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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE FORKS AT BARCLAY**



**THE FORKS**  
*At Barclay*

**RETURN TO**

**Prepared By: MURCHISON, TAYLOR & GIBSON, PLLC  
16 North Fifth Avenue, Wilmington, NC 28401**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE FORKS AT BARCLAY**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FORKS AT BARCLAY** (this "Declaration") is made this 14<sup>th</sup> day of February 2015, by **Forks Development, LLC**, a limited liability company incorporated and existing under the laws of the state of North Carolina ("Declarant")

**WITNESSETH:**

Whereas, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as "The Forks at Barclay" which consists of or will consist of single family homes and townhomes and which is more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Forks at Barclay is located within a larger planned community known as **BARCLAY**, and is or will be subject to and bound by that Master Declaration of Covenants, Conditions, and Restrictions for Barclay (the "Master Declaration"), recorded or to be recorded in the New Hanover County Registry, as the same may be heretofore or hereafter amended; and

WHEREAS, Declarant desires to subject the Property to this Declaration under a general scheme of development for the mutual benefit of the Lot Owners, and to form an association of owners within the Forks at Barclay to provide for, among other things, the preservation of the property values and the desirability and attractiveness of the real property in The Forks at Barclay, and to provide for the establishment and the continued maintenance of the Common Elements, Townhome Elements and Lawn Elements (as defined herein) in The Forks at Barclay.

NOW THEREFORE, Declarant hereby declares that all of the Property and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the North Carolina Planned Community Act (the "Act") and to the following easements, restrictions, covenants, and conditions of this Declaration, all of which shall run with the real property subjected to the Declaration. The Declaration, including all conditions, restrictions and affirmative obligations set forth herein, shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns.

**ARTICLE I  
DEFINITIONS**

In addition to other terms defined throughout the Declaration, the following capitalized terms shall have the following meanings:

**SECTION 1. Additional Property** shall mean and refer to any lands, in addition to the above described Property, which are located within one (1) mile of the Property and which are annexed to and made a part of the Planned Community in accordance with this Declaration, whether such lands are now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others and whether contiguous with existing phases or not contiguous thereto

SECTION 2. Association or Forks Association shall mean and refer to **The Forks at Barclay Homeowners' Association, Inc.**, a North Carolina non-profit corporation, its successors and assigns, the owners' association organized pursuant to the Act for the purposes set forth herein.

SECTION 3 Board of Directors or Board shall mean the Board of Directors of the Association, who shall be the body designated in this Declaration to act on behalf of the Association.

SECTION 4. Builder shall mean a Person purchasing one or more vacant Lots from Declarant for the purpose of constructing a home for sale to a third party and not for use by such Person or any principal, director, shareholder, officer, member, manager, or partner of such Builder or a family member of any principal, director, shareholder, officer, member, manager, or partner of such Builder.

SECTION 5. Common Elements shall mean all real and personal property, including easements, stormwater retention systems and private streets and private roads (if any), which either (i) the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners and/or (ii) Declarant has designated or designates in the future for the common use and enjoyment of the Owners, including areas labeled as "Common Area," "Common Element," and "Open Space" on a subdivision plat or in any other instrument recorded by Declarant. The terms shall include the Limited Common Element, as defined below, and shall also include any street trees that may be installed by Declarant in the public right-of-ways in accordance with a streetscape plan on file with the City of Wilmington

SECTION 6 Common Expenses means actual and estimated expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 7. Declarant shall be used interchangeably with "Developer" and shall mean and refer to Forks Development, LLC, and its successors and its assigns, if such successors or assigns if they are granted or succeed to any Special Declarant Right in accordance with N.C.G.S § 47F-3-104.

SECTION 8 Declarant Control Period shall have the meaning set forth in Article IV hereof.

SECTION 9 Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 10. Landscape Guidelines shall mean the guidelines and standards for design, landscaping, care and grooming of Lawn Elements, as said guidelines and standards may be amended from time to time. *The initial Landscape Guidelines shall be prepared by Declarant, who shall have the sole and full authority to amend the same during the Declarant Control Period (as said period is defined in Article IV).* After the Declarant Control Period, the Association may amend the Landscape Guidelines with the approval of Owners representing sixty-seven percent (67%) of the Class "A" and/or Class "B" votes in the Association. Declarant or the Association shall make the Landscape Guidelines available to Owners but shall not be required to record the same.

SECTION 11. Lawn Elements shall mean those vegetative elements existing on a Lot at the time said Lot is conveyed from a Builder to a member of the Association, which the Association may maintain pursuant to the Landscape Guidelines as further described in Article IV

SECTION 12 Limited Common Elements shall mean the real property, areas and facilities which are intended for the exclusive use of one or more, but less than all of the Lots as shown and designated on any maps of sections of the Planned Community which are or may be recorded in the New

Hanover County Registry or which may be annexed to this Declaration by any amendment annexing Additional Property and all facilities located thereon. Limited Common Elements may also be designated by Declarant during the Declarant Control Period in the deed conveying such area to the Association, on a subdivision plat or by Supplemental Declaration.

SECTION 13. Limited Common Expenses shall mean actual and estimated expenses of maintaining, operating, repairing, and replacing the Limited Common Elements, including insurance, reasonable reserves and utilities as may be found necessary and appropriate by the Board of Directors for the benefit of the Limited Common Elements

SECTION 14. Lot(s) shall mean any portion of the Planned Community, whether improved or unimproved, designated for separate ownership by an Owner and shown on a recorded subdivision plat. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term includes both Townhome Lots and Single Family Lots, as both are defined herein.

SECTION 15. Lot Owner or Owner shall mean Declarant or other Person who owns a fee simple title to any Lot, or who owns fee simple title to an undivided interest in a Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 16. Master Association or Barclay Master Association shall mean Barclay Master Association, Inc., a North Carolina non-profit corporation, its successors and assigns, which has been or will be created by Cameron Properties Land Company, LLC (the "Master Declarant") as a vehicle for overseeing the maintenance and expenses associated with areas shared by, or other users benefiting, all property owners within the master planned community known as Barclay.

SECTION 17. Master Declaration or Barclay Master Declaration shall mean the Master Declaration of Covenants, Conditions and Restrictions for Barclay and any amendments or supplemental declarations thereto.

SECTION 18. Person means a natural person, a business or nonprofit corporation, limited liability company, trustee(s) of a business trust, trustee(s) of charitable or noncharitable trust, limited or general partnership, joint venture, government, governmental subdivision, governmental agency, or other legal entity.

SECTION 19. Planned Community or Forks at Barclay shall mean and refer to the Property described in **Exhibit A** plus any Additional Property made a part of the Planned Community by annexation in accordance with this Declaration.

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

SECTION 21. Single Family Lot shall mean a Lot designated by Declarant for use as a detached single family dwelling. Within the Property initially subjected to this Declaration, Declarant has designated **Lots 3 and 36 in Phase 1, Section 1** of the Forks at Barclay (as more particularly described in the attached **Exhibit A**) as "Single Family Lots" but reserves the right to change such designation for any lots Declarant still owns by recording a Supplemental Declaration hereto. Declarant also reserves the right but not the obligation to designate additional lots as "Single Family

Lots" when such lots are recorded and annexed under this Declaration Any lot not designated as Townhome Lot shall be deemed a Single Family Lot.

SECTION 22. Special Declarant Rights shall mean any and all rights, powers, and privileges reserved for the benefit of Declarant in this Declaration, including, but not limited to (i) the right to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) the right to exercise any development or other right reserved to Declarant by this Declaration or otherwise; (iii) the right to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) the right to use the Common Elements for the purpose of making improvements within the Planned Community; (v) the right to make the Planned Community part of a larger planned community or group of planned communities; (vi) the right to make the Planned Community subject to a Master Association; (vii) the right to appoint or remove any officer or Board of Directors member of the Association or any Master Association during the Declarant Control Period; (viii) the right to permit or cause other land to be annexed to the Planned Community in accordance with this Declaration; (ix) the rights reserved to Declarant in Article VI of this Declaration; and (x) the rights described in the Act, including but not limited to N.C G S. § 47F-1-103(28)

SECTION 23. Townhome Elements shall mean those exterior portions of all Townhome Lots that the Association shall be obligated to maintain, as more particularly described in Article IV, Section 7.

