without joinder or approval of the Members of the Association.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON ELEMENTS

4.1 **Members' Easements of Enjoyment.** Subject to the provisions of Section 4.3 below, every Member shall have a right and easement of enjoyment in and to the Common Elements, 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 for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, Members shall have the right and privilege of using the designated parking spaces for the benefit of his or her Lot as more particularly specified in Paragraph 4.3.

Members may delegate this easement of enjoyment to members of their family, tenants, contract purchasers who reside on the property or in the case of the Member being a partnership, limited liability company, or corporation use may be delegated to the partners, members or shareholders as the case may be; however, such delegations of use shall be subject to regulation as to time and conduct by the Association.

4.2 **Title to Common Elements.** The record title to the Common Elements shall be vested with and held by the Association. Declarant agrees that all of the Common Area owned by Declarant shall be conveyed or assigned to the Association, subject to covenants, easements, restrictions and other matters of record, on or before ninety (90) days following the conveyance of the last Lot owned by Declarant. Upon recordation of the deed conveying Common Area to the Association, the Association shall be conclusively presumed to have accepted the conveyance.

4.3 **Parking.** As an Owner of a Lot, such person or entity is entitled to park and use the "concrete drive" adjacent to their Lot. No boats, trailers, campers, motorhomes, trucks over one and one-half (1 1/2) tons, service vehicles, tractors or other similar vehicles (excluding automobiles, bicycles and motorcycles) shall be parked anywhere within the Properties unless otherwise permitted. The Association may at their discretion designate certain areas for recreation vehicles to be stored and if designated each owner will be notified of such location.

Any vehicle located on the Properties must be operational and have a current registration and inspection. No portion of the Properties shall be used for performing repair work on a vehicle of any type, except such emergency repairs such as repairing or replacing a flat tire.

4.4 ***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 the North Carolina Non-Profit Corporation, to borrow money for the purpose of improving the Common Elements and in aid thereof to mortgage said properties.

b. The rights 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, to suspend the voting rights of any Member for 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 Elements 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 Elements 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 such an instrument is approved by a majority of the members attending in person or by proxy a meeting called for such purpose. Written notice of the meeting along with the proposed agreement and action thereunder must be sent to every Member at least thirty (30) days in advance of any action taken.

f. The right of the Association to designate parking spaces within the Common Elements for the exclusive use of each Living Unit, all as more particularly set out in Paragraph 4.3 above.

g. The right of the Association to adopt, modify, change, amend rules and regulations regarding the use of the Common Elements from time to time including the right to prescribe reasonable rules and regulations governing the use of the Common Elements, which rules and regulations shall apply equally to all Owners, their family members, guests, lessees and invitees. Any violation of such rules may, after a hearing in front of the Board of Directors or adjudicatory panel, be punishable by a fine not to exceed \$100.00 per violation, suspension of voting rights and or suspension of rights to use the Common Elements all as set forth in N.C.G.S. §47F-3-107.1.;

h. The right of the Association to adopt, modify, change and amend rules and regulations regarding the suspension of the rights of any Owner as to (i) casting votes as a Member of the Association, and (ii) the use and enjoyment of the Common Elements for failure to

pay assessments levied in accordance with Article V below. In no event, may a suspension exceed the date on which such past due assessments are paid.

4.5 ***Easements Upon the Common Area:*** The common property shall be subject to existing utility easements, including sewer, waterline and access easements and those easements described on the Plat including Stormwater Easements that may benefit adjoining properties.

4.6 ***Maintenance of Common Area.*** The Association shall keep in good condition, order and repair, the Common Area, including but not limited to the private street shown on the Plat or any plat of the Development, sidewalks, curbing, all entry features and entry landscaping, if any, all street signage and street lights, bulkheads (but not adjacent docks), and any stormwater control features. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owners, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

The Board of Directors, in its sole discretion, may change the landscaping of the Common Areas at any time and from time to time, including the adding or modifying of landscaping improvements.

ARTICLE V COVENANT FOR ASSESSMENTS

5.1 ***Creation of the Lien and Personal Obligation of Assessment.*** Except as hereinafter specifically provided, each Owner of a Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration of Covenants and Restrictions. The assessments may be classified as (A) Regular for (1) operation, maintenance, repair, replacement and improvement of Common Elements, (2) routine maintenance and repair or improvements to the exterior of the Living Unit of an Owner(s) and (3) other purposes, and (B) Special for (1) capital improvements to Common Elements, (2) routine maintenance and repair or improvements to the exterior of a Living Unit of an Owner(s) and (3) purchase and reconstruction of a Living Unit as provided in Article VI. These assessments are to be fixed, established and collected from time to time as hereinafter provided.

The Regular and Special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

5.2 ***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 Elements 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 Elements to pay hazard and liability insurance, ad valorem taxes, the payment to governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair,

replacements and additions thereto, the maintenance and upkeep of any private road or accessway and for the cost of labor, equipment, materials, management and supervision thereof.

Additionally, the Association shall maintain each wastewater collection, treatment and disposal system and operate, and repair the system in accordance with laws, rules and the conditions of the permit. levy and collect the assessments provided for to do so, including special or additional assessments; and, in the event that the sum realized by the levy of such assessment shall not be adequate to maintain, operate, and repair each system as required by laws and conditions of the permit, the Association shall take such action as is necessary to secure funds for such purposes.

5.3 *Basis for Computing Assessments.* The Board of Directors shall categorize the purposes for which it makes assessments so that each purpose will be one which is charged in the same amount to each Owner of a Lot.

5.4 *Maximum Increase in Regular Assessment.* The maximum increase in a regular assessment shall be no more than Fifteen Percent (15.00%) above the regular assessment for the previous year without a majority vote of the Members, by proxy or in person, at a meeting duly called for such purpose.

The Board of Directors may fix the annual regular assessment at an amount not in excess of the maximum.

5.5 *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 construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3rds) of the Members entitled to vote thereon and in attendance, either in person or by proxy, at a meeting duly called for this purpose.

