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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2006069112

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR TOWNES AT MARKETPLACE**

This Declaration, made the 18<sup>th</sup> day of December, 2006, by **TOWNES AT MARKETPLACE, LLC** a North Carolina limited liability company, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

**WITNESSETH:**

Whereas, Declarant is the owner of certain real property in the City of Wilmington, New Hanover County, North Carolina, known as "TOWNES AT MARKETPLACE" which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 50, Page 293, which reference is made for a more particular description (the "Property").

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

**ARTICLE I.**

**DEFINITIONS**

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

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

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

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

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

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

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

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

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

SECTION 10. Limited Common Elements shall mean areas and facilities which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Elements shall consist of (i) the exterior of all dwellings, including by way of illustration, but not limited to, roofs, exterior building surfaces, driveways and walkways, gutters and downspouts, (ii) rear and side yards and other improvements, including by way of illustration, but not limited to, travelways, walkways, leaves, shrubs and grass but excluding privacy fences for each dwelling.

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

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

SECTION 13. Master Declaration means that Declaration of Easements, Covenants, Conditions and Restrictions for Beau Rivage Market Place recorded in Book 5051 page 2786-2806 of the New Hanover County Registry.

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

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

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

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

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

SECTION 19. Stormwater Permit shall mean State Stormwater Permit #SW8060242 issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR).

SECTION 20. Sanitary Sewage Disposal System Permit shall mean State Permit No. WQ0030107 issued pursuant to NCGS 143-215.1 to construct, maintain and operate the disposal system serving the Planned Community.

SECTION 21. Townhouse or Townhome shall mean the dwelling located on a Lot.

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

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

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

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

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

(a) easements as necessary in the lands constituting the Common Elements and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and drainage facilities (including the right of Declarant and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas

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

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

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

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

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

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

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

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

### **ARTICLE III**

#### **RIGHTS OF DEVELOPER**

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

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

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

access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for Common Elements or amenities, and to take such steps as are reasonably necessary to make such replatted Lots or tracts suitable and fit as a building site or access area or roadway or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development". Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by the filing of a supplemental declaration in the Register of Deeds office of the county where the Planned Community is located. Declarant is required by DWQ to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

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

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property.
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to incorporate or reflect any platting change as permitted by Section 2 of this Article or otherwise permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the

control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum allowable built-upon area as permitted by DENR. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

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

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

## **ARTICLE IV.**

### **HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** A Lot Owners' association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association shall be a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to



perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

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

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

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

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

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

(b) on December 31, 2013; or

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

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

**SECTION 4. Government Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits,

agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

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

## **ARTICLE V.**

### **INSURANCE AND BONDS**

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

(a) **Amount and Scope of Insurance.** All insurance policies upon the Common Elements (except personal property within a Townhome) shall be secured by the Board of Directors, or its designee on behalf of the Association which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than 80 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land excavation, foundations and other items normally excluded from

property policies, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional mortgage investors for projects similar in construction, location and use as the Planned Community and the improvements thereon for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance or use of the Common Elements and legal liability arising out of lawsuits relating to employment contracts of the Association. If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot Owners;

(b) Insurance Provisions. The Board of Directors shall make diligent efforts to insure that said insurance policies provide for the following:

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

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

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

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

(5) the master policy on the Planned Community cannot be cancelled, invalidated or

suspended on account of the conduct of any one or more individual Lot Owners;

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

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

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

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

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

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any upon request of such mortgagee;

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

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

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

(2) subject to the provisions of Section 47F-2-118 of the act, the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

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

(a) The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or

the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds;

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

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

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

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

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

## **ARTICLE VI.**

### **COVENANTS FOR ASSESSMENTS**

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

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Insurance Assessments;

(d) Ad Valorem Tax Assessments; and

(e) Working Capital Assessments.

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

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

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

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

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

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article IV, Section 5, hereof.

**SECTION 5. 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 6. Ad Valorem Tax Assessments.** All ad valorem taxes levied against the Common Elements, if any, shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment.

**SECTION 7. Working Capital Assessments.** At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay a sum equal to one quarters of the Annual Assessment to the Association as working capital to be used for operating and capital expenses of the Association. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments.