SECTION 24. Townhome Lot shall mean a Lot designated by Declarant for use as an attached single family dwelling. Within the Property initially subjected to this Declaration, Declarant has designated Lots 1, 2 and 4-35 in Phase 1, Section 1 of the Forks at Barclay (as more particularly described in the attached Exhibit A) as "Townhome Lots" but reserves the right to change such designation for any lots Declarant still owns by recording a Supplemental Declaration hereto. Declarant also reserves the right but not the obligation to designate additional lots as "Townhome Lots" when such lots are recorded and annexed under this Declaration

## ARTICLE II Barclay

Declarant hereby adopts by reference, as if fully set out herein, all provisions of the Master Declaration, and any supplements or amendments thereto presently existing and/or hereafter adopted. The Association and all Owners shall be subject to and bound by the Master Declaration and the Master Association's jurisdiction notwithstanding the Master Declaration may be recorded after this Declaration Without limiting the foregoing, the Association and all Owners shall be obligated to pay all Master Association assessments which are in addition to the assessments described in this Declaration and to abide by the architectural land restrictions set out in the Master Declaration The Association, and not the individual Owners, shall be the member of the Master Association representing the Forks at Barclay Under the terms of the Barclay Master Declaration, the Master Association shall have the right to veto any action taken by the Association hereunder and to require specific actions to be taken by the Association.

The Master Declaration may designate certain Master Common Areas (or Master Common Elements or another similar term) located within or adjacent to Barclay and grant easements over such areas to the Master Association and/or certain non-profit corporations or the public subject to reasonable rules and regulations governing access, use and enjoyment thereof. These Master Common Areas may include community entry features, including associated signage, landscaping and irrigation, common drainage, stormwater drainage, sewage systems, water retention facilities and

related equipment; community-wide location and directional signage; streetlights, roadways and associated landscaping and irrigation; common pathways, trails and sidewalks; and common open space or greenspace. Portions of these Master Common Areas may be located within the Forks at Barclay; and notwithstanding anything in this Declaration or the recorded plats of the Planned Community to the contrary, any property initially designated by Declarant as Common Elements herein or on the recorded plats may be subsequently designated in the Master Declaration as a Master Common Area.

Notwithstanding anything in the Declaration to the contrary, in the event that the common drainage, stormwater drainage, sewage systems, water retention facilities and related equipment serving the Forks (the "Forks Stormwater System") is designated by the Master Declaration as a Master Common Area, then Declarant reserves the right, but not the obligation, to transfer all ownership and maintenance responsibilities for the Forks Stormwater System to the Master Association which would own, operate, and maintain the system and cover the cost thereof by collecting Master Assessments from the Forks Association.

In the event of a conflict between the Declaration and the Master Declaration with respect to the Master Association's rights and responsibilities, the Master Declaration shall control.

### **ARTICLE III** **PROPERTY RIGHTS AND EASEMENTS**

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

(a) All of the restrictions and limitations in this Declaration, including but not limited to the right of the Board to impose reasonable charges and fines for late payments and to suspend the voting rights and the rights to use the Common Elements by an Owner as further provided herein.

(b) The right of Declarant, and after the Declarant Control Period terminates, the Board of Directors to make and amend reasonable rules and regulations governing use of the Planned Community, the Lots and the Common Elements by the Owners

(b) The right of the Association to grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners of at least eighty percent (80%) of the Lots, provided, however, that the Association, if it has Declarant's written consent (which is required during the Declarant Control Period), may, without the consent of the Owners, grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support

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

(a) Easements as necessary in the lands constituting the Common Elements and the rear and front ten (10) feet of each Lot and side five (5) feet of each Lot for the installation and

maintenance of utilities and drainage facilities including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County, the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance, the right to cut any trees, bushes or shrubbery, the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible

(b) Easements over, under, and across all streets, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress to and from any Additional Property, and for the installation of utilities for any Additional Property.

(c) Easements shown and depicted on any recorded map or plat and which affect any Lot or Limited Common Element or which serve the Planned Community or are necessary for the development of the Planned Community.

(d) An easement of unobstructed access over, on, upon, through and across each Lot and the Common Elements, Townhome Elements and Lawn Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the same as required by this Declaration.

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

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

(b) In case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other Person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

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

**SECTION 4. Nature of Easements.** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on

Declarant and the Association, their successors and assigns, and any Owner, Purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration

#### **ARTICLE IV** **HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** The Association was formed on December 2, 2014. The Association is a North Carolina nonprofit corporation organized pursuant to the North Carolina Nonprofit Corporation Act for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements, the Townhome Elements, the Lawn Elements, the stormwater runoff system, and other property and facilities maintained by the Association, to enforce covenants, conditions and restrictions of this Declaration; and to make and enforce rules and regulations governing the Owners use and occupation of Lots. The Association shall perform its functions in accordance with this Declaration, its Articles of Incorporation and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2 Membership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from fee simple ownership of a Lot or fee simple ownership of an undivided interest in a Lot

**SECTION 3 Voting Rights.** The Association shall have three (3) classes of voting Membership as described below.

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

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

**Class C.** Declarant shall be the Class C Member and shall be entitled to three (3) votes for each Lot owned and for each planned but currently unplatted Lot to be in the Planned Community. The total number of planned Lots for the Planned Community is currently one hundred and twenty-four (124), provided however, that the actual number of Lots may be more or less, and the Class C member makes no representation whatsoever regarding the actual number of Lots to be included in the Planned Community. The Class C Membership shall cease and be converted to Class A Membership (for any Single Family Lots owned by Declarant) and/or Class B Membership (for any Townhome Lots owned by Declarant) on the happening of any of the following events, whichever occurs earlier

(a) When Declarant owns one percent (1%) or less of the total number of the planned Lots in the Property, including any of the Additional Property which may be annexed thereto, as herein provided;

(b) on December 31, 2035; or

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

#### **SECTION 4. Declarant Control Period**

(a) The period of time during which there is a Class C Membership is sometimes referred to herein as the "Declarant Control Period."

(b) During the Declarant Control Period, Declarant shall have the right to designate and select the Board of Directors of the Association (from Members or non-Members) and the right to remove any Person or Persons designated and selected by Declarant to serve on the Board of Directors, and to replace them for the remainder of the term of any Person designated and selected by Declarant to serve on the Board of Directors who may resign, die, or be removed by Declarant.

**SECTION 5. Government Permits** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of Declarant under any water, sewer, land use, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall automatically become the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. Declarant reserves the right to assign any such permits, easements, or agreements to the Association, in which case the Association shall be required to assume the same. There are additional provisions made in this Declaration concerning stormwater facilities and the stormwater permits.

**SECTION 6 Common Element Maintenance** The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from Declarant to the Association or assumed by the Association. If Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse Declarant the cost of such operation and maintenance within thirty (30) days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment within thirty (30) days of receipt of such bill to cover the amount thereof if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment. Included within the Association's responsibility to maintain all Common Elements is the obligation to maintain the health of any and all street trees which Declarant may install within City of Wilmington right-of ways, in accordance with a streetscape plan on file with the City of Wilmington.