5.6 *Change in Basis of Assessments.* The Association may change the basis of the assessments fixed by Section 5.3 hereof prospectively for any such period, provided that any such change shall have the assent of not less than two-thirds (2/3rds) of the votes of the 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 Member at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 5.3 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 2.2, hereof.

5.7 *Quorum for Any Action.* Unless otherwise specifically provided herein, the quorum required for any action authorized by this Declaration shall be the presence at the meeting of Members, or of proxies, entitled to cast at least one-third of all the votes of the membership.

5.8 *Date of Commencement of Assessments; Due Dates.* The date of commencement of Assessments for these Lots shall be no later than 6 months after issuance of a final Certificate of Occupancy (CO) by the Town of Atlantic Beach for the completed townhouse unit built on the lot,

or upon the conveyance to a third party after issuance of said CO, whichever occurs first, except as provided below to Declarant owned lots. 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 due dates shall be established by the Board of Directors. 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.

Notwithstanding any provision of this Declaration to the contrary, during the Development Period the Lots and other portions of the Property owned by the Declarant shall not be subject to any annual or special assessment levied by the Association or to any lien for such assessment. During the Development Period, the Declarant shall pay the balance of the actual operating expenses of the Association remaining after the Association levies and collects assessments from Owners. The Declarant shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. Upon the termination of Declarant's agreement to pay operating deficits, the Declarant shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as the Owner. In no event shall the Declarant be obligated to pay for the operating deficits of the Association after the Declarant no longer owns any Lots within the Property.

Notwithstanding anything to the contrary, at the first conveyance of any Lot by the Declarant, the grantee shall pay the Association the sum of \$2,000.00 for each Lot acquired as a contribution to the capital of the Association (the "Capital Contribution"). The Association may use the Capital Contribution or any part thereof for any purposes authorized for assessments by this Declaration. Additionally, at the first conveyance of any Lot by the Declarant, the grantee shall reimburse the Declarant for any prepaid insurance premiums with said sum being prorated based upon the remaining effective period of the policy.

5.9 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.

5.10 Effect of Nonpayment of Assessment; Personal Obligation of the Owner; Liens; Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 5.8), then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, become a continuing lien against the Lot or Living Unit when filed of record in the Office of the Clerk of Superior Court of Carteret County in the manner provided therefor under Chapter 47F of the General Statutes of North Carolina. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A, Chapter 45 of the General Statutes of North Carolina. Such lien shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives and assigns. The personal obligations of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

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 (18.00%) PER ANNUM and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property (both actions may be pursued without constituting an election of remedies), and there shall be added to the amount of such assessment court costs and the Association's actual attorneys fees incurred in bringing the action to collect such assessment or in foreclosing on the lien. (If a court determines that such attorneys' fees are not permitted under the then-current law, the Association shall be permitted to recover the maximum reasonable attorneys' fee permitted under law.)

5.11 Acceleration of Assessments Payable by Installment. In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire remaining balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

5.12 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.

5.13 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; and (b) all Common Elements as defined in Article I, Section 1.1, hereof.

5.14 Prohibition of Exemption From Liability For Contribution Toward Common Expenses. No Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Lot or otherwise.

5.15 Capital Reserves. The Board of the Association, in adopting its budget for the operation, management and maintenance of the Development, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements and for meeting its responsibilities for exterior maintenance set forth in Article VIII below, which capital improvement and replacement fund ("Capital Improvement Fund") shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a portion of the Common Elements, the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Lots, as well as, its maintenance and repair responsibilities under Article VIII hereof. The amount to be allocated to the Capital Improvement Fund may be established by the Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement, maintenance or repair. The amount so collected for the Capital Improvement Fund shall be

maintained in a separate account by the Association and such monies shall be used only to make capital improvements to the Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board, be expended for current operations and maintenance.

ARTICLE VI EXTERIOR MAINTENANCE AND PARTY WALLS

6.1 ***Exterior Maintenance.*** In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance to each Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, porches, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefore), and other exterior improvements. Such exterior maintenance shall not include glass' surfaces, or screens for windows and doors, or any improvements contained within Patio Area, or the repair or reconstruction of any improvements on any Lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

As a matter of information to future members of this Association, the Declarant wishes to make it known that it may be a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all Members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge based on the type of unit located on a Lot without further regard to the actual cost of maintenance of each dwelling. Except as otherwise provided for in this Article, the Owner of each Lot and Living Unit shall keep his Lot and all improvements thereon (including the Living Unit), in good order and repair, if not covered by the association, including but not limited to: (i) keeping all sidewalks and patios neat, clean and in good repair, and (ii) the exterior care of the Living Unit and all other structures on the Lot, including but not limited to, windows, screens, sliding glass doors, decks, and patios; however, excluding such maintenance being the responsibility of the Association under this article, all in a manner and with such frequency as is consistent with good property management and maintenance.

If, in the opinion of the Board of Directors, any Owner fails to perform the duties imposed hereunder, the Association, after thirty (30) days written notice to the Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, the Association shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements or structures thereon (including Living Unit) and the cost thereof shall be a binding, personal obligation of such Owner, and an additional assessment upon the Lot collectible as provided for in Article V.

6.2 ***Damage by Owner.*** In the event that the need for maintenance or repair of a Lot or Living Unit is caused through the willful or negligent acts or omission to act of its owner, or his family, tenants, contract purchasers, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, or other casualty as defined and explained in North Carolina standard fire and

casualty with extended coverage policies, the obligation and costs of such maintenance and repair shall be on the Owner. In the event such damage does not otherwise fall under the responsibilities of the Association as set out herein, and the Owner fails to take action to commence such maintenance and repair, the Association may, upon providing the Owner with thirty (30) days written notice, commence such maintenance and repairs and charge the costs of the same to the Owner as part of the regular assessment to his Lot under this Article. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, lessees, guests, contractors, or invitees, or contract purchasers, the cost of such maintenance or repairs shall be added to, and become a part of, the assessment to which such Lot is subject.

