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STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS**

**MARINA TOWNES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made the \_\_\_\_ day of February, 2005 by James A. Spicuzza and wife, Amy L. Spicuzza AND Rudy A. Smithwick and wife, Caroline Smithwick, hereinafter referred to as "Declarant".

W I T N E S S E T H :

Whereas, Declarant is the owner of certain real property in Craven County, North Carolina, know as "Marina Townes" which is described in that deed recorded in the Office of the Register of Deeds of, North Carolina in Book 2261 at Page 824, to which reference is made for a more particular description; and

Whereas Declarant desires to place certain Covenants and Restrictions upon the lands described above:

Now, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

ARTICLE I.

DEFINITIONS

SECTION 1. Association shall mean and refer to Marina Townes Owners Association, Inc., a North Carolina Non-profit Corporation, its successors and assigns, the owners association organized for the purposes set forth herein.

SECTION 2. Assessments shall mean any of the Assessments the Association is permitted to levy under this Declaration as the context requires.

SECTION 3. Declarant shall be used interchangeably with Marina Townes Joint Venture (which designations shall include singular, plural, masculine and neuter as required by the context).

SECTION 4. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 5. Home or Town home shall mean the dwelling located on a Lot.

SECTION 6. Lot(s) shall mean and refer to any subdivided lot within the confines of the land described above together with any dwelling situated thereon.

SECTION 7. Member(s) shall mean and refer to every person or entity who has a Membership in the Association.

SECTION 8. Membership shall mean and refer to the rights, privileges, benefits, duties, and obligations, which shall be inure to the benefit of and burden each Member of the Association.

SECTION 9. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 10. Person shall mean a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

SECTION 11. Property shall mean the Property as defined in the preamble to this Declaration.

SECTION 12. Voting Member shall mean a member of the Association entitled to vote on a particular matter.

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

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

- (a) The Association may make and amend reasonable rules and regulations governing the use of any future Common Areas by the Owners, and limiting the number of guests of Members;
- (b) The Association may levy fines in accordance with the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes);

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

- (a) Any as shown upon that map of the property recorded in Map Book 2275 at Page 647 of the CRAVEN County Registry.

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

- (a) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots in the performance of their duties;
- (b) in case of any emergency originating in or threatening any Lot or Common Areas, 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 purpose of providing Remedial Lot maintenance.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of the binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

SECTION 5. No Partition. There shall be no judicial partition of the Common Area, nor shall any Person acquiring any interest in the Properties seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

SECTION 6. Condemnation. If all or any part of the Common Area is taken or conveyed due to condemnation or threat thereof, the award made for such taking shall be payable to the Association to be used by the Board of Directors as it deems appropriate to restore or replace such common area and facilities to the extent land is available therefore. If the Board of Directors decides not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then the funds will be retained by the Association and used for purposes as the Board of Directors determines appropriate.

### ARTICLE III.

#### AMENDMENTS

SECTION 1. Amendment of Declaration by the Declarant. This Declaration may be amended without member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;

- (e) to 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 of 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 control, 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 Project, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, of the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Developer Control Period, shall be entitled to amend this Declaration pursuant to this Section.

#### ARTICLE IV.

##### HOMEOWNER'S ASSOCIATION

SECTION 1. Formation of Association. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to (i) own, operate and maintain the Common Areas, (ii) to maintain the Designated Common Area, (iii) to maintain the Limited Common Areas, and (iv) serve as a member of Marina Townes, all in accordance with this Declaration, the Association's Charter and Bylaws. The Association shall have all powers described in 47F-3-102 on the North Carolina General Statutes.

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

SECTION 3. Voting Rights. The Association shall have one class of voting Membership. Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determined, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

SECTION 4. Government Permits. All duties, obligations, rights and privileges of the Declarant under any water, sewer, storm water, and utility agreements, easements, and permits for the Project with municipal or governmental agencies or public or private utility companies are at all times the responsibility of the Association.

ARTICLE V.

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

SECTION 1. Common Areas. The Association, subject to the rights of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Area and all improvements and landscaping thereon, and will keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

SECTION 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

SECTION 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations will be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, permittees, and licensees, if any, until and unless modified in a regular or special meeting of the Association.