**SECTION 7 Townhome Element Maintenance** In addition to maintenance of the Common

Elements, the Association shall provide certain scheduled exterior maintenance upon each Townhome Lot, which maintenance may generally include: the repainting of exterior building surfaces, including exterior doors and garage doors and re-staining of originally installed wooden fences and utility enclosures, the scheduled replacement of roofs, including the removal and replacement of shingles, flashing, venting and moisture barrier materials, and the maintenance of gutters and downspouts. Such exterior maintenance shall not include repair or replacement of glass surfaces, exterior doors, garage doors or window frames. With regard to maintenance of the roofs or scheduled roof replacement, the Association shall not be responsible for the repair or replacement of the sheathing or underlying support members within the roof system. In addition, the Association shall also be responsible for the maintenance of the common irrigation system serving the Townhome Lots and for the replacement of dead shrubs, grass, trees and other vegetation on Townhome Lots. Provided however, the Board may decide, in its discretion, to replace dead shrubs, grass, trees and other vegetation on Townhome Lots with different varieties than were first planted. Maintenance and replacement of flowers and other additions to landscaping made by the Townhome Lot Owner (whether approved by the ACC or not) shall be the Townhome Lot Owner's responsibility.

All such exterior and other maintenance of the Townhome Lots described in this **Section 7** will be provided by the Association on a schedule and to a scope of work appropriate to meet the reasonable standards determined by the Board in its discretion, and not on a schedule or to a scope of work as directed or requested or specified by any specific Owner. The cost of the exterior maintenance and other maintenance described in this **Section 7** upon each Townhome Lot will be included in the Townhome Assessments and shall be levied at a uniform rate against all Townhome Lots. No Townhome Owner may exempt himself or herself from liability for assessments for exterior and other maintenance provided by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees or licensees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Townhome Element maintenance described in this **Section 7** may be modified by the board as it deems reasonable and appropriate.

Except for the Association's maintenance of the Townhome Elements, common irrigation system and limited vegetation replacement as described in this **Section 7** and except for the Association's maintenance of Lawn Elements described in **Section 8**, each Townhome Lot Owner will be responsible for all other required maintenance of the exterior and interior of his or her Lot, including the fixtures and utilities located in the Lot. All fixtures, equipment, and utilities installed and included in a Townhome Lot commencing at a point where the fixtures, equipment, and utilities enter the Townhome Lot shall be maintained and kept in good repair by the Owner. The Owner at the Owner's expense shall maintain, repair or replace the heating and air conditioning units (HVAC), air handling units, heat exchanger, heat outlet, enclosures and mechanical attachments. The Owner shall not allow any action of work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any townhome building, or impair any easement or hereditament. An Owner is responsible for a repair resulting from a casualty occurring within, or affecting the inside of the Townhome Lot. Each Owner shall be responsible for removing all snow, ice, leaves and debris from all doorsteps or stoops, decks, walkways and driveways appurtenant to his or her Townhome Lot.

**SECTION 8 Lawn Element Maintenance** Lawn maintenance, as more particularly described in the Landscape Guidelines, will be provided by the Association for the Lawn Elements on all Lots unless Declarant, by a supplemental declaration, excludes any such Lots from lawn maintenance. The cost of lawn maintenance for each Lot will be included in the Annual Assessments

The lawn maintenance service provided by the Association will be in accordance with the Landscape Guidelines and shall generally include (i) lawn mowing, edging and appropriate chemical applications on all turf on the Lawn Elements as installed by Declarant, (ii) maintenance of shrubs installed by Declarant, and (iii) mulching of planting beds installed by Declarant. Such lawn maintenance shall be provided to the Lawn Elements within the front, side and rear yards of each Lot, as well as the turf portion of the Lawn Elements extending from the Lot line to the paved edge of the street, but it will not be provided to any areas of a Lot that are locked or otherwise enclosed to the extent that access is prohibitive. Lawn maintenance will also not be provided to any area of landscaping installed by Declarant that is subsequently modified by the Owner. All such lawn maintenance will be provided on a schedule and to a scope of work appropriate to meet the standards in the Landscape Guidelines and as determined by the Board, in its discretion, and not on a schedule or to a scope as directed, requested or specified by any specific Owner

Except for the lawn maintenance service provided by the Association, each Owner shall remain responsible for all lawn maintenance required on or with respect to the Owner's Lot. Without limiting the foregoing, each Owner shall be solely responsible for the care and maintenance of all landscaping modifications made and/or additions made by the Owner to landscaping initially installed by Declarant. Each Owner will be responsible for watering all vegetation, trees, shrubs, grass, lawn and landscaped areas of the Lot as may be necessary to satisfy the Landscape Guidelines and community-wide standard. Each Owner shall be responsible for the maintenance and proper operation of any irrigation system which may be installed on a Lot; provided however, the irrigation systems located on all Townhome Lots shall be maintained by the Association. The costs of maintenance of the irrigation system serving the Townhome Lots shall be included in the Townhome Assessments. Other than the irrigation system maintenance in the foregoing sentence, all watering and irrigation system maintenance are expressly excluded from the Association's lawn maintenance responsibility.

No assurance or guarantee is made that the Association will continue to provide lawn maintenance as set forth herein. Lawn maintenance services may be suspended, modified, or terminated by the Board of Directors of the Association as it, in its sole discretion, deems reasonable and appropriate, whereupon the corresponding assessments shall also be suspended, modified or terminated. In order to carry out the lawn maintenance services described herein, the Association shall be authorized to move any personal property of the Owner, and shall not be liable for any loss or damage to real or personal property of the Owner resulting from said activities

**SECTION 9. Owners' Maintenance** Each Owner shall maintain his or her Lot and all landscaping and improvements comprising the Lot in a manner consistent with the community-wide standard and this Declaration, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Declaration in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right, through its agents, contractors, and employees to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the building and other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration plus a service charge of fifteen percent (15%) of such cost, shall immediately be deemed an Individual Assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable

in accordance with **Article V** In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot to make emergency repairs necessary for the proper maintenance and operation of the Planned Community

**SECTION 10. Architectural Control Committee.** The Board of Directors shall perform all duties of the Architectural Control Committee ("**ACC**") if no such committee is appointed by it, subject, however, to the Special Declarant Rights Any Architectural Control Committee appointed by the Board of Directors shall consist of at least three (3) members

## **ARTICLE V** **COVENANTS FOR ASSESSMENTS**

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

- (a) Annual Assessments;
- (b) Townhome Assessments;
- (c) Special Assessments;
- (d) Insurance Assessments;
- (e) Ad Valorem Tax Assessments;
- (f) Working Capital Assessments; and
- (g) Individual Assessments

The Assessments, together with interest, costs, late fees and any attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be imposed by law (the "**Reasonable Attorneys' Fees**") shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and Reasonable Attorneys' Fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Assessments** The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and in particular for the acquisition, maintenance, repair, improvement and replacement of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Lots, the Common Elements, any Limited Common Elements, the Townhome Elements, common irrigation systems described in **Article IV** and/or Lawn Elements. The funds arising from said Assessments or charges may be used for any or all of the following purposes. the costs of repairs, replacements and additions; the cost of labor, equipment , materials, management and supervision; the payment of any taxes and assessments assessed against the Common Elements and any improvements thereupon; the maintenance of the grounds and elements as described in this Declaration, the procurement and maintenance of insurance in accordance with the Bylaws, the maintenance of any dams and ponds, including retention or detention ponds or other bodies of water, if any located within the Common Elements; the performance of any other maintenance or repair obligations under this Declaration, the erection, maintenance and repair of signs, entranceways, landscaping and lighting within easements provided therefor or the Common Elements, road medians

and islands, the payment of charges for utilities, garbage collection and municipal water and sewer services furnished to the Common Elements; establishing working capital, paying dues and assessments to any organizations of which the Association is a member and to the Master Association; the costs of enforcing this Declaration, insurance premiums, legal and accounting fees and governmental charges, establishing and funding adequate reserve accounts for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; establishing working capital, paying dues and assessments to any organization or Master Association or other association of which the Association is a member; and doing any other things necessary or desirable as determined by the Board of Directors to keep the Common Elements, Limited Common Elements, Townhome Elements, common irrigation systems and Lawn Elements in good operating order and repair.