6.3 Inspection and Access Rights Reserved. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot at all reasonable times for inspection and to perform maintenance as provided in this Article after notice has been provided to the Owner. In the case of an emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practical.

6.4 Common Party Walls. All common party walls between individual Townhomes shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

- a. Each wall which is built as part of the original construction on a Lot which serves as the dividing line between two adjoining Lots or Townhomes shall constitute a common party wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- b. The cost of reasonable maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.
- c. If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall or fence, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.
- d. Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.
- e. The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any

expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

f. Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences to the extent reasonably necessary to repair, restore, maintain or reconstruct the common party wall or fence. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

6.4 ***Weatherproofing.*** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6.5 ***Right to Contribution Runs With Land.*** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.6 ***Easement and Right of Entry for Repair, Maintenance and Reconstruction and Planting.*** Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably possible.

Plantings. An Owner desiring to landscape around his Lot with plants and flowers shall submit a request plans for the same to the Association pursuant to Article VII and, if approved, shall maintain the same at his own expense. Any such plantings or maintenance shall be done in a manner which does not hinder the Association in the performance of any of its maintenance duties as to the Living Units or Common Elements and/or detracts from the exterior appearance of the Living Units. The decision as to whether such landscaping detracts from the exterior appearance of the Properties shall rest solely with the Board of Directors. If the Board of Directors determines that said planting is inappropriate, then in such event, the Owner shall remove such landscaping within thirty (30) days after receiving notice thereof.

If, in the opinion of the Board of Directors, any Owner is failing to maintain his Lot or approved plantings in a neat and orderly manner which continues after twenty (20) days written notice to the Owner from the Board of Directors, the Association may enter upon the Lot or Common Elements perform such maintenance as it deems necessary to put such area in a neat and orderly condition. The cost of such maintenance by the Association shall be charged to the Owner and shall constitute a lien against the Owner's Lot and be treated in the same manner as assessment liens under this Declaration.

6.7 **Certification with respect to Contribution.** If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners in writing that they certify in writing that they have no right of contribution against such Owner, whereupon it shall be the duty of each adjoining Owner to make such certification within ten (10) days of such request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital as to the amount claimed and the basis therefor. Failure by any Owner to provide such certification within the time periods appearing above shall conclusively be deemed to have waived and released any right of contribution against such Owner or Lot.

6.8 **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each lot owner agrees that the disputed matter be arbitrated as provided by Section 14.10 of this Declaration.

ARTICLE VII AESTHETICS COMMITTEE

7.1 **Review by Committee.** Unless otherwise provided herein, no building, fence, wall or other structure, nor any exterior improvement, replacement nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties 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 aesthetics 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-BOAT DOCKS/PIERS/SLIPS

8.1 **Limited Common Areas (Boat Slips).** Certain named Lots as set forth in Exhibit C to this Declaration shall have as part of their Limited Common Elements (a/k/a Areas) the right to access, construct and use a joint boat dock, slip and the dock space surrounding it. Such boat slips and the dock space surrounding them, are illustrated on Exhibit "C". Once constructed, such boat slips and surrounding dock area shall be appurtenant to the Lot(s) as limited common area and may be transferred with the Lot to the Owner's heirs, successors and assigns. A boat slip and surrounding dock space may not be transferred separately from the Lot to which it is made appurtenant. A conveyance of a Lot that has a boat slip as a limited common element shall include the related boat slip, whether it is included in the deed description or not.

Notwithstanding anything to the contrary contained herein all costs and expenses in any way related to the joint Boat Slips, and any related facilities (the "Boat Slip Facilities") including, but not limited to, the cost of maintaining, repairing, replacing and insuring the Boat Slip Facilities, as well as all utilities shared by the Boat Slips) shall be shared equally by the two lot

owners that utilize the boat dock and to which the Boat Slips have been assigned. In no event shall any Lot Owner who does not have a Boat Slip assigned to his Lot, nor shall any other lot with a different boat slip assigned to it, bear any responsibility, or incur any expense, relating to the Joint Boat Docks. Each Lot Owner that has a Boat Slip assigned to his Lot shall be responsible for keeping his Boat Slip in good condition and shall maintain the Boat Slip at his expense. All Boat Slip maintenance cost relating to the jointly used Boat Slips Facilities shall be negotiated between the two owners who utilize and have been assigned the slips and docks and such cost shall not be an expense of the association.

If a shared Boat Dock/Slip is destroyed in whole or in part, or damaged by fire or other casualty, any Owner of a residence which shares such Boat Dock wall may restore or repair it, and the Owners of the other residences which share the restored or repaired dock shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common dock, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provision of this Section, an Owner of a residence which shares a common dock who, by such Owner's negligent or willful act or omission, damages or causes the shared dock to be damaged by not removing a boat during severe or hurricane type weather, shall bear the entire cost of the necessary repair or restoration.

The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

8.2 Dock Regulations.

- a. The Association shall have the right to adopt from time to time reasonable rules and regulations regarding the use of Boat Docks which may restrict among other things, the following:
 - i. Maintenance of the area in and around the Boat Dock in a clean, safe condition;
 - ii. Installation of utilities serving slips, individually or collectively;
 - iii. No living aboard or overnight stays;
 - iv. Removal of vessels during severe weather i.e. hurricanes;
 - v. No commercial-type vessels moored or commercial activities conducted from the Boat Docks);
- b. Boat Lifts. Each Lot Owner shall be entitled to install and maintain one marine boat lift to serve the Boat Dock adjacent to their Lot. The design and plans for the installation of the boat lift shall be submitted to the Association for prior written approval. The Association may adopt rules related to the design, style and installation of boat lifts. Although installed within the Limited Common Elements, the Boat Lift shall remain and be the property of the Lot Owner and

all maintenance, repair and/or replacement shall be at the sole expense of the Lot Owner not the Association. No other lot owner may access and boat dock or slip not assigned to it and the use of said limited common area shall be exclusive to the two lot owners to which such slip has been assigned.

c. Dock Boxes. Lot Owners shall be entitled to maintain a dock box adjacent to their Boat Slip. The purchase and installation of the deck box shall be at the sole cost and expense of the Lot Owner. The Association shall have the ability to adopt rules related to the design, location and appearance of dock boxes.

d. No Leasing. No Lot Owner shall lease, rent or otherwise allow anyone other than the following persons to use his Boat Slip: (i) Lot Owner, (ii) Occupant. It being the intent of this restriction that a Boat Slip not be rented or used separately from the person or persons occupying or owning the Lot.

