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FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2014002593

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHINNWOOD WEST**

Prepared by Hogue Hill, LLP 101 South Third Street, Wilmington, NC 28401

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHINNWOOD WEST** (herein "Declaration"), is made an entered into on this the 3rd day of February, 2014 by SHINNWOOD WEST, LLC with offices located at 6105 Oleander Drive, Suite #201, Wilmington, North Carolina 28403

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property in New Hanover County, North Carolina known as SHINNWOOD WEST, a residential development that will be developed in phases and will eventually consist of approximately 94 detached single family dwellings, which real property is more particularly described by Exhibit A, attached hereto and incorporated herein by reference (the "Property"), and

WHEREAS, Declarant desires to subject the Property to these protective covenants and form an association of owners within SHINNWOOD WEST to provide for, among other things, the preservation of the property values and the desirability and attractiveness of the real property in SHINNWOOD WEST, and to provide for the establishment and the continued maintenance of the Common Areas, the Limited Common Areas and the Lawn Maintenance and Landscape of Common Areas and Limited Common Areas (as defined below) in SHINNWOOD WEST

NOW THEREFORE, Declarant declares that the Property described in Exhibit A shall be held, sold, and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions These Protective Covenants shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** "Act" shall mean the North Carolina Planned Community Act enacted under Chapter 47F of the North Carolina General Statutes, as amended

**Section 2.** "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended

**Section 3.** "Additional Property" shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described property, and annexed to and made a part of SHINNWOOD WEST pursuant to the provisions of this Declaration

**Section 4.** "Association" shall mean and refer to SHINNWOOD WEST OWNERS ASSOCIATION, INC , a North Carolina non-profit corporation, its successors and assigns

**Section 5.** "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the board of directors of the Association

**Section 6.** "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members

**Section 7.** "Common Properties" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners and Members of the Association

**Section 8.** "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise by law and shall mean and include

- (a) Expenses for maintenance of the roads, streets, street lights, area lighting rights of way, any amenities such as swimming pool, bathhouse, dog walk, gardens, pergolas, walking patios, trails and other amenities as may be provided in this Declaration,
- (b) Expenses of administration, maintenance, repair, or replacement of the Common Properties,
- (c) Expenses declared to be common expenses by the provisions of the Act, this Declaration or the Bylaws of the Association,
- (d) Hazard, liability, or such other insurance premiums as the Act, the Declaration or the Bylaws may require the Association to purchase, or as the Association may deem appropriate to purchase,
- (e) Ad valorem taxes and public assessment charges lawfully levied against Common Properties,
- (f) The expense of the maintenance of (i) Primary Conservation Areas, Primary Conservation Area Buffers, Wetland areas, and (ii) Drainage Areas, Drainage ponds, and related easements and facilities located within the boundaries of the Planned Community,
- (g) Expenses for maintenance of security devices and/or hiring security personnel, and,
- (h) Expenses for the maintenance of pedestrian easements as may be shown on the recorded maps of the Property, and as may be required by this Declaration or by other regulatory authorities
- (i) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association

**Section 9** "Perimeter Buffer" shall mean and refer to those areas as shown on the recorded plat of

SHINNWOOD WEST, all phases, and noted thereon as "Perimeter Buffer"

**Section 10.** "Primary Conservation Area" shall mean and refer to lands shown on recorded plats of Shinnwood West, all phases, and noted thereon as "Primary Conservation Area"

**Section 11.** "Primary Conservation Area Buffer" shall mean and refer to lands shown on recorded plats of Shinnwood West, all phases and noted thereon as "Primary Conservation Area Buffer"

**Section 12.** "Wetlands Preservation Area" shall mean and refer to all lands within that area bounded by the bearings and distances of the line notes as "Wetlands Preservation Area" on that map of survey prepared by Johnny J Williams Land Surveying, P C , and signed and sealed on October 24, 2012, minus that area which has been identified as "Wetlands Impact Area #1, #2, and #3" as per the approved United State Corps of Engineers *Nationwide Permit Number 29 , Action ID # SAW-2006-00151*

**Section 13.** "Declarant" shall mean and refer to **SHINNWOOD WEST, LLC**, or its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred in whole or in part, and subject to such terms and conditions as Declarant may impose

**Section 14.** "Exclusive Builder Team" shall mean those licensed contractors selected and approved by the Declarant to construct homes in SHINNWOOD WEST

**Section 15.** "Guidelines for individual Lot Owner's Lawn Maintenance and hardscaping (fences, pergola, walkways, etc ) and Landscape of Common Properties" shall mean the guidelines and standards for design, landscaping, care and grooming of Lawn Maintenance and Common Properties and Limited Common Properties, as said guidelines and standards may be amended from time to time The initial SHINNWOOD WEST Landscape Guidelines shall be prepared by the Declarant, who shall have the sole and full authority to amend the same during the Declarant Control Period (as said period is defined herein) After the Declarant Control Period, the Association may amend the SHINNWOOD WEST Landscape Guidelines if sixty-seven percent (67%) of the then Lot Owners agree The Declarant shall make the SHINNWOOD WEST Landscape Guidelines available to Owners but shall not be required to record the same

**Section 16.** "Limited Common Properties" shall mean those portions of the Common Properties that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas, landscapes areas, or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of an individual lot or lots shown on a map of a Phase of the Development, or by the Association

**Section 17.** "Living Unit" shall mean any residential occupied dwelling other than a single family residential dwelling on a Lot An example of a Living Unit shall be an apartment unit

**Section 18.** "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use and designed for separate ownership and occupancy

**Section 19.** "Member" shall mean and refer to every person or entity who holds membership in the Association

**Section 20.** "Membership" shall mean and refer to the rights, privileges, benefits, duties, and obligations, which shall inure to the benefit of and burden each Member of the Association

**Section 21.** "Notice" required to be given herein shall be in writing and mailed by U S mail, postage prepaid, first class to the address of the Association or of any Member on the records of the Association or shall be hand delivered to the Association or the Member

**Section 22.** "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Record ownership of any Lot shall make the Owner thereof a Member of the Association.