**SECTION 3. Annual Assessments and Townhome Assessments.** At least thirty (30) days before the beginning of each fiscal year, the Board of Directors shall adopt a proposed annual budget, as follows:

A. Budget for the Annual Assessments consisting of the annual cost of operating, managing, maintaining, improving, repairing and replacing the Common Elements and any Limited Common Element and the Lawn Elements; payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees; governmental charges; establishing working capital; and paying dues and assessments to any organizations of which the Association is a member and to the Master Association,

B. Budget for the Townhome Assessments for the Townhome Lots consisting of the annual cost of improving, maintaining and managing of the Townhome Elements, the common irrigation systems and limited vegetation replacements described in Article IV and the insurance for the Townhome Elements as required in Article X; and

C. Such other budgets as the Board deems appropriate

Within thirty (30) days after adoption of the proposed budgets, the Board shall provide to all Lot Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. Each budget is ratified unless at the meeting seventy-five percent (75%) of all of the Lot Owners in the Association entitled to vote on the particular budget rejects the budget. All Members shall be entitled to vote on the budget for the Annual Assessments, and only Townhome Lot Owners and the Class C Member, if any, shall be entitled to vote on the budget for the Townhome Assessments. In the event a proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board. The Annual Assessments for each Lot shall be established based on the annual budget thus adopted, with all Lots funding the budget for the Annual Assessments and only the Townhome Lots funding the budget for the Townhome Assessments; provided, however, that the first Annual Assessments shall be set by Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Board. The Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association or designee setting forth whether the Assessments on a specified Lot have been paid.

The annual budget shall include in each calendar year the amount assessed by the Master Association to the Forks Association (the "Barclay Master Assessments"), if any (as said assessments are or will be defined and authorized in the Master Declaration) to be paid by all Lot Owners in the Forks. The Association shall collect as part of its Annual Assessments the amounts budgeted for such Barclay Master Assessments, if any, and pay those Barclay Master Assessments to the Master Association on behalf of the Lot Owners.

**SECTION 4. Special Assessments** In addition to the Annual Assessments and Townhome Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes.

(a) To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, any Limited Common Elements Townhome Element or irrigation system, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are subject to such assessment voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members to be assessed not less than ten (10) days or more than sixty (60) days in advance of the meeting

(b) Without a vote of the Members, to reimburse Declarant as provided for in Article IV, Section 6, or as provided in Article X, Section 8

**SECTION 5. Insurance Assessments** Except for insurance policies purchased by the Board of Directors for the Townhome Lots as required in Article X (which are Limited Common Expenses applicable to Townhome Lots only), all premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment

**SECTION 6. Ad Valorem Tax Assessments** All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time of year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment

**SECTION 7. Working Capital Assessments** Upon every acquisition of title to any Lot by an Owner other than Declarant or a Builder, such Owner shall pay the sum of Five Hundred and 00/100 (\$500.00) to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments. The amount of the Working Capital Assessment may be revised by the Board of Directors at any time in its reasonable discretion

**SECTION 8. Individual Assessments** In addition to the other Assessments set forth in this Article V, the Board of Directors may levy an Individual Assessment against specific Lot(s) for the following purposes

(a) For the payment of Limited Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element against the Lot or Lots to which the Limited Common Element is assigned.

(b) For the payment of any Common Expenses which are designated to benefit specific Lot(s)

(c) For the payment of those amounts levied against any Lot owned by an Owner under Article IV, Section 8, Article IX, Sections 2(a) and (b) and/or Article VII, Section 4.

SECTION 9. Rate of Assessment. All Annual Assessments shall be levied at a uniform rate against all Lots. All Townhome Assessments shall be levied at a uniform rate against all Townhome Lots

SECTION 10. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant

SECTION 11. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law or at any other interest rate adopted by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. The Association may collect Reasonable Attorneys' Fees from any Owner for attorney's fees incurred by the Association as a result of any Owner's failure to timely pay any Assessment or installment thereof. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments

SECTION 12. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(d) Any judgment, decree, or order in any action brought under this section shall include costs and Reasonable Attorneys' Fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other Purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such Purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such Purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such Purchaser, its heirs, successors and assigns

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed

**SECTION 13. Declarant's Obligation for Assessments; Grace Period for Builders.**

(a) During the Declarant Control Period, Declarant may satisfy its obligation for assessments on Lots which it owns either by (i) paying such assessments in the same manner as any other Owner; (ii) by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year; or (iii) paying one-half of the assessments for an unimproved Lot for all Lots which are platted and Recorded but which have not yet been sold to an Owner other than Declarant or a Builder. Unless Declarant otherwise notifies the Board in writing at least 45 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Declarant Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner

(b) Any Builder who purchases property subject to this Declaration directly from Declarant shall not be required to pay assessments or working capital fees relative to such property acquired from Declarant for a period beginning on the date such property is acquired from Declarant (each, an "Acquisition Date") and ending on the date that is two (2) years after the Acquisition Date; provided however, in the event any portion(s) of such property are subsequently conveyed by a Builder to any other party prior to end of the two (2) years following the Acquisition Date, then the grace period described in this section shall automatically and immediately terminate as to any portion(s) of the property conveyed by the Builder as of the date of such conveyance, and the grantee of such conveyance shall thenceforth be subject to full assessments and fees under this Article V.

**ARTICLE VI**  
**RIGHTS OF DECLARANT**

In addition to any and all other rights, powers and privileges reserved to Declarant in this Declaration, Declarant shall have, and there are hereby reserved to Declarant, as part of the Special Declarant Rights defined in Article I, of this Declaration, the following rights, powers and privileges so long as Declarant owns any of the Property or any of the Additional Property

**SECTION 1 Architectural Control Committee/Board of Directors.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the

Association shall be exercised and performed by Declarant or its designee, so long as Declarant shall own any Lot within the Property, any Additional Property, or the Planned Community. Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers of the Association and members of the Board of Directors. These appointments may be made with Association Members or non-Members

**SECTION 2. Plan of Planned Community.** The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, utility and drainage facilities and easements and to change, alter or re-designate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The rights reserved in this Section specifically include, but are not limited to, the right of Declarant to redesignate, change or alter any platted Lot(s) into road(s). Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots, to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments), to eliminate or withdrawal from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements. Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by Declarant, including any lands shown on plats of the Planned Community as "Future Development". Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by filing of a supplemental declaration in the Register of Deeds office of the county where the Planned Community is located. Declarant may be required by DWQ to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant shall not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown as Lots on the recorded Plat, or which are not shown as Lots on any subsequently recorded plats showing Lots that are made part of the Planned Community

**SECTION 3. Amendment of Declaration by Declarant** As long as Declarant owns any of the Property or any of the Additional Property, this Declaration may be amended by Declarant in its discretion. Retention of this right by Declarant is not intended to materially alter the general or common scheme of development for the property herein described but to correct and/or modify situations or circumstances which may arise during the course of development. Without limiting the foregoing, this Declaration may be amended by Declarant without approval of the Members or the Board of the Association, as the case may be, as follows:

- (a) In any respect, prior to the sale of the first Lot
- (b) To the extent this Declaration applies to Additional Property.
- (c) To correct any obvious error or inconsistency in drafting, typing or reproduction.

(d) To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.

(e) To incorporate or reflect any platting change as permitted by this Article or otherwise permitted under this Declaration.

(f) To accomplish the purposes of Article VI, Section 2 above

(g) To conform, by amendment or otherwise, this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Declarant may at any time amend this Declaration to change the maximum allowable built-upon area as permitted by DENR. Notwithstanding anything else herein to the contrary, only Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

Notwithstanding anything to the contrary herein, any and all amendments to the Declaration that affect the Master Association or the Master Declarant shall be subject to the prior written consent of the Master Declarant in accordance with the terms of the Master Declaration.