ARTICLE IX INSURANCE

9.1 ***Definitions.*** As used in this Paragraph 9, the following terms shall be defined as described. "Structures" as used in this Article 9 shall mean and refer to all buildings and improvements, including Common Elements, Limited Common Elements, and Townhomes, affixed to that land described in Article Two and shown on the Plat, excluding, however, Owner Betterments as hereafter defined. With the exception of Owner Betterments, Structures are buildings and improvements that would be considered real property under the common law. Townhomes, except for any Owner Betterment contained therein, are included in the definition of Structures for purposes of the Association's property insurance. Structures include improvements and betterments to Common Element made by the Association as opposed to an Owner.

"Owner Betterment" shall mean any upgrade or addition made to a Townhome, Common Element or Limited Common Element by an Owner that exceeds the replacement cost of the same item in the Basic Building Plans and Specifications (as defined below) or is an addition to the Townhome. For purposes of the Association's property insurance, an Owner Betterment is relevant only to the extent that its replacement cost exceeds the replacement cost of the same item or is an addition to the Unit. An example of an Owner Betterment would be a marble tile floor with a replacement cost of \$100.00 per square yard installed in a Townhome by an Owner in place of the carpeting shown as part of the Basic Building Plans and Specifications where the carpeting has a replacement cost of \$25.00 per square yard. If the townhome is totally destroyed by an insured casualty, the Association's property insurance would cover the value of carpeting shown in the Basic Building Plans and Specifications but not the replacement cost of the marble tile.

9.2. ***Association's Insurance.***

a. The Association shall maintain, to the extent available:

i. Property insurance on the Structures insuring against risks of direct physical loss commonly insured including fire, wind, and extended coverage perils. The total amount of property insurance shall be the full replacement cost of the Structures, if in the opinion of the Board of Directors, insurance in that amount is affordable; however, the total amount of property insurance after application

of any deductibles shall be not less than ninety percent (90%) of the replacement cost of the Structures. The property insurance shall be subject to such deductibles as the board of directors deems appropriate.

ii. Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements. This liability insurance will cover only the liability of the Association, and Owners as members, but does not cover the Owner's individual liability for his acts or omissions while on Common Elements, within Limited Common Elements, or within his Townhome

iii. Fidelity insurance coverage to protect against dishonest acts in the handling of Association money by the officers, directors, volunteers, managers or employees of the Association.

iii. Fidelity insurance coverage to protect against dishonest acts in the handling of Association money by the officers, directors, volunteers, managers or employees of the Association

iv. Such other insurance as the Board deems advisable from time to time.

b. If the insurance described above of this Paragraph 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 Owners.

c. Insurance policies carried pursuant to subparagraph 9.2(a) must provide that:

i. Each Owner is an insured person under the policy with respect to liability arising out of his membership in the Association;

ii. The insurer waives its right to subrogation under the policy against any Owner or members of his household;

iii. No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and

iv. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

d. Any loss covered by the property policy under Section 9.2 (a) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to the Association as insurance trustee, and not to any mortgagee or beneficiary under a deed of trust. The Association as insurance trustee shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. If there is a surplus of insurance proceeds after the property has been repaired or restored, the Owners of the affected Townhomes will share in any distribution of the surplus according to the formula used for assessing property insurance premiums. The Board may elect to credit the accounts of the Owners rather than making an actual distribution.

e. An insurer that has issued an insurance policy under this subparagraph shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each

Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

9.3. *Insurance Required of Owners*

a. Each Owner is required to purchase, and at all times maintain, one or more insurance policies that cover the following:

i. Dwelling coverage, sometimes known as "HO 6," on Owner Betterments within or appurtenant to his Townhome in the full replacement cost thereof insuring against risks of direct physical loss commonly insured including fire, wind, extended coverage perils, and if the Owner chooses, flood.

ii. Personal property coverage on the personal property in Owner's Townhome insuring against risks of direct physical loss commonly insured including fire, wind, extended coverage perils, and if the Owner chooses, flood.

iii. Personal liability coverage in the amount of at least \$500,000.00 insuring the Owner against lawsuits, legal expenses, and medical costs if he is legally responsible for injury or property damage to others in his Townhome. From time to time the Board of Directors will have the authority to require all Owners to maintain personal liability coverage exceeding \$500,000.00 if the Board determines such increased amount is advisable to adjust for inflation or exposure to risk.

b. The Board may require that Owner will file with the Association proof of insurance specified in subparagraphs (i) ["dwelling coverage"] and (iii) ["personal liability coverage"] in such form as required by the Board of Directors. If an Owner shall fail to provide or maintain such insurance policies, or give proof of such insurance to the Association, the Board shall have the authority to purchase such policies in the name of the Owner after giving such owner thirty calendar days' notice of intent to purchase insurance by first class mail sent to the Owner's last known address as shown in the association's records. If the Board purchases such insurance, the cost thereof will be deemed a common expense assessment benefitting only the Owner and assessed against the Owner and his Townhome. Such assessment, and all costs of collection including attorney's fees, will be the personal obligation of the Owner, constitute a lien on his Lot pursuant §47F-3-116, and be collectible according to §47F-3-116.