**Section 23.** "Phased Development" means that SHINNWOOD WEST will be developed in Phases with separate maps for each phase and Declarant will record with each map an Annexation Agreement annexing that phase into SHINNWOOD WEST, making it subject to this Declaration.

**Section 24.** "Planned Community" shall mean the Property, any Additional Property, and all portions thereof, which the Declarant has submitted or may later submit to the terms, covenants, conditions, easements and restrictions of this Declaration, as contemplated by Section 47F-1-103(23) of the Act.

**Section 25.** "Property" shall mean and refer to that certain real property as defined in the preamble to this Declaration.

**Section 26.** "Shinnwood West Code" shall mean that set of building requirements established by the Declarant to govern all construction of improvements in SHINNWOOD WEST.

**Section 27.** "Stormwater Permit" shall mean City of Wilmington Stormwater Management Permit No 201312 issued by the City of Wilmington, North Carolina.

## **ARTICLE II PROPERTY RIGHTS**

**Section 1.** Owners' Easements of Enjoyment Every Owner shall have the right and easement of enjoyment in and to the Common Properties together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Properties,
- (b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Property facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations,
- (c) the right of the Association to dedicate, sell, lease mortgage or transfer all or any part of the Common Properties, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication, sale, mortgage or transfer shall be effective unless it has been approved by a vote or the written agreement of no less than eighty percent (80%) of the Members and an instrument of dedication, sale, lease, mortgage or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that eighty percent (80%) of the Members have approved the dedication, sale, lease, mortgage or transfer, and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns, provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the Members,

- (d) the right of the Association to limit the number of invitees and guests of Members;
- (e) the right of the Association, in accordance with its Articles or Bylaws to impose rules and regulations for the use and enjoyment of the Common Properties, the Lots and improvements thereon, which rules and regulations may further restrict the use of the Common Properties and create Limited Common Properties
- (f) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property but may not delegate or assign responsibility for the actions of those to whom such right is delegated

**Section 3. Title to the Common Properties.** The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Properties located within the Property to the Association prior to expiration of the Declarant Control Period, free and clear of all encumbrances and liens, other than utility easements or rights of way for service, access, storm drainage and other similar service or utility easements that may affect the Property

**Section 4. TV Antennas, Cablevision, Music.** The Association may, in its discretion, provide one or more central television or radio antennas for the convenience of the Members and may supply cablevision, and the cost of these may be included in Annual or Special Assessments. If it elects to provide such services and facilities, the Association may regulate or prohibit the erection of television, radio or other antennas on individual Lots

### **ARTICLE III OWNERS' ASSOCIATION**

**Section 1. Formation of Association.** SHINNWOOD WEST OWNERS' ASSOCIATION, INC is a non-profit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Properties, collect and disburse funds to pay the Common Expenses, and to provide any other services provided in this Declaration or agreed to by a majority of the Members

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

**Section 3. Voting Rights.** Each Member other than the Declarant shall be entitled to one vote in the affairs of the Association for each Lot owned. During the Declarant Control Period The Declarant shall be entitled to three (3) votes in the affairs of the Association for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Unless a greater percentage vote of the Members or Lot Owners is required by the Act, this Declaration or the Bylaws, any action requiring or submitted to a vote by the Members may be taken upon the majority vote of the Members entitled to vote at a meeting at which a quorum is present, or by the written agreement of a majority of the Members. The determination of a quorum and other rules governing meetings of the Members and the Association shall be set forth in the Bylaws and shall control unless inconsistent with this Declaration or the Act

The Association may suspend the voting rights and the right to use the recreational or other Common Property facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid,

and for a period not to exceed 60 days for any infraction of the Association's published rules and regulations

**Section 4. Powers, Privileges, Rights and Obligations.** In addition to the rights and powers granted to the Association by the Act, this Declaration, its Articles and Bylaws, and to the rights and powers with regard to assessments set forth in Article V of this Declaration, the Association shall have and possess and shall perform and exercise the following powers, privileges, rights and duties, subject, however, to the rights of the Declarant contained in Article VI hereof

- (a) The Association shall be entitled to make and amend reasonable rules and regulations governing use of the Lots and the Common Properties,
- (b) The Association shall be responsible for the operation, upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Properties improvements and additions thereto, and (ii) it may, in its sole and absolute discretion, accept responsibility for the upkeep and maintenance of the Limited Common Properties, if any, provided, however, that in the event that any of the above activities are necessitated by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, or is caused by fire, wind, rain, blowing water, lightning, smoke or other hazard or casualty, and the cost of such maintenance, repair or other activity is not fully recovered by insurance, then, at the sole discretion of the Board, 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 the annual assessment levied against said Owner's Lot,
- (c) The Association may engage in such other activities as authorized by a majority of the Members,
- (d) The Association may suspend the voting rights and privileges of any Owner for any period during which any assessments against the Owner's Lot remain unpaid, and for a period not to exceed 60 days for an infraction of the published rules and regulations of the Association, and
- (e) The Association may mortgage or convey the Common Properties, or dedicate or transfer all or part of the Common Properties, to any public agency, authority or utility in the manner described in Article II, Section 1, Paragraph (c) herein

#### **ARTICLE IV** **INSURANCE**

- (a) Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available,
  - (1) Property insurance on the Common Properties insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be 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, excavations, foundations, and other items normally excluded from property policies, and
  - (2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage for occurrences taking place in the Common Properties
- (b) If the insurance described in paragraph (a) of this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all