**SECTION 4. Annexation of Additional Property.** As long as Declarant owns any of the Property or any of the Additional Property, Declarant may annex to and make a part of the Planned Community any Additional Property without the consent of the Association or any Lot Owners. Except for the annexation of Additional Property by Declarant, the annexation of Additional Property to the Planned Community shall require the assent of the Owners of Lots to which at least sixty-seven percent (67%) of the votes of the Class A Members who are voting in person or by proxy at a meeting called for this purpose are allocated, provided, however, Additional Property may be annexed to the Planned Community by Declarant or any assignee of Special Declarant Rights without the assent of the Owners of Lots so long as the Additional Property is used for residential purposes, roads, utilities, drainage facilities, amenities, landscape areas, and other facilities not inconsistent with residential developments. Subdivisions or planned communities formed from Additional Property need not have the same name as prior portions of the Planned Community

**SECTION 5 Approval Rights for Changes in Standards** So long as Declarant owns any of the Property or any of the Additional Property, no amendment to or modification of this Declaration, the Landscape Guidelines, the Design Guidelines, or any rules and regulations shall be effective without prior notice to and the written approval of Declarant

**ARTICLE VII**  
**USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE**

**SECTION 1. Approval of Plans for Building and Site Improvements.** No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors 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 Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and full compliance with this Article will be deemed to have occurred. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

**SECTION 2 Minimum Standards for Site Improvements.**

(a) Each one (1) story dwelling shall have a minimum of one thousand six hundred fifty square feet (1650 sq. ft ) of enclosed, heated dwelling area; and each two (2) story dwelling shall have a minimum of one thousand nine hundred fifty square feet (1950 sq. ft.) of enclosed, heated dwelling area; provided, however, the Architectural Control Committee may permit a one (1) story dwelling to have a minimum of one thousand five hundred square feet (1500 sq. ft.) and a two (2) story dwelling to have a minimum of one thousand eight hundred square feet (1800 sq. ft.) if the Committee, in its sole discretion, finds that the variance will not adversely impact property values within the Planned Community. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open/screened porches, and like areas

(b) Since the establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Control Committee, provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations

(c) The exterior of all dwellings and other structures must be completed within **twelve (12) months** after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, natural calamities, or the complexity of design and construction.

(d) All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Control Committee so as to preclude the same from causing an unsightly view from any highway, street or way within the Planned Community, or from any other residence within the Planned Community. All mail and newspaper boxes shall be

uniform in design Design of mail and newspaper boxes shall be furnished by the Developer, Association, or Architectural Control Committee. No fences shall be permitted unless the design, placement, and materials of any fence are approved by the Architectural Control Committee. Clotheslines are not permitted on any Lot.

(e) Off-street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot, which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by the Architectural Control Committee

(f) All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frosted lights or bulbs.

### SECTION 3. Use Restrictions.

(a) Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of Declarant contained herein. All Lots are restricted for construction of one single family dwelling (plus, a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Control Committee)

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures No structure of a temporary character, trailer, basement, tent, shack, garage, shed, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Architectural Control Committee.

(d) Vehicles/Boats. No vehicle, boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment or similar type vehicle/equipment shall be parked on public or private streets or thoroughfares, provided however, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide services or to make a delivery to a Lot or the Common Area. No boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment or similar type vehicle/equipment, shall be permitted to remain visible on any Lot or on any street at any time, without the written consent of the Board of Directors No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. All lawn maintenance equipment shall be stored when not in use, in a method so as not to be visible from the street. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street. The Association shall have the right to have all such vehicles, boats, or equipment parked, used or stored in violation of this section towed away or removed at the Owner's expense

(e) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that domesticated dogs, domesticated cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance.

(f) TV Satellite Dishes and Outside Antennas. No TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Control Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted.

(g) Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Board of Directors.

(h) Signs. No signs (including "for sale" or "for rent" signs), other than political signs (as defined in N.C.G.S. §47F-3-121), shall be permitted on any Lot or in the Common Elements without permission of the Board of Directors, provided, however, Declarant may, so long as Declarant owns any Lot, maintain for sale signs on Declarant's Lots and maintain signs on the Common Elements advertising the Planned Community. With regard to the regulation of political signs, the Association, pursuant to the provisions of the Act, may (i) prohibit the display of political signs on a Lot earlier than forty-five (45) days before the day of an election and later than seven (7) days after an election day, and/or (ii) regulate the size and number of political signs that may be placed on a Lot (but only to the extent the Association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property). If the local government in which the applicable property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one (1) political sign with the maximum dimensions of 24 inches by 24 inches (24" x 24") on a Lot. For the purposes of this paragraph, a "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

(i) Subdividing. Subject to any rights reserved to Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of Declarant during the Declarant Control Period and thereafter by the Board of Directors.

(j) Flags/Statuary. No flags, outdoor statuary or other decorative objects may be placed on any Lot unless and until permission for the same has been granted by the Architectural Control Committee. Notwithstanding any other provision in this Section, either the American Flag or the North Carolina flag having the maximum dimensions of four feet by six feet (4'x6') may be flown on a pole no longer than 5 feet 6 inches from a pole holder attached to the home in an approved location which can be reached by hand from the ground below so as to be easily installed and removed. No flagpoles shall be installed in any other locations on any Lot. Flags will be displayed in accordance with traditional rules and patriotic customs set forth in 4 U.S.C. §§5-10, as amended, governing the display and use of the American Flag. The Association may display the American Flag or the North Carolina flag from flagpoles or otherwise on any Common Element.

**SECTION 4 Maintenance.** Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. In the event that any maintenance activities are necessitated to any Common or Limited Common

Element by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to and become an Individual Assessment levied against said Owner's Lot.

## **ARTICLE VIII**

### **STORMWATER PERMITS/FACILITIES**

**SECTION 1. Stormwater Permits** Pursuant to NCGS §143-214.7(c2), Declarant shall be entitled to transfer the stormwater permit(s) to the Association and DENR shall allow such transfer so long as: (a) the Common Elements related to the operation and maintenance of the stormwater management system have been conveyed to the Association; (b) Declarant has conveyed at least fifty percent (50%) of the Lots to Owners other than Declarant; and (c) the stormwater management system is in substantial compliance with the stormwater permit(s). Therefore, the Association and each of its Members agree that at any time after the Developer (i) has requested that the Association accept transfer of the stormwater permit(s); (ii) has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than forty-five (45) days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in substantial compliance and accordance with the plans and specifications therefor; and (iii) is not prohibited under NCGS §143-214.7(c2) from transferring the stormwater permit(s) to the Association, then the Association will cause its officers, without any vote or approval of Lot Owners, and within ten (10) days after being requested to do so, to sign any and all documents required by DENR for the stormwater permit(s) to be transferred to the Association and will accept a deed conveying such facilities to the Association (if not already deeded). If the Association fails to cause the documents required by this paragraph to be signed by its officers or to accept a deed conveying such facilities, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the Association's officers sign all documents necessary for the stormwater permit(s) to be transferred to the Association and accept a deed conveying such facilities to the Association. Failure of the Association's officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the stormwater permit(s). In addition, each Owner for the Owner, the Owner's heirs, successors and assigns, by acceptance of a deed from Declarant, for a Lot hereby irrevocably appoints Adair C. Graham Jr. (or his duly appointed successor) as the Owner's attorney in fact, on behalf of the Owner and Association, to sign all documents required by DENR necessary for the stormwater permit(s) to be transferred to the Association; provided, however, that Declarant shall first have requested as provided above that an officer of the Association execute such documents and any officer has failed to do so within the time provided.