9.4 *Assessment of Deductible; Intentional Damage.*

a. Assessment of Deductibles. If a component of a Townhome over which a Owner has maintenance responsibility fails, and such failure causes damage to the Townhome, other Townhomes and/or the Common Elements which damage is covered by the Association's property insurance, such Owner will be assessed the Association's insurance deductible if the Owner was negligent in causing the damage.

i. If circumstances indicate to the satisfaction of the Board that an Owner was not negligent, the deductible will be paid by the Association as a general common expense.

ii. If there is probable cause to believe that an Owner was negligent in causing the damage a hearing will be held by the Board of Directors to determine if the damage resulted from the Owner's

negligence or intentional act and, in either case, the entire deductible will be assessed to the Owner. If the Board determines that the damage was not the result of the Owner's negligence or intentional act, the deductible will be a general common expense. The Owner will be given written notice of the hearing mailed by first class mail to the Owner's last known address at least 14 days in advance of the hearing and the Owner will have the right to be represented by an attorney at the hearing and to present evidence. The Owner will be given a written decision by the Board.

iii. An assessment of a deductible under this subparagraph will be deemed a common expense assessment benefitting only the Owner and his Lot under N.C.G.S. §47F- 3-115(c) (2) and assessed against the Owner and his Lot. Such assessment, and all costs of collection including attorney's fees, will be the personal obligation of the Owner, constitute a lien on his Lot pursuant §47F-3-116, and be collectible according to §47F-3-116.

b. Association's Responsibility for Deductible. If a component of a Common Element over which the Association has maintenance responsibility fails as a result of the negligence of the Association, and such failure causes damage to a Townhome and/or the Common Element which damage is covered by the Association's property insurance, the Association will pay the deductible as a general common expense.

c. Intentional Damage. An Owner is liable to the Association for all costs incurred by the Association in repairing uninsured damage caused by the intentional act of the Owner and such costs will be assessed against the owner's Lot. Prior to making such an assessment, the Board will hold a hearing as provided in subparagraph (a)(ii) above. An assessment of a deductible under this subparagraph will be deemed a common expense assessment benefitting only the Owner and his Lot under N.C.G.S. §47F-3-115(c) (2) and assessed against the Owner and his Lot. Such assessment, and all costs of collection including attorney's fees, will be the personal obligation of the Owner, constitute a lien on his Lot pursuant §47F-3-116, and be collectible according to §47F-3-116.

d. Owner Responsibility. The Owner will be responsible for the acts of all persons in his Townhome with his permission including his family members, guests, and lessees and their invitees.

ARTICLE X REFUSE COLLECTION

10.1 ***Refuse Collection.*** Individual pickup refuse collection is provided for each Lot and Living Lot which is subject to assessment under Article V hereof by either the Town of Atlantic Beach or the Association.

10.2 ***Assessment of Costs.*** The cost of such refuse collection may be assessed against each Lot or Living Unit for which such collection is provided and shall be added to and become part of the annual assessment or charge to which such Lot or Living Unit is subject under Article V hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof.

ARTICLE XI ANNEXATION

11.1. ***Additional Property.*** Additional Lots and/or Common Elements may be annexed into the Development with the consent of two-thirds (2/3) of the Members, excluding the Declarant.

Notwithstanding the above, Declarant reserves the right in its sole discretion and without requirement of consent or approval by the Members to annex to the Property that certain adjoining tract or parcel or land identified on Exhibit A, as "Future development". The addition of this additional property may be done in phases and in any number of lot so as not to exceed 18 total in the discretion of Declarant or its assigns.

11.2. **Recording.** Any annexation made to the Property pursuant to Paragraph 11.1 above, shall be done and become effective upon recording of an amendment to this Declaration by the Association or Declarant as the case may be in the Office of the Register of Deeds of Carteret County, specifying the additional lands to be annexed into and made a part of the Development.

ARTICLE XII GENERAL PROVISIONS

12.1 **Permitted Use and Restriction on Rentals.** No Lot or Living Unit shall be used for any purpose other than residential. Nothing contained herein, however, shall be deemed to prevent an Owner from leasing a residence to a single-family unit for residential use under the conditions set out below.

Rental Restrictions: Residences located upon the lots may be rented under the following conditions:

Definition – "Rental" shall mean and refer to any agreement, oral or written, between an Owner and another person or entity which allows a third party, other than the property owner, to occupy Owner's residence, or any portion of it, on the lot for any consideration or compensation.

It is specifically provided that Owners who rent their residence or part thereof, must comply with the following provisions:

1. (a) Owners shall not rent or exchange their residence, nor a room or rooms, in whole or in part, for any rental term less than 28 days. The Owner should have a personal knowledge of the character of the person(s) leasing their residence and upon request shall provide references to the Association, if requested. Total occupancy of any residence by more than ten (10) persons shall be specifically prohibited, whether during a rental term or not.

2. The Owner of any residence that is rented to others in accordance with this Amendment must ensure that their tenants have a written copy of Declaration, and Rules and Regulations set out by the Association, including parking restrictions and use of common areas of the subdivision, and such owner must ensure that all tenants agree to follow them. Each Owner will be liable for their tenants' non-compliance as if the owner him/herself had committed the violation.

3. Violation of this amendment, the Declaration and the rules and regulations by Tenants will subject the Lot owner to fines and suspension of subdivision privileges or services. The fines and suspension shall be levied in accord with N.C. Gen. Stat. §47F-3-102 and N.C. Gen. Stat. §47F-3-107.1, and this remedy shall be in addition to all others remedies given to the Association under the Declaration.

12.2 **Prohibited Activities.** No business, noxious or offensive trade or activity shall be carried on upon or in any Lot or Living Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

12.3 **Mobile homes, etc.** No trailer, mobile home, recreational vehicle, camper, or tent shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary nature be used for human habitation on the Properties.

12.4 **Exterior Appearance.** No Owner or occupant shall change the exterior appearance of a Living Unit without the express written consent of the Board of Directors.