Lot Owners The Declaration may require the Association to carry any other insurance, and the Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners

(c) Insurance policies carried pursuant to Paragraph (a) of this Article shall provide that

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

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household,

(3) Not act or omission by any Lot Owners, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy, and

(4) 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

(d) Any loss covered by the property policy under Paragraph (a)(1) of this Article shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interest may appear The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portions of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated

(e) An insurance policy issued to the Association does not relieve a Lot Owner from the responsibility of obtaining insurance for the Lot Owner's own personal benefit, as the Association's policy only covers occurrences and improvements located in or taking place in the Common Areas

(f) Any portion of the Development for which insurance is required under Paragraph (a)(1) of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Development is terminated as a Planned Community, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of Owners assigned to the Limited Common Properties not to be rebuilt The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense If any portion of the Development is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Properties shall be used to restore the damaged area to a condition compatible with the remainder of the Development, (ii) the insurance proceeds attributable to Limited Common Properties which are not rebuilt shall be distributed to the Owners of the Lots to which those Limited Common Properties were allocated, or to the lienholders, as their interest may appear, and (iii) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interest may appear, in proportion to the Common Expense liabilities of all the lots Notwithstanding the provisions of this paragraph, North Carolina General Statutes Section 47F-2-118 (termination of the planned community) shall govern the distribution of insurance proceeds if the Development is terminated as a Planned Community

## **ARTICLE V**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed

therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements, (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Properties and public roads if the Association shall default in payment thereof, and (5) assessments (fines) levied as a result of violations of the Declaration rules, policies and design guidelines. The annual and special assessments, together with interest and costs, fines, and reasonable attorneys' fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is 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 the delinquent assessments shall not pass to his successors in the title unless expressly assumed by them.

The Association shall also have the authority, through the Board to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

**Section 2. Purposes of Assessments.** The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots, and, in particular, but not limited to, for the acquisition, improvement and maintenance of the Property, services, amenities and facilities, and for the use and enjoyment of the Common Properties, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Properties, the providing for security of the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the payment of common antenna or cable service, the employment of counsel, accountants and other professionals for the Association when necessary, the enforcement of this Declaration and such other needs as may arise. Out of the assessments, the Board may create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Properties which the Association may be obligated to maintain.

**Section 3. Annual Assessments.** Annual Assessments shall be in an amount to be fixed from year to year by the Board which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2 above. The amount of the Annual Assessment against each Lot for any given year shall be fixed at least 30 days in advance of the Annual Assessment period, provided, however, that the first Annual Assessment shall be set prior to the conveyance of the first Lot to an Owner, and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their Lots. Written notice of each Annual Assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board and the Board shall have the authority to require the assessments to be paid in pro rata monthly or quarterly installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year by not more than ten percent (10%) above the Annual Assessment for the previous year without a vote of the Members, except as herein provided.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an

Owner, the Annual Assessment may be increased by more than ten percent (10%) by a vote of sixty-seven percent (67%) of the Members who are entitled to vote in person or by proxy at a meeting duly called for this purpose at which a quorum is present

(c) The Board may increase the amount of the Annual Assessment to \$500 00 per Lot notwithstanding the provisions of Paragraphs (a) and (b) above, and thereafter the limitations set forth in said Paragraphs shall apply to any annual increase

**Section 4. Special Assessments for Extraordinary Maintenance and Capital Improvements.**

In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Properties and any Limited Common Properties, including fixtures and personal property related thereto, and any property for which the Association is responsible, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the Members who are entitled to vote in person or by proxy at a meeting duly called for this purpose at which a quorum is present

**Section 5. Insurance Assessments.**

All premiums on insurance policies purchased by the Board or its designee pursuant to Article IV and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment. Such Assessment shall not be subject to the 10% limitation set out in Section 3, (a) and (b) of this Article V

**Section 6 Ad Valorem Tax Assessments.**

All ad valorem taxes levied against the Common Properties, if any, shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay such ad valorem taxed in such year not included as a component of the Annual Assessment. Such assessment shall not be subject to the 10% limitation set out in Section 3, (a) and (b) of this Article V

**Section 7. Working Capital Assessments.**

At the time title to a Lot is conveyed to an Owner by the Declarant, the Owner shall pay to the Association as working capital the sum of \$250 00. Such funds shall be used solely for initial operating and capital expenses of the Association such as pre-paid insurance, supplies, and furnishings, fixtures and equipment for the Common Properties, etc. Amounts paid into the working capital fund are not to be considered as an advance of the Annual or any other assessments. Any working capital funds remaining after the last Lot has been sold by Declarant shall be transferred to and become part of the general funds of the Association, to be used in the discretion of the Board

**Section 8. Uniform Rate of Assessment.**

Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or other periodic basis established by the Board

**Section 9. Commencement of Assessments.**

Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from the Declarant. Declarant shall not be obligated to pay assessments (but Declarant at its option may subsidize the Association, when necessary to keep it solvent until the Association has sufficient revenue)

**Section 10. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and will be subject to a \$20 00 monthly late fee. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the

Lot No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court for New Hanover County, North Carolina in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due 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. The claim of lien once recorded shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid or for a period of Three (3) years from filing which ever occurs first. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorneys' fee, advances to pay taxes and prior encumbrances and interest thereon, all as above provided Such claims of lien shall be signed by an officer or agent of the Association Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record

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

**Section 11. Subordination of the Lien to Mortgages and Ad Valorem Taxes.** The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot Sale or transfer of any Lot shall not affect the assessment lien However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but shall not abate the personal obligations of the prior Owner No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof Should the priorities set forth above be modified by law, such variation as established by law shall prevail

**Section 12. Exempt Property.** Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the ad valorem tax assessments created herein However, no land or improvements devoted to dwelling use shall be exempt from said assessments