**SECTION 2. Stormwater Facilities Operation and Maintenance** Any stormwater retention ponds and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of **Section 3** of this **Article VIII**, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Such operation and maintenance shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the stormwater permit(s) Except as provided in **Section 3** of this **Article VIII**, the Association shall indemnify and hold harmless the Developer from any obligations and costs under the stormwater permit(s) for operation and maintenance of the stormwater retention ponds and related facilities

**SECTION 3. Damage to Stormwater Facilities.** Declarant shall, at its sole cost and expense, be responsible for repairing any damage to stormwater facilities caused by the Developer's development activities. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including but not limited to construction of residences or other activities by Owners, their agents and contractors, upon their Lots, acts of God, or the negligence of others Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot. Each Owner, shall within thirty (30) days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the stormwater plans and specifications for the Planned Community. If the Lot Owner fails to do so within said thirty (30) day period, the Association shall perform the work and the cost of the work shall be added to the Annual Assessment due from the Lot Owner or assessed against such Owner and his Lot as an Individual Assessment

**SECTION 4 Enforcement Of State Stormwater Runoff Regulations.**

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8-140417, as issued by the North Carolina Division of Energy, Mineral and Land Resources under the NCAC 2H 1000.

(b) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

(c) These covenants are to run with the land and be binding on all Persons and parties claiming under them.

(d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Energy, Mineral and Land Resources

(e) 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.

(f) The maximum allowable built-upon area per Lot is as follows:

Lots 1-2, 4-35. 3,648 sq. ft

Lot 3. 3,725 sq ft.

Lot 36. 4,650 sq ft.

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 area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools

(g) All runoff from the built-upon areas on 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.

(h) Built-upon area in excess of the permitted amount will require a permit modification.

(i) All affected Lots shall maintain a 50' wide vegetative buffer adjacent to surface waters, measured horizontally from and perpendicular to the normal pool of impounded structures, the top of bank of each side of streams and rivers and the mean high water line of tidal waters

(j) 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.

**SECTION 5. Enforcement Of City of Wilmington Stormwater Runoff Regulations.**

(a) The following covenants are intended to ensure ongoing compliance with City of Wilmington Comprehensive Stormwater Management Permit Number 2014023, as issued by the City of Wilmington/Engineering

(b) The City of Wilmington is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit

(c) These covenants are to run with the land and be binding on all Persons and parties claiming under them

(d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the City of Wilmington

(e) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the City of Wilmington.

(f) The maximum allowable built-upon area per Lot is as follows

Lots 1-2, 4-35. 3,648 sq. ft.  
Lot 3. 3,725 sq. ft  
Lot 36: 4,650 sq. ft

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 area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools

(g) All runoff from the built-upon areas on the Lot must drain into the permitted system. This may be accomplished through a variety of means including roof drain gutters which drain toward the street or perimeter swales to collect the lot runoff and directing them into a component of the stormwater collection system. Lots that will naturally drain into the system are not required to provide these additional measures

**ARTICLE IX**  
**LOTS SUBJECT TO DECLARATION/ENFORCEMENT**

**SECTION 1. Lots Subject to Declaration.** The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any Person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners.

**SECTION 2 Enforcement and Remedies.** The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Association shall be entitled to enforce its Articles of Incorporation, Bylaws, and rules and regulations and this Declaration and to collect from any Owner the Reasonable Attorneys' Fees incurred by Association in enforcing the same. In addition to the remedies otherwise provided for *herein concerning the collection of Assessments, the following remedies shall be available:*

(a) **Association to Remedy Violation.** In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Articles of Incorporation, or rules and regulations, the Board of Directors, after thirty (30) days' notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within thirty (30) days after Owner is billed. If not paid within said thirty (30) day period, the amount thereof may immediately be added to and become an Individual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common Elements or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become an Individual Assessment levied against said Owner's Lot.

(b) **Fines.** The Association may, in accordance with the procedures set forth in the Act, *establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or rules and regulations.* If an Owner does not pay the fine when due, the fine shall immediately become an Individual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

(c) **Suspension of Services and Privileges.** The Association may, in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's Lot remain unpaid for at least thirty (30) days or for any period that the Owner or the Owner's

Lot is otherwise in violation of this Declaration or the Association's Articles of Incorporation, Bylaws, or rules and regulations

SECTION 3. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

## ARTICLE X INSURANCE AND RECONSTRUCTION

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

(a) Amount and Scope of Insurance. All insurance policies necessary or desirable upon any Townhome Lots (except personal property within a Townhome Lots) shall be secured by the Board of Directors, or its designee, on behalf of the Association. Such insurance shall at a minimum cover against (1) loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land excavation, foundations and other items normally excluded from property policies, and (2) general liability insurance for each Lot, with limits of at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.

(b) Insurance Provisions. The Board shall make diligent efforts to insure that the insurance policies required by this section provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lots Owners and their employees, agents, tenants and invitees,

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

(3) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees,

(4) coverage will not be prejudiced by act or neglect of the Lots Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Planned Community over which the Association has no control

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

(6) the master policy on Planned Community cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

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

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

(c) Premiums. All premiums on the insurance policies required by this section and any deductibles payable by the Association upon loss shall be a Common Expense paid by the class of Members to which it applies;

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

(e) Policies All insurance policies purchased by the Board shall be with a company or companies with an AM Best Rating of "A" or better, written using ISO Forms or its equivalent. All insurance policies shall be written for the benefit of the Board and the Townhome Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board,

(f) Townhome Lots - Individual Policies. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the Townhome Lots Owners to purchase insurance policies covering each Townhome Lot Owner individually, then upon the assent of sixty-seven percent (67%) of the Class B Members (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the insurance coverage for the Townhome Lots may be turned over to the Townhome Lot Owners to purchase individual policies under such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the Townhome Lots is turned over to the individual Townhome Lot Owners under the provisions of this paragraph, then the Association shall be named as additional insured on each policy, each Townhome Lot shall be insured for its full replacement value, and the provisions of this Section shall be modified accordingly,

(g) Distribution of Insurance Proceeds Subject to the provisions of N.C.G.S § 47F-3-113(g), the proceeds of insurance policies maintained by the Association pursuant to this section shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

(2) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying

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

**SECTION 2. Single Family Lots - Individual Home Insurance.** All Single Family Lot Owners shall purchase individual policies at their own expense covering their respective Single Family Lots.

**SECTION 3. Common Element Insurance** The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, must at all times keep the Common Elements and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. The Association at minimum shall maintain with regard to the Common Elements the insurance coverage(s) required by the North Carolina Planned Community Act.

**SECTION 4. Fidelity Bond.** The Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association, provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

**SECTION 5. Owners' Insurance.** It shall be the responsibility of each Owner, at such Owner's expense, to maintain additional fire and casualty and extended coverage insurance upon his personal property and any alterations or other improvements made to his Lot, and public liability insurance. Each Owner shall obtain and maintain liability insurance in the amount of at least \$100,000.00 per occurrence. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Lot as the Owner, in the Owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were an Individual Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner. The Board may require an Owner to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

**SECTION 6. Distribution of Insurance Proceeds** All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to

the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

A. Proceeds on account of damage to any improvements in the Common Elements shall be held by the Association and applied in the manner provided in **Article X, Section 7.**

B. Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage to each such Owner's Lot, which cost shall be determined by the Association

C. In the event a mortgagee endorsement or certificate has been issued with respect to a Lot, the share of that Owner shall be held in trust for the owner and its Mortgagee, as their respective interest may appear

D. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in **Article X, Section 7.**

**SECTION 7. Responsibility for Reconstruction or Repair.** If any portion of the Planned Community is damaged by perils covered by property insurance maintained by the Association, the Association shall cause such damaged portions to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Planned Community, except as provided to the contrary in N.C.G.S. § 47F-3-113(g). In addition, if such damage renders one or more of the then existing Lots on the Planned Community uninhabitable, the Association may, with the affirmative vote of eighty percent (80%) of the votes of the Members, and with the approval of one hundred percent (100%) of the Owners and Mortgagees of the damaged Lots proposed not to be rebuilt, elect not to reconstruct or repair such damaged Lots. A meeting shall be called within ninety (90) days after the occurrence of such casualty. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Lots were damaged, or to their Mortgagees in accordance with the terms of the mortgage covering that Lot, in proportion to the reasonable cost of repairing damage to such Lots, provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lots have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Planned Community.