SECTION 4. Areas of Common Responsibility. The Association shall make and enforce all necessary rules and regulations necessary to carry out its duties regarding maintenance of the area of common responsibility.

SECTION 5. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. Sanctions may include reasonable monetary fines and suspensions of the right to vote and to use facilities on the Common Area. In addition, the Association has the right to exercise self-help to cure violations, and is entitled to suspend any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty days delinquent in paying any Assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. Sanctions shall be imposed as provided in the By-Laws.

The Association, through the Board, by contract or other agreement, has the right, but not the obligation, to enforce county and municipal ordinances and will permit the counties or municipalities to enforce ordinances on the Properties for the benefit of the Association and its Members.

SECTION 6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

SECTION 7. Indemnification. The Association will indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member.

ARTICLE VI.

DECLARANT'S RIGHTS

This Declaration and the covenants, conditions and restrictions contained herein are intended to promote and maintain a plan of development of the Properties, as that plan may change during the course of development. This Declaration, and any amendment hereto, whether made unilaterally by the Declarant, to the extent permitted hereby, or by the Association, shall become a part of this plan of development and be enforceable uniformly by and against all Lots hereunder.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer will be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public registry for Craven County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, the Declarant is permitted to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities includes specifically, without limitation, the right to use Lots owned by the Declarant as models and sales offices, respectively.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant and recorded in public registry.

Notwithstanding any provisions contained in the Declaration to the contrary, the Declarant shall not be permitted to amend unilaterally any covenant or provision hereof that would have the effect of reducing any rights of a Lot Owner or that would have the effect of imposing any additional assessment on a Lot.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article will terminate upon the earlier of (a) twenty years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE VII.

INSURANCE AND BONDS

If it is economically advantageous to obtain group insurance over individual insurance, the following shall apply:

SECTION 1. Insurance. It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

- (a) Amount and Scope of Insurance. All insurance policies upon the Project (except personal property within a Town home) shall be secured by the Board of Directors, or its designee on behalf of the Association which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, (2) flood, and (3) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional mortgage investors for projects similar in construction, location and use as the Project and the improvements thereon for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation. In obtaining such coverage, the Board of Directors shall consider the reasonable requirements of holder of first liens on individual Lots;
- (b) Insurance Provisions. The board of directors shall make diligent efforts to insure that said insurance policies provide for the following:
- (1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees;
  - (2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;
  - (3) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to be named insured and all mortgagees;
  - (4) coverage will not be prejudiced by act or neglect of the Lot Owners when said act or negligent is not within the control of the Association or by any failure of the Association to comply with any warrant or condition regarding any portion of the Project over which the Association has no control.
  - (5) the master policy on the Project cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;
  - (6) the master policy on the Project cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
- (c) Premiums. All premiums on such insurance policies and any deductibles payable by the Association upon loss shall be a common expense:
- (d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors;
- (e) Policies. All insurance policies purchased by the board of Directors shall be with a company or companies permitted to do business in the State of North Carolina. All insurance policies shall be written for the benefit of the Board of Directors and the Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premium, shall be delivered to

the Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee;

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

(g) Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) all reasonable expenses of the insurance trustee shall be paid or provision made thereof;

(2) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

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

## ARTICLE VIII.

### COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

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

SECTION 2. Annual Assessments. The board of directors shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year. Within 30 days after adoption of the proposed budget for the Project, the Board of Directors shall provide all of the Lot Owners a summary of the budget and

notice of a meeting to consider its ratification including a statement that the budget may be ratified without a quorum. The budget is ratified unless, at the meeting, a majority of all the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors. The annual assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Board of Directors. The board of Directors shall have the authority to require the assessments to be paid in periodic installments.

The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 3. Special Assessments for 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, repair, or replacement of a capital improvement upon any future Common Areas. Including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the members of each class who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 4. Insurance Assessments. All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, 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.

SECTION 5. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 6. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 7. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment or installment thereof not paid within (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability of the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 8. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

- (a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges,

finest, interest, and other charges imposed pursuant to Sections 47-E-3-102, 47F-3-107A AND 47F-3-115 of the Act are enforceable as Assessments.