**SECTION 8. 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 and 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 9. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

**SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association.** Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. 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 for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

**SECTION 11. Lien for Assessments.** The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

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

(b) The Association may not foreclose an assessment lien under Power of Sale if the debt secured by the lien consist solely of fines imposed by the Association, interest on unpaid fines, or Attorney's fees incurred by the Association. The Association, however, may enforce the lien by judicial foreclosure.

(c) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the

docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(d) 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.

(e) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

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

(g) 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 VII.**

### **USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE**

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the 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. In the event the Declarant, or its designee, or, if applicable, the Board, or the Architectural Control Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. 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 Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant, the Board, or 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.

## SECTION 2. Minimum Standards for Site Improvements.

(a) Each dwelling shall have a minimum of 1,200 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 include garages, terraces, decks, open/screened porches, and like areas.

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

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

(d) All service utilities, fuel tanks, yard maintenance equipment when not in use, garbage cans, wood piles, miscellaneous storage and out door cookers are to be enclosed within a building, 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. Garage doors are to be kept in the closed position at all times when not in use. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant, for conformity. All mail and newspaper boxes shall remain in the designated location and shall be maintained by the Lot Owner to

the standards set by the Association at the Lot Owner's expense. Fences shall not be permitted on any Lot. Clothes lines are not permitted on any Lot.

(e) Off street parking shall be limited to two (2) passenger automobiles on the driveway, and one (1) passenger automobile fully enclosed within the garage. Those vehicles parked on the driveway must not extend beyond the back of the curb at the drive aisle, (which is the limit of the lot owner's limited common area), nor shall they encroach over the edges of the driveway onto the grass or planted areas. No driveway dimension or material shall be altered from its original condition except for repair to its original state and location. Each lot owner understands and agrees that any automobile or vehicle which violates the aforementioned parking covenant may be removed at the lot owner's expense, and said lot owner will hold the Association harmless for damages or costs incurred in the vehicle's removal.

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

(g) Each lot owner will install at his expense, window and door blinds on that building wall facing drive aisles within thirty (30) days of occupancy. Said blinds are to be white in color.

### SECTION 3. Use Restrictions.

(a) Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All numbered Lots are restricted for construction of one single family Townhome 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 Owners thereof. Insect screening on rear porches shall be the responsibility of the owner, and shall remain in good condition. Damage to said screening will be repaired no later than ten (10) days following lot owner's receipt of notice from the Home Owner Association, or it will be repaired by the Association at the lot owner's expense. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings, rear porches, rear patios, or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, 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 Planned Community until the construction of dwellings on all Lots and Common Elements improvements are completed.

(d) Vehicles/Boats. No boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment 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 Elements. 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 streets or in driveways but only in garages or other areas and not visible from the street.

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

(f) Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary, TV satellite signal receiving dishes, or 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.

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

(h) Signs. No signs shall be permitted on any Lot or in the Common Elements other than one (1) 10" X 17" sign displayed in the lower left corner of the front bedroom window indicating that a Townhome is for rent or for sale.

(i) 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.

(j) Flags. No flags may be displayed in the Common Areas. The Association may prohibit or regulate the display of flags on lots with the exception of the flag of the United States of America displayed in accordance with the custom set forth in 4 u.s.c. §§ 5-10 as amended.

(k) Political Posters. No Political Posters may be displayed in the Common Areas.

SECTION 3. Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects and shall be responsible for maintaining and watering those shrubs and bushes and sod located with their Limited Common Area to insure their survival during times of extreme heat and drought. In the event that any maintenance activities are necessitated to any Common or Limited Common Element by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors 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.

## ARTICLE VIII

### 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 and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law in North Carolina regarding party walls and of liability for property damage due to negligence or willful acts or 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, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

SECTION 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act 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 Contribute Runs with Land. The right of any Owner to contribute 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 arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

## ARTICLE IX

### LOTS SUBJECT TO DECLARATION/ENFORCEMENT

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

SECTION 2. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board or its designee, after 30-days notice, unless otherwise stated herein,

may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner, and such entry shall not be deemed a trespass. The full amount of the cost of remedying the violation or performing such maintenance or other activities and shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within 30 days after Owner is billed. If not paid within said 30 day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors 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 immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. Notwithstanding the foregoing, the Association shall not have a lien for the cost of any maintenance and repairs mentioned in this section if the Association is obligated to make such repairs or conduct such maintenance by virtue of yards or structures being Limited Common Elements.