If (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Planned Community by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Elements shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within any Lots shall be accomplished promptly by the Owner of the affected Lots at his expense.

**SECTION 8 Procedure for Reconstruction or Repair.** In the event of a loss causing damage to any

portion of the Planned Community, the following provisions shall govern and apply

A. Immediately after a loss which causes damage to any portion of the Planned Community, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the loss. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

B. If the proceeds of the insurance coverage are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more Special Assessments shall be made against all Owners of the affected Lots (with respect to any deficiency in insurance proceeds for damage or destruction to Lots or other improvements on Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Common Elements or the improvements thereon) in sufficient amount to provide funds for the payment of such costs, and the proceeds of such Special Assessments shall be deposited with the Association, provided, however, that the Association may borrow funds to pay for such costs with the assent of eighty percent (80%) of the members of the Association voting at a meeting duly called for such purpose.

## ARTICLE XI Party Walls

SECTION 1 General Rules of Law to Apply. Each wall that is built as a part of the original construction of the Lots upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. If any portion of the original structures constructed on each Lots, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Elements, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lots or Common Elements, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 1 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

SECTION 2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use

SECTION 3 Destruction by Fire or other Casualty If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

SECTION 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

SECTION 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

SECTION 6. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. 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 to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable

## **ARTICLE XII**

### **GENERAL PROVISIONS**

SECTION 1. Rights of Institutional Note Holders Any institutional holder of a first lien on a Lot will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (c) receive written notice of any condemnation or casualty loss that affects the property securing its loan, (d) receive written notice of any sixty (60) day delinquency in the payment of Assessments or charges owed by any Owner of any Lot which is security for the loan, (e) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (g) be furnished with a copy of any master insurance policy.

SECTION 2 Utility Service Declarant reserves the right to subject the Property or any Additional Property to contracts for the installation of utilities, cable TV, street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot, including but not limited to, a contract with Duke Energy or its successor in interest for the installation of street lighting. Each Lot Owner will be required to pay for any water connections, sewer connections, impact fees or any other charges imposed by any entity furnishing water, sewer or other utility service to the Lot(s). In the alternative, Declarant may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Architectural Control Committee. Declarant also reserves the right to subject the Property or any Additional Property to contracts for community-wide trash removal services, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot to the trash removal provider

SECTION 3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect

SECTION 4 Amendment of Declaration Except in cases of amendments that may be executed by Declarant as provided by this Declaration or by certain Lot Owners under Section 47F-2-118(b) of the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by Declarant if necessary for the exercise of any Special Declarant Right or any other development right reserved to Declarant herein. Notwithstanding anything to the contrary herein, so

long as Declarant owns any portion of the Property or the Additional Property, no amendments made by the Owners may remove, revoke, or modify any benefit, right or privilege of Declarant hereunder without the written consent of Declarant or the assignee of such right or privilege

SECTION 5 Conflict. In the event of a conflict between the provisions of this Declaration and the Bylaws of the Association, this Declaration shall prevail, except to the extent this Declaration is inconsistent with the Act.

SECTION 6. North Carolina Planned Community Act. It is the intent of Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

SECTION 7. Gender and Number. As used in this Declaration, the masculine, feminine and neuter gender, and the singular and plural numbers, whenever the context requires or permits, shall each be deemed to include the other genders or numbers respectively

SECTION 8. Captions. The captions in this Declaration are inserted only as a matter of convenience and for reference and they in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof

IN TESTIMONY WHEREOF, Declarant has caused this Declaration as of the day and year first above written.

**FORKS DEVELOPMENT, LLC**

By: *R. Hill Rogers*  
Name HILL ROGERS  
Title MANAGER

STATE OF NORTH CAROLINA

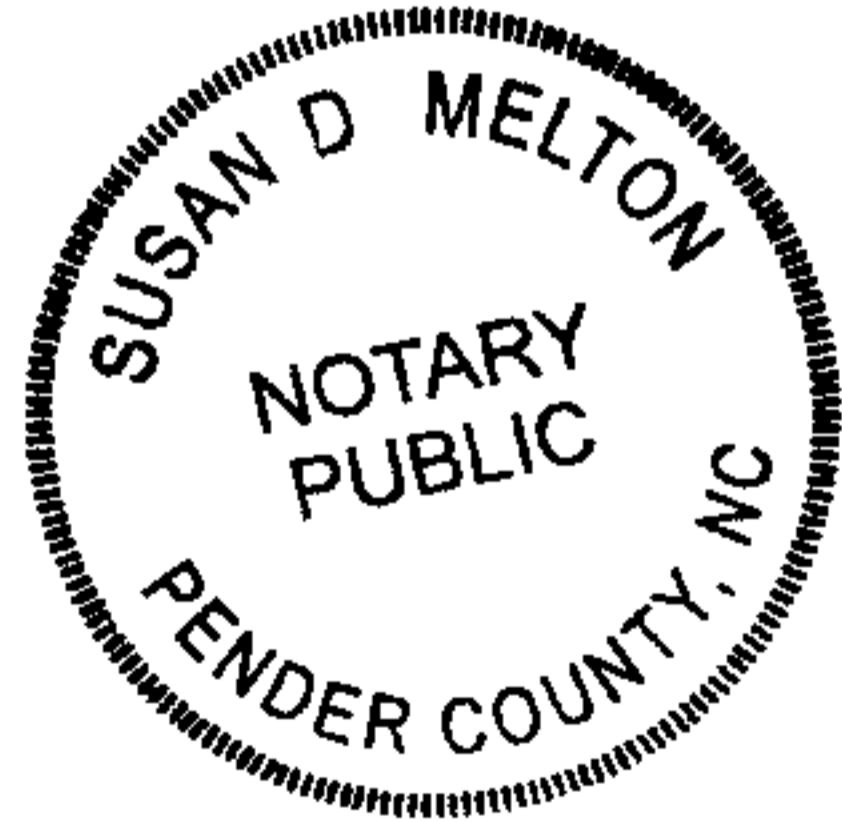
COUNTY OF New Hanover

I Susan D. Melton, a Notary Public in and for the State and County aforesaid, do hereby certify that R. Hill Rogers, personally came before me this day and acknowledged that he is the Manager of FORKS DEVELOPMENT, LLC, a North Carolina limited liability company, and that he in such representative capacity voluntarily signed this Declaration for the purposes stated therein

Witness my hand and official stamp or notarial seal, this 6 day of Feb, 2015

*Susan D. Melton*  
Notary Public

My Commission Expires:  
5-30-14




**CONSENT OF MORTGAGEE**

**FIRST BANK** is the holder of that certain Deed of Trust on the property described in the foregoing Declaration of Covenants, Conditions and Restrictions for The Forks at Barclay (the "Declaration"), said Deed of Trust having been filed in **Book 5827 at Page 130** in the Office of the Register of Deeds of New Hanover County (as amended, the "Deed of Trust), and as holder of said Deed of Trust, does hereby consent to the terms, conditions and covenants in the foregoing Declaration and agree that the lien of said Deed of Trust is subordinate to and subject to all of the terms, conditions and covenants contained in said Declaration

In witness whereof, FIRST BANK has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized officer