12.5 **Screening of Tanks, Trash and Storage Receptacles.** All propane tanks, trash receptacles or similar storage receptacles are prohibited from being exposed to view and shall be screened by fencing, a wall, plantings or buried underground.

12.6 **Clothes Lines, Satellite Dishes.** Clothes lines, as well as, television satellites dishes exceeding 24 inches in diameter are expressly prohibited. Any television satellite dish not exceeding 24 inches in diameter shall additionally be installed at a location to the rear of the Living Unit and/or screened appropriately with fencing or vegetation so that the same is not easily seen or observed from adjoining Lots or the parking lot.

12.7 **Fill, Drainage.** No lot owner shall be permitted to fill in or alter any of the drainage systems, ditches or swales of the lots without the written approval of the Declarant.

12.8 **Fencing.** No wire fencing shall be permitted on any lot or portion thereof. A lot owner may install a fence in the common area adjacent to its lot, but the type of material, location and size must be approved by the AESTHETICS COMMITTEE as provided for in Article VII. All fencing materials and the location of the same shall be required to be approved in advance by the AESTHETICS COMMITTEE before being used or installed. The maximum height or style for fencing may be set by the Committee but all such design standard will be uniform throughout the development. The cost of installation and maintenance of such fence shall be born solely by the Lot owner that installed it or its successors and assigns. Failure of a lot owner to maintain the fence shall be a violation of this Declaration and subject the lot owner to fines and injunctive relief.

12.9 **Signs.** Subject to applicable law, no sign, banner, billboard, or advertisement of any kind, including without limitation, information signs, "for sale" or "for rent" signs, and those of contractors/subcontractors, shall be displayed on any Lot including inside any window so that it is visible from the exterior of the Townhouse except for signs, banners, and billboards approved in advance by the aesthetics committee, and by Declarant so long as Declarant owns any Lot, or any portion of Property. If permission is granted to any Owner to erect a sign on a Lot, the aesthetics committee and Declarant for as long as Declarant owns any Lot or a portion of the Property reserves the right to restrict the size, shape color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees.

No political signs shall be permitted to be placed on any Lot or Common Element by an Owner or the Association.

Notwithstanding the foregoing the following signs shall be allowed:

- a. street or directional signs erected by Declarant or by the Association;
- b. any sign constructed by any governmental agency;
- c. identification and informational signs constructed by Declarant, the purpose of which is to assist Declarant in identifying the project and the location of Lots or sales models within the development;
- d. during property development and sale, Declarant may erect such identifying and marketing signs as it may deem necessary.
- e. signs placed on Common Elements by the Declarant or the Association for purposes of identifying the same and/or containing information about the use of such property.

12.10 **Pets.** Pets shall be kept or maintained in or about the Living Unit only if the Owner is granted a conditional license to maintain up to two (2) pets by the Association. Such a license will be granted subject to the following conditions and reservations:

a. **Acceptable Pets.** The only pets to be permitted shall be dogs under ninety (90) pounds when fully grown, cats, and small birds and fish. The following dog breeds shall be specifically prohibited: Rottweiler, Doberman, German Shepard, Mastiff, Pit Bulls and wolf hybrids. In addition, the Association shall specifically have the power and responsibility to designate, based upon temperament, size and/or nature or tendencies, from time to time a list of breeds of animals which shall be prohibited.

b. It shall be the responsibility of the Owner to pay for any and all costs involved in restoring to the original condition any damage caused to the Properties by a pet owned by an Owner, his tenants, guests or invitees.

c. An Owner shall be financially responsible for personal injury or property damage caused in relation to any Owner, tenant, guest, employee of the Association, or to any member of the public as a result of such pet being on the Properties.

d. Pets must be carried in arms or on a leash when taken in and out of a Living Unit.

e. Guests, tenants and visitors of an Owner shall not be permitted to bring any pets onto the Properties.

f. The Board may, upon their sole determination, revoke or terminate the above conditional license if an Owner violated the terms of the conditional license, his pet is determined to be vicious, is annoying to other Owners or Occupants, or is otherwise a nuisance.

12.11 **Temporary Structures.** No temporary structures of any kind shall be permitted on the Properties at any time, excepting such structures as may be required during major repair and maintenance and have been approved by the Board of Directors.

12.12 **Open Fires.** No open fires, including outdoor cooking activities, shall be permitted anywhere on the Properties except in such areas as may be designated for such purposes, from time to time by the Board of Directors.

12.13 **Hazardous Use and Waste.** No Lot Owner or Occupant shall permit anything to be done to or kept in a Living Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Properties, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction), to or in his Living Unit or the Common Elements.

12.14 **Rules.** The Board of Directors shall have the authority to adopt rules for the use of the Common Elements and shall furnish a written copy to said rules to the Owners. Any violation of such rules may, after a hearing in front of the Board of Directors, be punishable by fine not to exceed \$100.00 per violation, suspension of the voting rights of the violating Owner(s), not to exceed forty-five (45) days per violation and/or suspension of the rights to use of the Common Elements, not to exceed forty-five (45) days per violation. 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 Elements.

ARTICLE XIII RIGHTS OF FIRST MORTGAGEE; VA, FNMA and HUD PROVISIONS

13.1 **Availability of Association Documents, Books Records and Financial Statements.** The Association shall upon request and during normal business hours, make available for inspection by Owners and First Mortgagees and the insurers and guarantors of a first mortgage on any Lot, current copies of the Declaration, the By-Laws, other rules and regulations governing the Properties and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a first mortgagee or insurer or guarantor of a first mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Lots, current copies of the Declaration, By-Laws, other rules and regulations governing the Properties, and the most recent annual audited financial statement, if such is prepared. For purposes of this Article, the term "available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

13.2 **Successor's Personal Obligation for Delinquent Assessments.** The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Lot unless said delinquent assessments are expressly assumed by them.

13.3 **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against an Owner and any aggrieved Lot Owners shall have a right of action against the Association for failure to comply with the provisions of this Declaration, the By-Laws and the rules, regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the By-Laws.