B. Fines. The Association may in accordance with the procedures set forth in the Act establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine together with attorney's fees, interest and court costs shall immediately become due and owing to the Association and the Association may file a lien against the Owner's lot if the fine levied against the lot remaining unpaid for a period of 30 days or longer but the Association may enforce said lien by a judicial foreclosure.

C. Suspension of Services and Privileges. The Association may in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

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



## ARTICLE X

### **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), 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 45 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.** The four drainage areas related to the townhome portion of Beau Rivage Market Place are identified as drainage areas 1, 2, 3 and 4 on the enclosed plan, and are served by infiltration basins # 1, 2, 3, and 4 respectively. Said facilities constitute Common Elements 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. 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 VII, 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 Developer's development activities. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including but not limited to construction of residences or other activities by Owners, their agents and contractors, upon their Lots, acts of God, 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 to 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.** 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, in excess of 2,400 square feet per lot. The Total impervious surface area for drainage areas associated with the Townhome portion of Beau Rivage Market Place shall be limited to 248,143 sq. feet.

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 DWQ 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 state stormwater management permit number SW8 060242 as issued by the Division of Water Quality. These covenants may not be changed or deleted without the consent of the State.

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 DWQ and the State of North Carolina 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.

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

## **ARTICLE XI**

### **SANITARY SEWAGE DISPOSAL SYSTEM**

SECTION 1. The Declarant applied to the Environmental Management Commission for the issuance of a permit pursuant to GS 143-215.1 and was issued Private Sewer Permit No. WQ0030107 "the "Permit" to construct, maintain and operate a wastewater collection system and disposal facilities (hereinafter the "Disposal System").

SECTION 2. The Declarant has caused to be formed, the TOWNES AT MARKETPLACE OWNERS' ASSOCIATION, INC. (hereinafter "Association"), a non-profit corporation organized and existing under and by the virtue of the laws of the State of North Carolina, for the purpose, among others, of administering, affairs and business of the Development and operating, maintaining, re-constructing and repairing the common elements of the lands and improvements owned by the Association, including the Disposal System; and of collecting dues and assessments to provide funds for such operation, maintenance, re-construction and repair.

SECTION 3. The Environmental Management Commission desires to assure that the Disposal System of the Development is properly constructed, maintained and operated in accordance with law and permit provisions in order to protect the quality of the waters of the State and the public interest therein.

SECTION 4. To insure that the Disposal System is properly constructed and maintained and operated in accordance with the permit provisions, the Association agrees in accordance with the provisions of Permit No. WQ0030107 to the following:

A. The Disposal System shall be constructed in accordance with the permit and plans and specifications issued and approved by the Commission, and shall thereafter be properly operated and maintained, in accordance with applicable permit provisions and law.

B. The Declarant shall transfer ownership and/or control of the Disposal System to the Association upon completion of construction in accordance with the permit and approved plans, and after the staff of the Division of Water Quality has inspected and approved of the facilities. The Declarant will request that the permit be reissued to the Association and 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 the Division of Water Quality for the 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 Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 180 days before the date of the request, that the Sanitary Sewage Disposal System is 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 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 Sanitary Sewage Disposal System is covered by the Permit. The request must include a copy of the Association Bylaws and Declaration.

C. The Declarant shall not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its Disposal System until a permit has been reissued to the Declarant's successor.

D. The Disposal System and appurtenances thereto are part of the common elements and shall thereafter be properly maintained and operated in conformity with law and the provisions of the permit for construction, operation, repair, and maintenance of the system and facilities. The entire wastewater treatment, collection and disposal system shall be a common element which will receive the highest priority for expenditures by the Association except for Federal, State, and local taxes and insurance.

E. The Disposal System will be maintained out of the common expenses. In order to assure that there shall be funds readily available to repair, maintain or construct the Disposal System, the Association if necessary, shall approve special assessments to cover such necessary costs. There shall be no limit on the amount of such assessments, and such special assessments can be made as necessary at any time.

F. In the event the common expense allocation and separate fund are not adequate for the construction, repair, and maintenance of the Disposal System, the Association shall approve special assessments to cover such necessary costs. There shall be no limit on the amount of such assessments, and such special assessments can be made as necessary at any time.