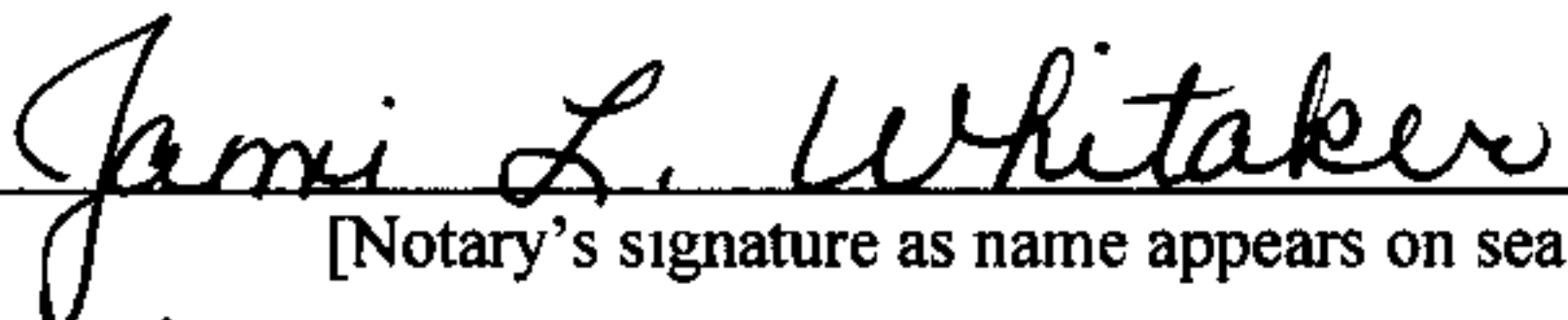
**FIRST BANK**

By:   
Name Alan Barnes  
Title Branch Officer

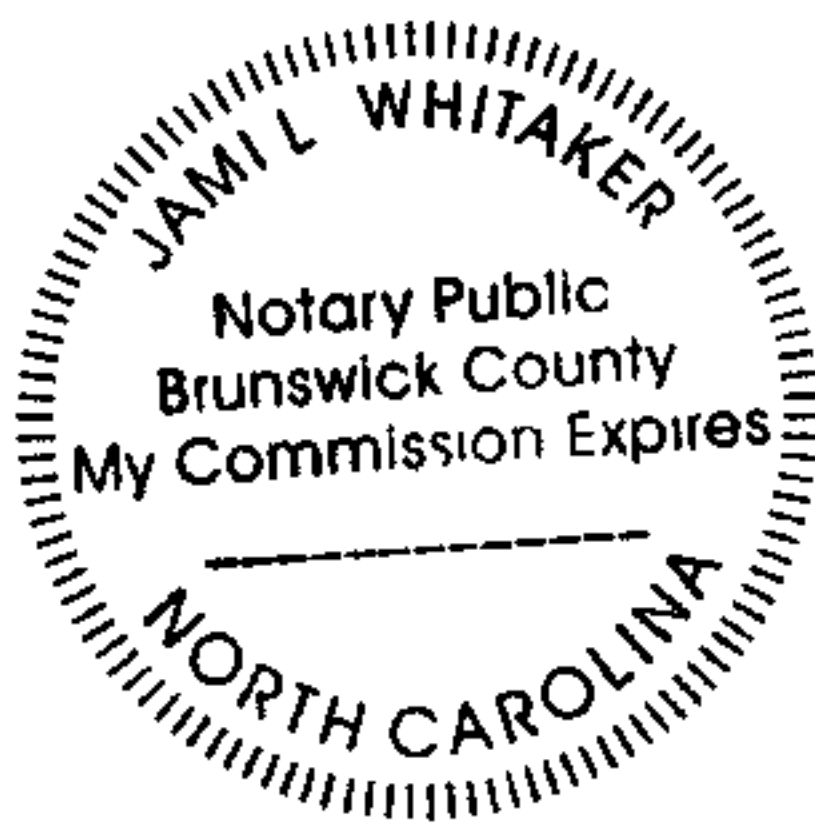
STATE OF North Carolina  
COUNTY OF Brunswick

I certify that the following persons personally appeared before me this day, acknowledging to me that they each signed the foregoing document Alan Barnes  
[Insert Name of person signing – not title]

Today's Date Feb. 12, 2015

  
[Notary's signature as name appears on seal]  
Jami L. Whitaker  
[Notary's printed name as name appears on seal]

My commission expires June 16, 2018



[Affix Notary Seal in Space Above]

**CONSENT OF MORTGAGEE**

**CAMERON PROPERTIES LAND COMPANY, LLC** is the holder of that certain Deed of Trust on the property described in the foregoing Declaration of Covenants, Conditions and Restrictions for The Forks at Barclay (the "Declaration"), said Deed of Trust having been filed in **Book 5820 at Page 1372** in the Office of the Register of Deeds of New Hanover County (as amended, the "Deed of Trust"), and as holder of said Deed of Trust, does hereby consent to the terms, conditions and covenants in the foregoing Declaration and agree that the lien of said Deed of Trust is subordinate to and subject to all of the terms, conditions and covenants contained in said Declaration.

In witness whereof, **CAMERON PROPERTIES LAND COMPANY, LLC** has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized officer.

**CAMERON PROPERTIES LAND COMPANY, LLC**

By. *Bruce B. Cameron III*  
Name. *Bruce B. Cameron III*  
Title: *Manager*

STATE OF *NC, Carolina*  
COUNTY OF *New Hanover*

I certify that the following persons personally appeared before me this day, acknowledging to me that they each signed the foregoing document. *Bruce B. Cameron III*

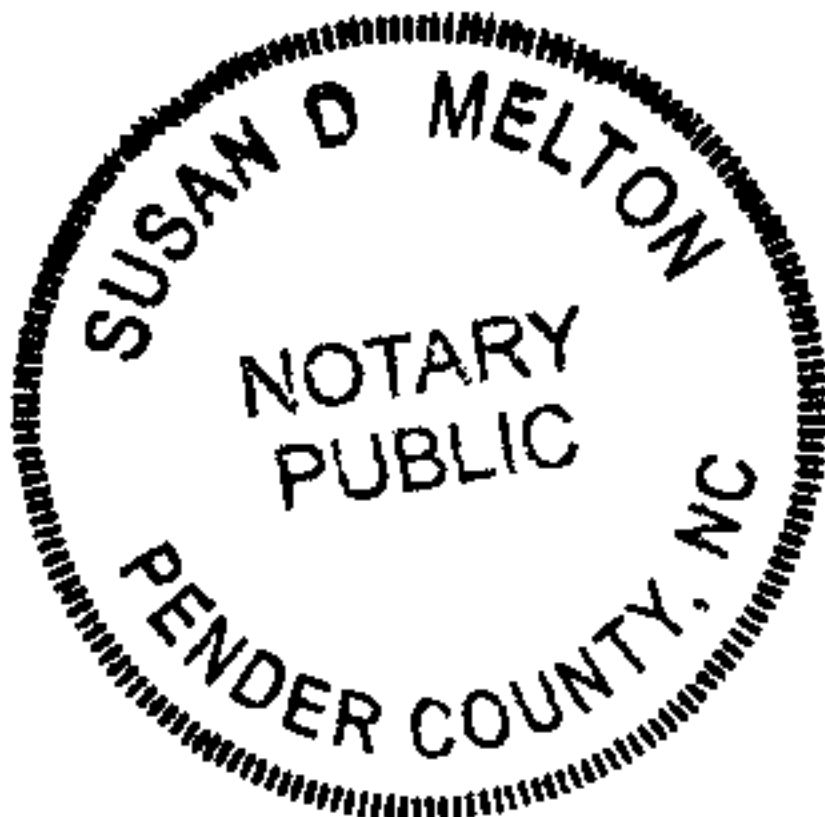
[Insert Name of person signing - not title]

Today's Date: *Feb. 10*, 2015.

*Susan D Melton*  
[Notary's signature as name appears on seal]

*Susan D Melton*  
[Notary's printed name as name appears on seal]

My commission expires: *5-30-16*



[Affix Notary Seal in Space Above]

**EXHIBIT A**

BEING all of those certain tracts or parcels of land lying and being in the City of Wilmington, Wilmington Township, New Hanover County, North Carolina, and being more particularly described as follows:

All of that property shown on the plat entitled "The Forks at Barclay, Phase 1 Section 1", which plat is recorded in Map Cabinet 60 at Pages 126 of the New Hanover County Registry, reference to said plat is hereby made for a more particular description.



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

Filed For Registration: 02/17/2015 02:36:51 PM

Book: RE 5868 Page 1880-1916

Document No.: 2015004214

37 PGS \$110 00

Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2015004214\***

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