- (b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docking of the claim of lien in the office of Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.
- (c) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien by the office of the Clerk of Superior Court.
- (d) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
- (e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be common Expenses collectible from all the Lot Owners including such purchaser, its heirs, successors and assigns.
- (f) A claim of lien shall set forth the name and address of the association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

#### ARTICLE IX.

##### USE RESTRICTIONS. ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall, fence or other structure shall be commenced, erected, or maintained upon any Lot. Nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications (including site plan) showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all Lots by Declarant, by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board.

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

(a) Each dwelling 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;

(b) All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the 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, or from any other residence within the subdivision. All mailboxes be uniform in design. Design for and

location of mail boxes shall be furnished by Declarant Area; provided, however, that the design, placement, and materials of any fence are approved by the Declarant, the Board, or the Architectural Control Committee, as the case may be.

(c) All light bulbs or other lights installed in any fixture location on the exterior of any building for the purpose of illumination shall be clear, white or non-frost lights or bulbs. Exterior spot/flood lights must be approved by the Association. Any approved spot/flood lights shall be aimed to the greatest extent possible to direct light away from adjoining property.

### SECTION 3. Use Restrictions.

(a) 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 one single-family Town home dwelling.

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

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, 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 Project until the construction of dwellings on all Lots and improvements are completed.

(d) Vehicles/Boats. No 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. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot or street. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on the streets or in driveways, but only in garages or other areas not visible from the street.

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

(f) Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary, yard art, 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 permission for the same has been granted by the Board of Directors of the Association or its architectural control committee; provided, however, satellite dishes not over eighteen (18) inches in diameter which cannot be seen from the street are permitted.

(g) Construction in Any Future Common Area. No person shall undertake, cause or allow alteration or construction in or upon any portion of future Common Areas except at the direction or with the express written consent of the Association or as permitted by this Declaration.

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

(i) Trash Cans. All trash cans must be kept from view from the street except on trash pickup days. Trash cans must be removed from the street within 24 hours of trash pickup.

(j) Christmas Decorations. Christmas decorations may only be exhibited between November 20 and January 7 of the following year.

SECTION 4. Maintenance. To the extent the association is not obligated to provide maintenance pursuant to this Declaration, each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then after thirty days notice from the Architectural Control committee, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the full amount of the cost thereof chargeable to the Owner's Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens. In the event that any maintenance activities are necessitated to any future Common areas by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the board of directors of the association, 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 and shall become a lien against the Lot.

## ARTICLE X.

### PARTY WALLS

SECTION 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts of omissions shall apply thereto.

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

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

SECTION 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act caused the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

SECTION 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

## ARTICLE XI.

### GENERAL PROVISIONS

SECTION 1. Enforcement of Storm Water Runoff Regulations. 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 footages permitted by 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 storm water permit for the property issued by the state of North Carolina and therefore may not be changed or deleted without the consent of the state. For curb and gutter projects, no one may pipe, fill in, or alter any Lot line swale used to meet North Carolina Storm water Management Permit requirements.

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SECTION 3. Rights of Institutional Note Holders. Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Project or the Property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 4. 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 other utility service to the Lots. In the alternative, the Developer may collect such connection, impact and other fees, charges directly from the Lot Owners. All Lot Owners shall be required, for the household purposed, to use water and sewer supplied by the companies/governmental units servicing the Project. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Declarant or the Association.

SECTION 5. Severability. Invalidation of any one of these covenant or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 6. Lots Subject to Declaration/Enforcement. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having any Lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners. Failure by the association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 7. 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 CRAVEN County, executed by the duly authorized officers of the Association upon the vote of not less than two-thirds (2/3) of 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.

SECTION 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration are declared by a court to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall be deemed to be reformed to vest the particular interest within 90 years of the creation of the interest in compliance with the provisions of NCGS \_ 41-17.

SECTION 9. Cumulative Effect: Conflict. In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law, then to the extent that the provisions of North Carolina law cannot be waived by agreement, the North Carolina law controls.

SECTION 10. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent of the Voting Members. This Section shall not apply, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings provided above.