G. If a wastewater collection system and wastewater treatment and/or disposal facility provided by any city, town, village, county, water and sewer authorities, or other unit of government shall hereinafter become available to serve the Development, the Association shall take such action as is necessary to cause the existing and future wastewater of the Development to be accepted and discharged into said governmental system, and shall convey or transfer as much of the Disposal

System and such necessary easements as the governmental unit may require as condition of accepting the Development's wastewater.

H. Recognizing that it would be contrary to the public interest and to the public health, safety and welfare for the Association to enter into voluntary dissolution without having made adequate provision for the continued proper maintenance, repair and operation of its Disposal System, the Association Bylaws shall provide that the Association shall not enter into voluntary dissolution without first having transferred its said system and facilities to some person, corporation or other entity acceptable to and approved by the Commission by the issuance of a permit.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

SECTION 1. 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 Planned Community 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 content of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 2. 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 any entity furnishing water, sewer 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 household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Declarant or the Association.

SECTION 3. Termination. Except in the case of a taking of all Lots by eminent domain, this Planned Community may be terminated only by agreement of Lot Owners

of Lots to which eighty percent (80%) of the votes in the Association are allocated acting in strict accordance with the requirements of Section 47F-2-118 of the Act.

**SECTION 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 5. Amendment of Declaration.** Except in cases of amendments that may be executed by the Declarant under this Declaration or by certain Lot Owners under Section 47E-2-118(b) of the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right.

**SECTION 6. FHAVA Approval.** So long as there is Class B membership, annexation of Additional Properties, dedication of Common Elements and amendments to this Declaration must be approved by the Federal Housing Administration and/or the Department of Veterans Affairs, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Planned Community. Declarant makes no representation that the Development conforms with all FHA and VA standards and specifications.

**SECTION 7. North Carolina Planned Community Act.** It is the intent of the Declarant to comply with the requirement imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

**SECTION 8. Joinder and Consent.** REGIONS BANK, the holder of a Deed of Trust dated July 17, 2006 and recorded in Book 5051, Page 2806 of the New Hanover County Registry, signs this Declaration to evidence its consent to be bound by the terms hereof.

[ Remainder of page intentionally left blank ]

IN WITNESS WHEREOF, the parties hereto, have caused this Declaration to be executed in their corporate name and the corporate seal affixed by its duly authorized officers as of the day and year first above written.

REGIONS BANK

By: John S. Whitley

TOWNES AT MARKETPLACE, LLC

By: Howard A. Penton III  
Howard A. Penton III, Manager

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

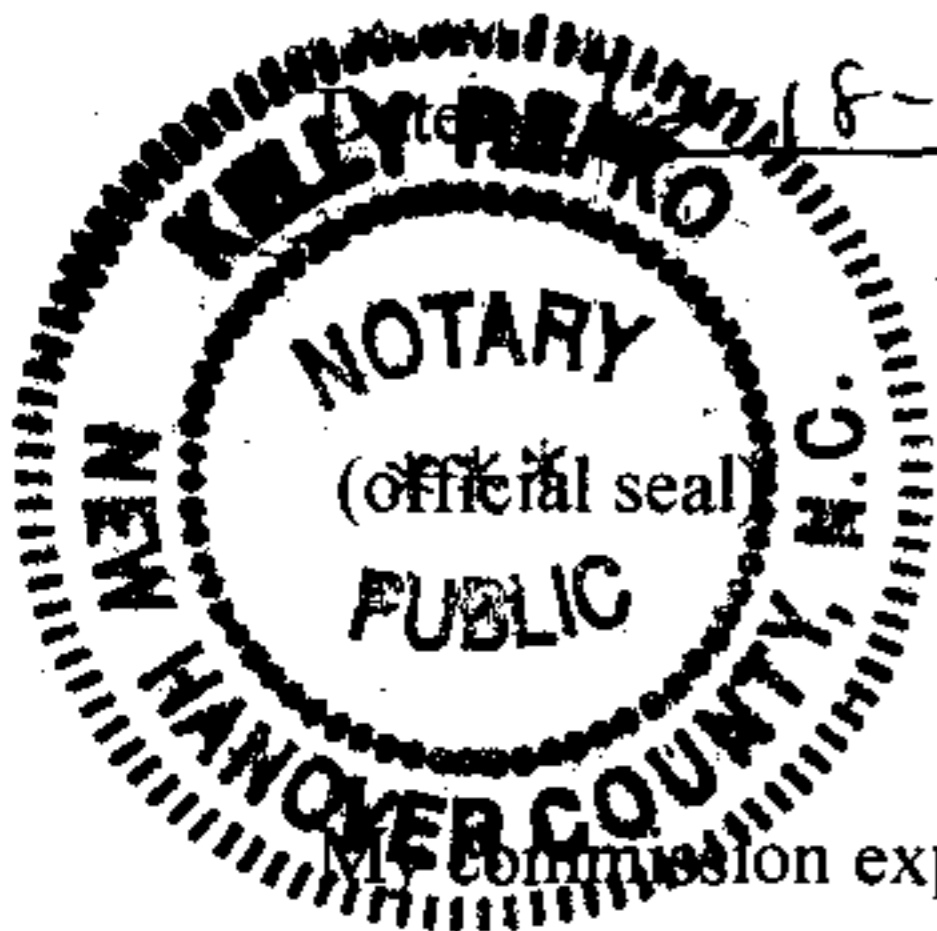
I, Kelly Repto, a Notary Public, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_.
- A credible witness has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
Howard A. Penton III	Manager