## **ARTICLE VI** **RIGHTS OF DECLARANT/DECLARANT CONTROL**

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

**Section 1 The Association/Period of Declarant Control** All the powers and duties of the Board may be exercised by the Declarant, and the Declarant shall appoint all members of the Board, until such time as ninety percent (90%) of the Lots within the Development have been sold or conveyed by the Declarant to purchasers (the "Declarant Control Period") Management and control of the Association can be voluntarily transferred earlier by Declarant to the Owners at any time

For the duration of the Declarant's rights and obligations, Declarant shall have the right to conduct development, construction, marketing and customer service operations within SHINNWOOD WEST in a customary and reasonable fashion This includes the right to maintain construction and sales offices and model homes on lots which Declarant or a Member of the Declarant's Exclusive Builder Team owns and to park vehicles thereon, the right of access over the streets and rights of way within SHINNWOOD WEST by construction and supply vehicles and the right to store materials and equipment related to such land development and construction on property owned by Declarant, and the right to make and reproduce photographs of the common area and of private homes in marketing, advertising, and public relations efforts However, it shall be incumbent upon those exercising these

reserve right to conduct their activities in ways respectful of the comfort and safety of the occupants of lots in SHINNWOOD WEST

**Section 2 The Architectural Control Committee** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or by the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property

**Section 3 Plan of Development** The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development (so long as the Declarant retains title to said lands) including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the subdivision plat of the Property or Additional Property in order to create one or more modified Lots, to further subdivide tracts 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, to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway

**Section 4 Amendment of Declaration by the Declarant** This Declaration may be amended by the Declarant 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 include any platting change as permitted herein
- F To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property, or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological, and environmental 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 Veterans Administration, U S Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, the Federal National Mortgage Association, the U S Corps of Engineers, and the North Carolina Department of Environmental and Natural Resources 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* Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section 4 F

**Section 5. Utility Service.** Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing

monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, impact fees or any other charges imposed by an entity furnishing water, sewer or other utility service to the Lots. In the alternative, the Developer 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 governmental unit servicing the Development. Separate water systems for outside irrigation and other outdoor uses may be permitted but only with the written permission of the Declarant or its assigns.

**Section 6. Parking.** The Declarant may establish on and over any Common Area such service alleyways and parking areas as Declarant in its sole discretion deems necessary or appropriate.

**Section 7. Street Lighting.** Declarant reserves unto itself, and unto the Association after the Declarant Control Period, the right to subject the real property in the subdivision to a contract with Duke Energy Progress, or other similar provider, for the installation of street lighting which shall require a continuing monthly payment by each residential customer.

## **ARTICLE VII**

### **USE RESTRICTIONS AND ARCHITECTURAL CONTROL**

**Section 1. General.** No improvements shall be made, placed, constructed or installed on any Lot and no exterior modifications to existing improvements shall be undertaken without prior approval of the SHINNWOOD WEST Architectural Control Committee in accordance with this Article except that the Declarant activities shall be exempt from this requirement so long as it is engaged in development or construction in SHINNWOOD WEST.

**Section 2. SHINNWOOD WEST CODE.** All improvements to Lots in SHINNWOOD WEST shall conform to the SHINNWOOD WEST Code unless a variance has been granted in writing pursuant to this Article. The Declarant shall have exclusive authority to amend the SHINNWOOD WEST Code until all of the Lots have initially been developed, after which the power to amend shall pass to the SHINNWOOD WEST Architectural Control Committee. Any amendments to the SHINNWOOD WEST Code shall be prospective in effect and shall not apply to require modifications to or removal of structures previously approved once construction has commenced.

**Section 3. Building and Site Improvements.** No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements or any exterior modification to a lot, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements, landscaping or plantings 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 Declarant, or after the sale of ninety percent (90%) of all Lots by Declarant, by the Board or by an Architectural Control Committee composed of three (3) persons appointed by the Board. In the event the Declarant, the Board, or the Architectural Control Committee fails to approve or disapprove such submission made by any Lot Owner within forty-five (45) days after said plans and specifications have been received by the Declarant, the Board, or Architectural Control Committee, approval shall be deemed to have been denied. 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 Declarant, the Board, or the Architectural Control Committee shall be deemed sufficient and by accepting a deed to a Lot in SHINNWOOD WEST each Owner acknowledges that determination as to such matters are subjective opinions that may vary as to the desirability or attractiveness of particular improvements. Two copies of all plans and related data shall be furnished to the Declarant, the Board, or the Architectural Control Committee, as the case may be, for its records. Neither the Declarant, the Board, nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications. The Architectural Control Committee may establish and change reasonable fees to defray the costs of administering applications for approval under this Article.

**Section 4. Scope of Review** In reviewing each application and related submissions, the Architectural Control Committee shall be guided by the Shinnwood West Code, however, the Shinnwood West Code shall not be the exclusive basis for its decisions and compliance with the Shinnwood West Code does not guarantee approval of any application. The Architectural Control Committee may consider any factors it deems relevant, including harmony of external themes established for Shinnwood West. Its decisions may be based on purely aesthetic considerations. Each owner, by accepting a deed to a Lot in Shinnwood West, acknowledges that determinations as to such matters are subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The architectural standards and procedures established pursuant to this Article and the Shinnwood West Code are intended as a mechanism for maintaining and enhancing the overall aesthetics of Shinnwood West and shall not create any duty to any person. The Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring the compliance with the building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar Architectural Control.

Neither the Declarant, the Association, nor the Architectural Control Committee shall be held liability for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction or modifications. In all such matters, the Assembly shall defend and indemnify the Shinnwood West Architectural Control Committee and its members.