13.4 **Management and Other Agreements.** Any management agreement between the Declarant or the Association and a professional manager, or any other agreement providing for services of the Developer, sponsor, builder, or Declarant, if any exists, shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

13.5 **Notice.** Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request to the Association stating its mortgage held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed amendment of this Declaration designed to effect a change in (1) the boundaries of any Lot or any Limited Common Elements appertaining thereto, (2) the interests in the Common Elements or Limited Common Elements relative to any Lot or the liability for Common Expenses appertaining thereto, (3) the number of votes in the Association appertaining to any Lot or (4) the purposes to which any Lot or the Common Elements are restricted; (ii) Any proposed termination of the Declaration; (iii) Any condemnation or casualty loss that affects either a material portion of the Properties or which affect any Lot on which there is a First Mortgage; (iv) any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot on which the First Mortgagee hold its First Mortgage; (v) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action pursuant to this Paragraph 13.5 shall be considered an "Eligible Security Holder" for purposes of this Article.

13.6 **Consent of Eligible Security Holders.** This Paragraph shall be effective only if, at the time this Paragraph would apply, at least one Lot is subject to a First Mortgage. The following actions shall require the approval of at least FIFTY-ONE PERCENT (51.00%) of Eligible Security Holders prior to becoming effective:

- (i) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard that is not substantially in accordance with the Declaration and the original plans and specifications;
- (ii) Any election to terminate the Declaration after substantial destruction or a substantial taking in condemnation of the Properties;
- (iii) Unless the formula for reallocation of interests in the Common Elements after a partial condemnation or partial destruction of the Condominium is provided elsewhere in this Declaration or by the Act, a reallocation of interest in the Common Elements resulting from a partial condemnation or partial destruction of the Properties.
- (iv) Any decision to materially amend any provisions of the Declaration or By-Laws, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the below referenced matters:
 - a. Voting Rights;
 - b. Assessments, assessment liens or subordination of such liens;
 - c. Reserves for maintenance, repair, and replacement of Common Elements;
 - d. Responsibility for maintenance and repair of the Condominium;
 - e. Re-allocation of interest in the Common Elements or Limited Common Elements or rights to their use;
 - f. Boundaries of any Lot;
 - g. Convertibility of Lots into Common Elements or Common Elements into Lots;

- h. Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Condominium beyond those provisions already contained within the Declaration regarding the annexation of additional properties found in Article XI;
- i. Insurance of fidelity bonds;
- j. Leasing of Living Units;
- k. Imposition of any restrictions on an Owner's right to sell, transfer or otherwise convey his Lot outside of those provided for in the Declaration;
- l. A decision by the Association to establish self-management when professional management had been required previously by the agencies or corporations;
- m. Any provisions that expressly benefit First Mortgagees or insurers or guarantors of First Mortgages.

13.7 *Consent of First Mortgagees for Termination of Declaration.* This Paragraph shall be effective only if, at the time this Paragraph would apply, at least one Lot is subject to a First Mortgage. Any decision to terminate this Declaration for reasons other than substantial destruction or condemnation of the Property shall require the prior consent of SIXTY SEVEN PERCENT (67.00%) of Eligible Security Holders.

13.8 *Eligible Security Holder Consent to Certain Actions.* With respect only to non-material amendments (which excludes items (a) to (m) of Paragraph 13.6(iv) below), such as for the correction of technical errors or for clarification, any Eligible Security Holder who receives a written request by the Association, or any Owner, to approve an addition or amendment to the Declaration or By-Laws who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

13.9 *Assessments.* Assessments shall be due and payable in monthly installments or as the Board directs. As legally required by N.C.G.S. § 47F-3-115 of the Act, Declarant shall pay all accrued expenses of the Development not covered by paid dues as provided in Section 5.8. An assessment shall be deemed levied against the Lot upon the giving of notice by the Board to a Member of the Association who is an Owner of that Lot. Owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

13.10 *Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards.* With respect to First Mortgages held by or for the benefit of any person, no provision of this Declaration or the By-Laws shall be deemed to give an Owner, or any other person, priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Owner's Lot, in the case of a distribution to said Owner of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or Common Elements.

13.11 *Annexation.* Except as provided for in Article XI, no additional real property may be added to the Development without the prior written consent of any of the following that holds, insures or guarantees any mortgage on a Lot: HUD, VA and FNMA, at the time the additional property is sought to be added to the Development.

13.12 *Completion of Improvements.* Notwithstanding any provision to the contrary contained herein, all improvements on each lot annexed into the Development shall be substantially

completed within one year of issuance of a building permit for improvements on each townhouse lot.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

14.1 **Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit or 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 with the Register of Deeds of Carteret County, after which time said covenants shall be automatically renewed and extended for successive periods of ten (10) years unless otherwise amended.

14.2 **Amendment.** This Declaration may be amended by the affirmative vote or written consent or any combination thereof, of Owners of sixty-seven percent (67%) of the Class A Membership and the written consent of the Declarant, so long as the Declarant owns any property which is subject to the Declaration or which may be subject to the Declaration by the Declarant. No amendment shall be effective until reduced to writing and recorded at the Carteret County Registry. No amendment shall change, modify or alter the rights reserved to Declarant without Declarant's written consent which consent shall be attached to and recorded with any such amendment.

Notwithstanding the above provisions and in addition to any other rights held by the Declarant, during the Development Period, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulations, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots or Units; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots or Units; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots or Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration (vi) Amendments, during the Declarant Control Period that would allow the Declarant to change any provision of the Declaration or the Bylaws, which, in the sole judgment of the Declarant, tends to impair the development or marketing rights of the Declarant under the Declaration or the Bylaws, or interferes with the development of or construction on any portion of the Property provided such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner or (viii) to correct typographical or grammatical errors.

Variations. Notwithstanding anything to the contrary contained herein, the Declarant or the Board of Directors shall be authorized to grant individual variations from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Properties.