On behalf of and as the act of the following entity: Townes At Marketplace, LLC



Date: 8-06

Kelly Repto, Notary Public

Kelly Repto (print name)

My commission expires: 5-5-2007

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Susan Grace Glidden, a Notary Public, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)  
 I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_.  
 A credible witness has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
<u>John S. Whitley</u>	<u>Trustee</u>

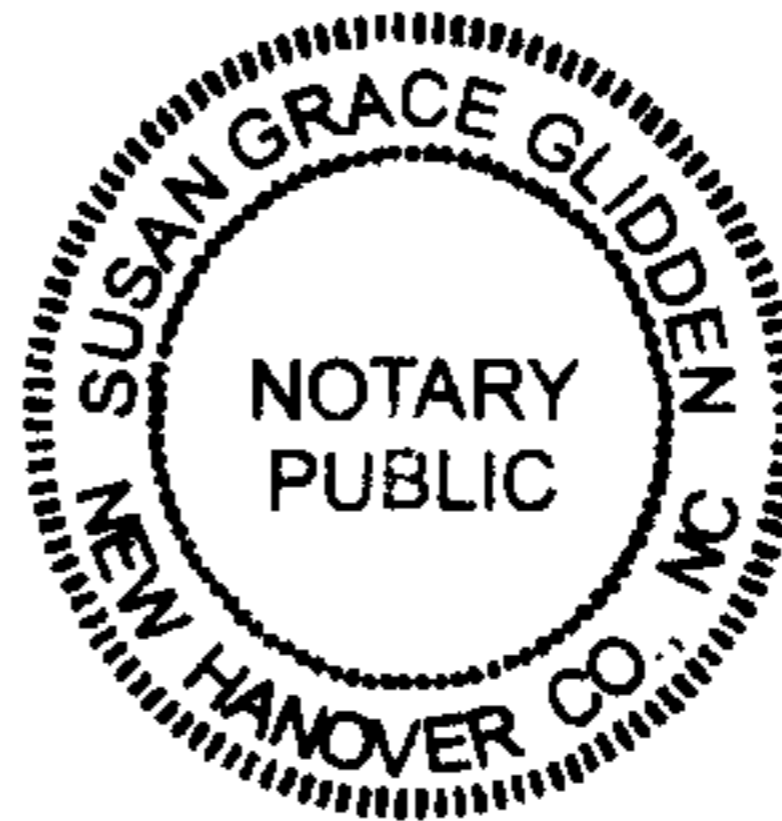
On behalf of and as the act of the following entity: REGIONS BANK

Date: 12-18-06

Susan Grace Glidden, Notary Public

Susan Grace Glidden (print name)

(official seal)  
My commission expires: 9-5-10







REBECCA P. SMITH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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**Recorder:** PHELPS, MICAH

State of North Carolina, County of New Hanover

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PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

**\*2006069112\***

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