**Section 5 Approval of Plans**

A No house plans will be approved unless the proposed house shall have a minimum of 1200 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system, provided, however, that such term does not including garages, terraces, decks, open 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 applicable county or municipal zoning ordinances and must be approved absolutely by the Declarant, the Board, or the Architectural Control Committee, as the case may be and/or as may be shown on the recorded plats of SHINNWOOD WEST, all phases.

C The exterior of all new houses must be completed within six (6) months after the Owner's receipt of approval from the Declarant, the Board, or the Architectural Control Committee, and construction of any addition to a dwelling, or subsequent exterior improvement to an existing dwelling, any grading, landscaping, or any outbuilding, swimming pool or improvement ancillary to the dwelling shall be completed within three (3) months after the Owner's receipt of approval, except where such completion is impossible or would result in great hardship to the Owner or building, due to strikes, fires, national emergency or natural calamities. The Declarant, the Board, or the Architectural Control Committee shall have the authority to extend the foregoing times upon application of the Lot Owner and for good cause shown for a period not to exceed six (6) months. Any approvals given by the Declarant, the Board, or the Architectural Control Committee shall expire if construction of the dwelling is not beyond that of the foundation within six (6) months of the date of approval.

D No dwelling structure shall be erected, altered, placed or permitted to remain on any Lot, except one single family dwelling.

E All service utilities, fuel tanks, wood piles and trash containers (except on trash pick up

days) are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes (if allowed) shall be furnished by Declarant. Fences may be permitted on any Lot, provided, however, that the design, location, and materials of any fence must be approved in writing by the Declarant, the Board, or the Architectural Control Committee. Clothes lines are not permitted on any Lot.

F No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association or its designee. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Property. The Association shall have the right to have all such vehicles towed away at the Owner's expense. No repairs to any vehicles may be made on streets or in driveways but only in garages or other areas not visible from the street. No dirt bikes, ATVs or other unregistered or off road vehicles may be driven or parked on any Lot, street or Common Area.

G Except for temporary guests and visitors, only standard private passenger vehicles, including passenger vans and pick-up trucks, are permitted to be parked within SHINNWOOD WEST. Such vehicles must bear current licenses, be in operating condition, bear no signs, and be parked at the rear of a Lot behind a home or in designated areas. Further, boats and boat trailers may be stored in garages or under those homes built on elevated pilings, with prior Association approval. Boats and trailers must be adequately screened so as not to be visible from the adjoining street.

H The Declarant, the Board and the Architectural Committee, or their appointment agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the SHINNWOOD WEST Code and approved plans and specifications.

I The Declarant, the Board, or the Architectural Committee shall have the power to grant, and may allow, variances of, and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein, provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof, and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards.

J After the Declarant Control Period, if the Association shall discontinue the Architectural Control Committee (1) no further approvals need be obtained by any Lot Owner pursuant to this Article, and any Lot Owner thereafter shall improve its Lot as the Lot Owner deems appropriate, without such prior approval but not inconsistent with the other Articles of the Declaration, and (2) any improvement located on any Lot shall be deemed approved by the Architectural Control Committee and any variance of any improvement from any building restrictions presented by any applicable covenants shall be deemed approved by the Architectural Control Committee whether or not a document of variance approval has been recorded unless there shall be pending in the County where the Lot is situated an action against any Lot Owner for enforcement of the provisions of this Declaration or any applicable protective covenants for failure to comply with the provisions of this Article or for having constructed an improvement which violates the building restrictions and a variance shall not have been given, and as to the Lot affected by the action, the result of the action shall be determinative thereof. Any purchaser of a lot or institution financing a lot may rely on the foregoing statement.

**Section 6 Land Use And Building Type** No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of single family dwellings only. Different and amended land use restrictions and architectural control guidelines may be established for Additional Property.

added to the Development by Declarant, provided, however, that no Lot may be used for other than single family dwellings except pursuant to approval of the Members in accordance with this Declaration

**Section 7 Nuisances** No noxious or offensive activity shall be carried on or 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 of such other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof.

**Section 8 Appearance.** It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition or disrepair of buildings or grounds of the Owner's lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. The exterior storage or placement of personal items not normally expected to be kept out of doors is prohibited. Toys, strollers, bicycles and other similar items may not be kept on porches, patios, driveways or in yards. Grills may be kept on rear porches or rear yards only.

**Section 9 Right of Entry** In the event that a lot owner fails to comply with any provision of these Covenants or any adopted rule, policy or Architectural Control Committee Design Guidelines then after a thirty day notice to the lot owner, the Declarant, the Board or the Association's representatives, agents, management company, designees or contractors may enter upon the lot to remedy any violation or conduct required maintenance, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefore. Such lien shall be enforceable by proceedings as provided herein and by law for enforcement of assessment liens.

**Section 10 Temporary Structures** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee, provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Development until the construction of dwellings on all Lots is completed.

**Section 11 Animals** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets that in the sole opinion of the Association are not deemed threatening or dangerous to people 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 and under the direct control of their owner and do not become a nuisance to the neighborhood. Only a resident's personal household pets may be kept or maintained. Each owner will be responsible for immediately collecting and properly disposing of waste from his pet.

**Section 12 Statuary, TV Satellite Dishes and Outside Antennas** No yard statuary or 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 written permission for the same has been granted by the Declarant, the Board or the Architectural Control Committee. Only satellite dishes not over eighteen inches ("24") in diameter which can not be seen from the street will be permitted.