14.3 **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.

14.4 **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 lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in on event be deemed a waiver of the right to do so thereafter.

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

14.6 **Conflict with the Act; Severability.** Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provision of Chapter 47F of the North Carolina General Statutes, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event, the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph, or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect the rest of this Declaration or the application of any such covenants, restriction, condition, limitation, provision, paragraph or clause to any other Person or circumstance.

14.7 **Interpretation of Declaration.** Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

14.8 **Captions.** The captions herein are only for convenience and reference. They do not define, limit or describe the scope of this Declaration, or the intent of any provision.

14.9 **Authority of Association.** Unless specifically limited by a provision of this Declaration or the By-Laws, any action allowed or required to be taken by the Association may be taken by a majority vote of the Board, without joinder or approval of the Members of the Association.

14.10 **Arbitration.** In the event of any dispute arising under these covenants including but limited to the need, responsibility for or payment of insurance premiums, any issues with the party walls as identified by Section 11, the cost or need for maintenance of the exterior, and walkways or the yard or landscaping, and other matters herein, then the dispute shall be submitted to binding arbitration. In the event of dispute, the lot Owners shall submit the matter to arbitration within fifteen (15) days of written notice to the other lot owner of a disagreement/dispute by either lot owner, certified mail, return receipt requested. The initial arbitrator is JOHN M. HARRIS, 304 N. 35th Street, Morehead City, NC 28557, but the Owners may designate any other arbitrator they wish. In the event that this arbitrator cannot serve when called upon, then each Owner shall choose an arbitrator and the arbitrators so chosen shall choose a third party to serve as arbitrator. The decision of the within named arbitrator or appointed arbitrator shall be binding upon all Owners. In the event that it is impossible to appoint an arbitrator, any Owner may petition the Superior Court of Carteret County, North Carolina, to

appoint an arbitrator or to hear said Owner's cause in law or in equity. The cost of the arbitration hearing shall be allocated by Arbitrator and such Arbitrator may, but is not required to, allocate that all cost of the arbitration including any cost incurred by prevailing party, be reimbursed by the other party. In no event shall a prevailing party be required to pay for more than 50% of the cost of arbitration.

Following arbitration and the failure of the owner to either comply with the arbitration decision or to pay his or their portion of the costs, the other owner not in default is authorized upon 5 days written notice to the other Lot Owner, to pay for and complete the repairs, maintenance, construction or other work and/or to file a civil action against the other owner in default to enforce the Arbitration decision. Interest shall accrue on any sums owed at 1.5 per cent per month and the interest together with a reasonable attorney's fees and the cost of the action shall be recoverable in any civil action against the defaulting owner.

Lender Consent. Crescom Bank is the holder of two Deeds of Trust encumbering portions of Property recorded in Deed Book 1627, Page 052 and Deed Book 1662, Page 245 both of Carteret County Registry. Bank hereby consents to the execution and delivery of the Declaration and to the filing thereof in the office of the Register of Deeds of Carteret County, North Carolina and further hereby subjects and subordinates its deeds of trust to this Declaration.

ARTICLE XV STORMWATER MANAGEMENT

15.1 The following covenants are intended to ensure compliance with the State Stormwater Management Permit Number SW8 181001, as issued by the Division of Energy, Mineral and Land Resources under the Stormwater Management Regulations:

- (a) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Project.
- (b) These covenants are to run with the land and be binding on all persons and parties claiming under them.
- (c) The covenants pertaining to stormwater regulations may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Energy, Mineral and Land Resources.
- (d) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Energy, Mineral and Land Resources.
- (e) The maximum allowable built-upon areas per Lot is the above referenced permit, incorporated herein by reference. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right of way between the front lot line and the edge of the pavement. Built upon areas includes, but is not limited to structures, asphalt, concrete, gravel, brick, stone, slate, coquina, and parking areas, but not including raised, open wood decking, or the water surface of swimming pools.
- (f) All runoff from the built-upon areas of the Lot must drain into the permitted system. This may be accomplished through providing roof drain gutters, which drain to the pond or street, grading the lot to drain toward the street or directly into the pond, or grading perimeter swales and directing them into the pond or street.
- (g) Built-upon area in excess of the permitted amount will require a permit modification.

- (h) Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the Stormwater Rules is subject to enforcement procedures as set forth in N.C.G.S. Chapter 143, Article 21.

15.2 ***Transfer to the Association.*** All obligations of the Declarant contained in this Article Fifteen shall be transferred to the Association at such time as the Declarant, in its sole discretion, determines to be appropriate. The Association shall be obligated to accept all responsibilities and obligations required to be performed in order to ensure compliance with State Stormwater Management Permit Number SW8 181001, as issued by the Division of Energy, Mineral and Land Resources as set forth in this Article and within the permit itself.

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SEE SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the day and year first above written.

(Corporate Seal)

WINDFARE TOWNHOMES, LLC.

By: _____
Manager

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, a Notary Public of the County and State above, do hereby certify that _____, personally came before me this day and acknowledged that (s)he is Manager of WINDFARE TOWNHOMES, LLC., a North Carolina LLC, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him as its Manager.

This the _____ day of _____, 2020.

Notary Public

My commission expires: _____

EXHIBIT A

[Additional Property]

BEING all of that property identified as “Future Development” or “Future” and shown on that map entitled “WINDFARE–TOWNHOME LOTS ____ AND _____ ”, Phase One, prepared by The Cullipher Group, P.A. and recorded in Map Book _____, Page _____, Carteret County Registry. The future development property may be subdivided into Townhouse Lots and made subject to this Declaration. The property may be subdivided in the discretion of Declarant before being subjected to the Declaration.

EXHIBIT B-BYLAWS

EXHIBIT C-LIMITED COMMON AREAS
DOCK/SLIP AREAS

The area identified as Limited common areas on the plat shall be shared by the owners of Lots 3A and 3B pursuant to Article 8 of this Declaration.