**Section 13 Exterior Lights** 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-frost lights or bulbs.

**Section 14 Landscaping** Prior to initial occupancy of each residence the Lot, the front yard must be sodded and irrigated, provided, however, that any areas to be used as planting beds for trees and shrubs need not be sodded so long as such beds are planted prior to initial occupancy. The Declarant, the Board or the Architectural Control Committee, as the case may be, may on account of adverse weather conditions or for other good cause

shown permit such landscaping to be done within a period of three (3) months after initial occupancy of the residence

**Section 15 Signs** There shall be no advertising or marketing on any lot and no signs (including for sale or for rent signs) or brochure distribution devices shall be permitted on any Lot or in the Common Areas without permission of the Board of Directors, except that each Lot may have posted, prior to initial occupancy, one sign setting forth the names of the Owner, builder and architect, and, in the case of a Lot owned by Declarant or builder that is a member of the Exclusive Builder Team, such other signs as the Declarant may approve, provided any such sign(s) shall be removed not later than the time of initial occupancy of the Lot. The materials, size, location, lettering and manner of installation shall conform with such rules as Declarant may establish.

**Section 16 Alterations** No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Properties except at the direction or with the express written consent of the Association.

**Section 17. Subdividing** Subject to the provisions of Article VI hereof, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board.

**Section 18. Business** No industry, business, trade, occupation, profession of any kind, including short term rentals, or rental of individual rooms for boarding, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot, except that the Declarant or its agents may use any unsold Lots for sales or display purposes, and Declarant may maintain sales or rental offices on the Property.

**Section 19. Mailboxes.** All mailboxes shall be of a uniform design, color and type which shall be selected and approved by Declarant or the Architectural Control Committee.

**Section 20. Christmas Decorations** Christmas Decorations may only be exhibited between November 20 and January 7 of the following year.

**Section 21 Leases.** Rental contracts for residences shall not be for a term shorter than three consecutive months. All leases must be filed with the Association within ten days after execution, along with contact information for the Owner of the property including a mailing address and telephone number.

**Section 22. Fences and Hedges** No person shall construct or install a fence, hedge, or similar structure on any Lot in such location or manner as to interfere with or obstruct access to utility meters, sewer cleanouts or utility pedestals on the Lot by any utility company or public works employees or agents. In the event of a violation of this provision, the Declarant, the Association, New Hanover County, or the affected utility company shall be entitled to enter upon the Lot and remove the fence, hedge, or other obstruction and recover all costs incurred from the owner of the Lot.

## **ARTICLE VIII** **ANNEXATION OF ADDITIONAL PROPERTY**

**Section 1** Declarant may annex to and make a part of the Development any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"), as follows:

A Except as provided in subparagraph B below, annexation of additional property to the Development shall require the assent of sixty-seven percent (67%) of the Members, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting called for this purpose.

B Additional Property may be annexed to the Development without the assent of the Members so long as the Additional Property can be used only for residential purposes and related facilities usually

appurtenant to residential developments, recreational facilities and Common Property

**Section 2** Annexation of Additional Property shall occur upon the recording, in the Office of the Register of Deeds for the county where the Additional Property is located, of (i) a subdivision plat for the Additional Property and (ii) a supplemental declaration stating that the Additional Property is made a part of the Development and is subject to this Declaration. Upon recording of such plat and supplemental declaration, the Additional Property shall become fully subject to the terms of this Declaration, except to the extent that pursuant to Article V, Section 4 hereof, the Declarant amends the applicability of this Declaration to the Additional Property.

## ARTICLE IX

### **STORMWATER PERMIT/FACILITIES**

**Section 1** Stormwater Permit. The Association and each of its Members agree that at anytime after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), whether by phase or in its entirety and (ii) the Developer is not prohibited under DENR regulations from transferring the Stormwater Permit for the Planned Community to the Association, the Association's officers without any vote or approval of Lot Owners, and within 10 days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association and will accept a deed conveying such facilities to the Association (if not already deeded), provided, however, that at the time the Developer requests that the Association accept transfer of the Stormwater Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 90 days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph 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 appropriate Association officers sign all documents necessary for the Stormwater Permit to be transferred to the Association and accept a deed conveying such facilities to the Association. Failure of the 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.

**Section 2** Stormwater Facilities Operation & 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 Areas and, subject only to the provisions of Section 3 of this Article, the Association, and its Members at their sole cost and expense, are responsible for the operation and maintenance of such facilities. Said facilities constitute Common Areas and, subject only to the provisions of Section 3 of this Article, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities, including routine debris removal, erosion control and stabilizing vegetation, routine inspections, and record keeping. 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. Except as provided in Section 3 of this Article IX, the Association shall indemnify and hold harmless the Developer from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

**Section 3** Damage to Storm Water Facilities. The Declarant shall at its sole cost and expense be responsible for repairing any damage to storm water facilities caused by the Declarant's development activities. The Declarant shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including but not limited to activities of the Lot Owners and the Association arising out of construction of residences or other activities by Owners, their agents and contractors, upon their Lots, acts of God, and 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 30 days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense and return them to the state required by the storm water plans and specifications for the Planned Community. If the Lot Owner fails to do so within said 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.

**Section 4 Enforcement Of Storm Water Runoff Regulations** The amount of each lot that can be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar material is set forth on The Shinnwood West Lot BUA Table of the City of Wilmington Stormwater permit #201312

Alteration of the drainage as shown on the plans and specifications submitted by the Declarant to obtain the Stormwater Permit is prohibited without the consent of the City of Wilmington and the Declarant Roadside or lot line swales, ditches and other vegetative conveyances may not be filled, piped or altered except as necessary to provide a minimum driveway crossing For curb and gutter projects, no one may pipe, fill in, or alter any Lot line swale used to meet Stormwater Permit requirements

The following covenants are intended to ensure ongoing compliance with stormwater management permit number 201312 as issued by the City of Wilmington These covenants may not be changed or deleted without the consent of the City of Wilmington

Built-upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction

All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted

These covenants run with the land and are intended to insure continued compliance with the Stormwater Permit Therefore, the covenants contained in this section may not be changed or deleted without the consent of the City of Wilmington is specifically made a beneficiary of these covenants The provisions of the Stormwater Permit are incorporated herein by reference and each Owner is required to refrain from taking any action which will be in violation of the Stormwater Permit

Any Lots within CAMAs Area of Environmental Concern may have the permitted maximum built-upon area reduced due to CAMA jurisdiction over such areas

## **ARTICLE X** **EASEMENTS**

**Section 1 Easements in Favor of Declarant** The following easements are reserved to Declarant, Declarant's successors and assigns

(a) easements as necessary in the lands constituting the Development for the installation and maintenance of utilities and drainage facilities, including the right of Declarant 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 for surface water whenever such action may appear to the Developer 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, the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot, and the right to subject the Property and any Additional Property to a contract with the appropriate electric utility company for the installation of street lighting, which contract requires a continuing monthly payment to the electric utility company by each resident customer for street lighting service (such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service)

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

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

(d) Some lots may be subjected to landscape easements for the purpose of maintaining specified plantings, levels of maintenance, signs, walls, fences, and other decorative structures. The operation of such easements shall be governed by the provisions in this Declaration, other recorded instruments and by policies duly enacted by the Association and pursuant to its authority set forth in this Declaration

(e) Perpetual non-exclusive easement over the Common Areas for the purpose of conducting parades, running, biking, or other sporting events, education, cultural, artistic, musical and entertainment activities and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. By accepting title to or occupying a Lot subject to this Declaration, as it may be amended, each owner and occupant of a Lot acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences. Neither the association, nor any owner or occupant of any lot, shall take any action that would interfere with or otherwise attempt to restrict the exercise of this easement

**Section 2 Other Easements** The following easements are granted by Declarant to others

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

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

(c) the Association is granted an easement over each Lot for the purposes of exercising its rights under Article VII, Section 5, of this Declaration

**Section 3 Nature of Easements** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration

**ARTICLE XI**  
**GENERAL PROVISIONS**

**Section 1 Enforcement** The Association, the Declarant or any Owner, shall have the rights to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Declarant or 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

## **Section 2 Enforcement of Storm Water Runoff Regulations**

(a) All permitted runoff from Lots shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall perform in a manner that maintains the integrity and performance of the system as permitted. No Lot nor that portion of the street right of way between the edge of the pavement and the front Lot line, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar material (but excluding wood decking and the water surface of swimming pools), in excess of the square footage permitted by the applicable governmental rules and regulations. Roadside or lot line swales may not be filled, piped or altered except as necessary to provide a minimum driveway crossing. These covenants are intended to insure continued compliance with the stormwater permit for the Property issued by the City of Wilmington and, therefore, may not be changed or deleted without the consent of the City of Wilmington's Public Services Department. For curb and gutter projects, no one may pipe, fill in, or alter any Lot line swale used to meet North Carolina Stormwater Management Permit Requirements.

(b) The Maximum allowable Built-Up Area per Lot is defined in the Shinnwood West Lot BUA table of the City of Wilmington Storm water permit # 201312. 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 street pavement. The term "Built-Up Area" includes but is not limited to structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised open wood decking or the water surface of swimming pools. The Declarant may, in accordance with the applicable governmental regulations, transfer allowed built-upon area from one lot to another within designated drainage basins, through notification to and approval by the City of Wilmington Public Services Department, and provide it with a copy of any recorded amendments to this Declaration which reflect the changes to said Built Upon Area.

(c) This project proposes a curb outlet system. Each designated curb outlet swale or 100' vegetated area shown on the approved plan must be maintained at a minimum of 100' long, maintain 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner, maintain a dense vegetated cover, and be located in either a dedicated common area or a recorded drainage easement. Runoff conveyances other than the curb outlet system swales, such as perimeter ditches, must be vegetated with side slopes no steeper than 3:1 (H:V).

(d) No piping shall be allowed except those minimum amounts necessary to direct runoff beneath an impervious surface such as a road or under driveways to provide access to lots.

(e) All built-upon areas associated with this project shall be located at least 30 feet landward of all perennial and intermittent surface waters.

(f) The covenants contained in this Section 2 are intended to ensure ongoing compliance with City of Wilmington Stormwater management Permit No. 201312, as issued under regulations promulgated by the City of Wilmington, and may not be altered or rescinded without the express written consent of the City of Wilmington. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the City of Wilmington.

(g) The covenants contained in this Section 2 shall run with the land and be binding on all persons and parties claiming under them. The State of North Carolina, and the City of Wilmington are made beneficiaries of these covenants to the extent necessary to maintain and enforce compliance with the stormwater management permit and regulations.

## **Section 3. Conservation.**

(a) Identification. The areas shown on a recorded plat of SHINNWOOD WEST, all phases, and identified as "Primary Conservation Area" and those areas identified as the "Wetlands Preservation Area" as recorded on the Map in the New Hanover County Registry, shall be maintained in perpetuity in their natural

condition

(b) The areas shown on a recorded plat of Shinnwood West, all phases and identified as "Primary Conservation Area Buffer" will be subject to the provisions of the City of Wilmington "Land Development Code" that will limit activities on the "Area Buffer" as follows

(i) Shoreline access paths Pathways which provide access to the shoreline are permissible provided they are a maximum average of six (6) feet in width and follow a path that minimizes erosion within the buffer Pathways may be vegetated with grasses and mowed, or may be surfaces such as crushed stone, shell, or mulch Elevated wooden walkways and stairs up to six (6) feet in width may also be used, as long as there is spacing between decking boards and the walkway is elevated a minimum of two (2) feet to provide for light penetration and rainwater to drip through to allow for continued vegetation growth

(ii) View Corridor Selective thinning and pruning of natural vegetation within the buffer may be allowed to provide for site lines and vistas of the shoreline Alteration of the natural vegetation as provided in this division is permitted Removal of native vegetation for planting of non-native grasses or other exotic or invasive species is prohibited

(iii) Safety and welfare Selective tree removal and thinning and pruning of natural vegetation within the buffer zone will be allowed for safety and welfare concerns (e.g. removal of damaged tree(s) close enough to a dwelling that it poses a strike hazard). A permit shall be required for the removal of any tree(s) within the buffer or the conservation resource

(iv) Shoreline erosion control For necessary shoreline erosion control projects, trees and woody vegetation may be removed and the erosion control measure employed in a manner that is consistent with the purpose and intent of this division Areas cleared for erosion control measures may be required to be re-vegetated with plant species as recommended in the City of Wilmington Technical Standards and Specifications Manual

(v) Habitat and species management Management of natural vegetation within the buffer to enhance wildlife habitat and to remove nuisances and non-native invasive species may be allowed

**Section 4 Prohibited Activities** No person or entity shall perform any of the following activities in the "Wetlands Preservation Areas"

- (a) fill, grade, excavate or perform any other land disturbing activities
- (b) cut, mow, burn, remove or harm any vegetation
- (c) construct or place any roads, trails, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structure, other than elevated walkways by prior approval from United States Army Corp of Engineers
- (d) drain or otherwise disrupt or alter the hydrology or drainage ways of the Wetlands Preservation Areas
- (e) dump or store soil, trash, or other waste
- (f) graze or water animals, or use for any agricultural or horticultural purpose

**Section 5 Enforcement by USA** This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, US Army Corps of Engineers, Wilmington District, Action ID# SAW 2006-00151, and therefore may be enforced by the United States of America This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under

it This covenant cannot be amended without the express written consent of the U S Army Corps of Engineer, Wilmington District

**Section 6 Perimeter Buffer** As shown on the recorded plat of SHINNWOOD WEST, all phases, a 25-foot perimeter buffer shall be preserved around the perimeter of SHINNWOOD WEST This buffer is required in accordance with the City of Wilmington Land Development Code Section 18-433(c)(6)

**Section 7 Severability** The provisions of this Declaration are independent and severable, such that 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 8 Lots Subject to Declaration** All present and future Owners, tenants and occupants of Lots annexed into SHINNWOOD WEST as well as 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 inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, as though such provisions were made a part of each and every deed of conveyance or lease The covenants, conditions and restrictions contained in this Declaration and any amendment thereto shall be effective as of the recording of the Declaration and shall continue in force and effect perpetually unless and until the Declaration is amended to delete them or the Development is terminated

**Section 9 Rights Reserved to Institutional Lenders** "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Authority, Federal National Mortgage Association and other mortgage lenders and guarantors and insurers of such first mortgages So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights

(a) To be furnished with a least one copy of the annual financial statement and report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished upon request

(b) To attend any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles and Bylaws of the Association,

(c) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof

(d) Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which such information requested from the Association is to be forwarded to the Institutional Lender

**Section 10 Amendment of Declaration.** Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of the county where the Development is located, executed by the duly authorized officers of the Association

upon the vote or written agreement of not less than sixty-seven percent (67%) of the votes allocated to the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein.

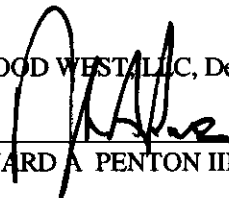
Any amendment to this Declaration for the purpose of terminating the Declaration or terminating the Development as a Planned Community shall require the vote or written agreement of not less than eighty percent (80%) of the Lot Owners, and must be made pursuant to the provisions of Section 47F-2-118 of the Act

In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant

No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority

IN WITNESS WHEREOF, the parties hereto, have caused this Declaration to be executed by the Declarant this the 5<sup>th</sup> day of FEBRUARY, 2014

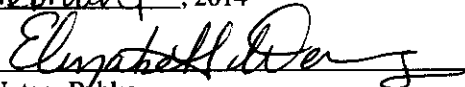
SHINNWOOD WEST, LLC, Declarant

By   
HOWARD A. PENTON III, Manager

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Elizabeth Downing a Notary Public for New Hanover County and State of North Carolina, do hereby certify that HOWARD A. PENTON III, personally appeared before me this day and acknowledged that he is the Manager of SHINNWOOD WEST, LLC, a North Carolina limited liability company and further acknowledged that being authorized to do so he executed of the foregoing instrument on behalf of SHINNWOOD WEST, LLC as its Manager

WITNESS my hand and notarial seal this 3<sup>rd</sup> day of February, 2014

  
Notary Public  
My Commission  
Expires 2-29-2016

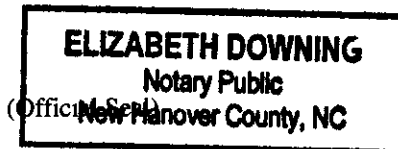


Exhibit "A"

BEING all of that 45.99 acre tract described as TRACT 2 and shown on a Recombination Survey for Beasley-Pigford Properties, LLC dated March 4, 2008 by Sherwin D. Cribb, N.C. Professional Land Surveyor L-1099 together with a proposed 50 foot public Right of Way leading from the above described tract to Greenville Loop Road (60 foot R/W) all as shown on said survey which is recorded in Map Book 52, Page 292 of the New Hanover County Registry, said property having been acquired by First Troy SPE, LLC, a North Carolina limited liability company by Substitute Trustee's deed dated January 19<sup>th</sup>, 2010 and recorded in Book 5464, Pages 2150-2162 of the aforesaid public registry



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

WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration: 02/03/2014 12:00:35 PM  
Book: RE 5796 Page: 22-46  
Document No.: 2014002593  
25 PGS \$62.00  
Recorder: HUGHLEY, CAROL

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2014002593\***

2014002593