

NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

Melanie Arthur 58P
CARTERET COUNTY
JL Date 11/25/2008 Time 16:30:00
GR 1291389 Page 1 of 58

Melanie Arthur, Register of Deeds
By Melanie Arthur
Asst/Deputy, Register of Deeds

Return to
Michael Lincoln
P.O. Box 4130
Emerald Isle, NC 28594

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR
SILVER CREEK TOWNHOMES**

Prepared by and return to Michael Lincoln, P.A. P.O. Box 4230 Emerald Isle, NC 28594

THIS Declaration is made and entered this the 21 day of NOVEMBER, 2008 by
MCNIELL & ASSOCIATES RENTALS, INC A NORTH CAROLINA CORPORATION ,
hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of a certain tract of land located in Carteret County , North
Carolina, (hereinafter referred to as "Development Area") and being more particularly described on
the attached Exhibit "A"; and

WHEREAS, Declarant is constructing on a portion of the development area a "residential
subdivision" which may include parks, playgrounds, swimming pool, open spaces, commercial
areas, and other community facilities for the benefit of the townhome community, (hereinafter
referred to as the "Project"); and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property
values and amenities within said community and to provide for the maintenance of the common
areas, properties and improvements located thereon, and to this end, desires to subject the Project
property to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each
and all of which are for the benefit of said real property and each and all of which are for the benefit

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of said real property and each present and a future owner thereof; and

WHEREAS, the Declarant also desires to provide and allow for the submission of additional "Sections" to the Project as said phases are developed and completed, and to provide for equality of rights, privileges and obligations of all owners in all phases of the Project by adding additional phases by amendment to this Declaration by the recording of an Amendment hereto.

NOW, THEREFORE, it is hereby declared that the Project property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth; said property being more particularly described as follows:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

1. DEFINITIONS:

1.1. "Association" shall mean and refer to SILVER CREEK TOWNHOME OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

1.2. "Common Areas" shall mean all real property owned by the Association, if any, for the common use and enjoyment of the Owners.

1.3. "Declarant" shall mean and refer to MCNIELL & ASSOCIATES RENTALS, INC, A NORTH CAROLINA CORPORATION, its successors and assigns.

1.4. "Declaration" shall mean and refer to this instrument, as may from time to time be amended.

1.5. "Living Unit" or "Unit" or "Townhome" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single

family.

1.6. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or any amendments thereto.

1.7. "Lot" shall mean and refer to any Townhome Unit as defined by law and as shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and include any improvements thereon.

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

1.9. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements located thereon, which become subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

1.10. "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

1.11. "Project Property or Area" shall mean the total of the real property incorporated herein and described hereinabove, together with all structures and other improvements thereon, together with such other portions of the Development Area as may from time to time be added to and incorporated in the Project Area by amendment of this Declaration.

1.12. "Development Area" shall include that property described hereinabove, all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

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2. EXPANSION OF PROPERTIES INTO DEVELOPMENT AREA:

2.1. The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the properties which are subject to this Declaration without the consent or joinder of the Owners of Units or persons or entities having a lien or security interest in such Unit by adding from time to time all or any portion of the tract of land known as the Development Area and being more particularly described on the attached Exhibit "A" and incorporated herein by reference as if fully set out.

2.2. The Declarant may also identify and add to the development area by amendment hereto any other such property as Declarant in its sole discretion may determine.

2.3. An Amendment to this Declaration shall be made and recorded in the Office of the Register of Deeds of Carteret County, North Carolina, to include each portion of the real property which is to be included within this Declaration, and each such portion of the real property shall constitute an addition to the Properties. The right of the Declarant, or its successors and assigns, to expand the Properties as herein provided shall expire fifteen (15) years from the recording of this Declaration or upon the sale of all of the properties hereinabove described.

3. SUPPLEMENTAL DECLARATIONS:

3.1. Declarant shall have the right, from time to time, to record Supplemental Declarations for portions ("Parcels") of the Properties which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use only of Owners of Lots or Townhomes in said parcel, and may create an internal owners association within said Parcel; provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or of any prior Supplemental Declaration for another Parcel

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4. COMMON AREAS:

4.1. **Dedication:** The Common Areas, if any, in each Parcel shall be dedicated as such by the Declarant, or its successors and assigns, before the first Townhome in each Parcel is conveyed to an Owner.

4.2. **Maintenance:** The Association shall be responsible for the exclusive management and control of the Common Areas and all improvements located thereon (including recreational facilities, landscaping, fixtures and equipment related thereto), except as otherwise may be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers, the Association to control and regulate the hours and periods of operation of all recreational facilities in the Development area, and all maintenance of landscaping in the Development areas even if in areas subject to a Section-Association created by amendment to this Declaration or the recording of a Supplemental Declaration.

4.3. **Owner's Easement of Enjoyment:** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

4.3.1. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

4.3.2. The right of the Association to limit the number of guests of members;

4.3.3. The right of the Association to suspend the right to use the recreational facilities by an Owner for a period during which any assessment against his Lot or Townhome remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

4.3.4. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes subject to such conditions

as may be agreed to by the Association; and

4.3.5. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

4.4. **Delegation:** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

4.5. **Restriction on Alienation:** Notwithstanding anything contained herein to the contrary, the Association shall not alienate in any way or transfer all or any part of the Common Areas without the prior approval of all holders of outstanding first priority mortgages against any of the Properties that are subject to this Declaration; provided, however, this restriction shall not be applicable to grants of easements for utilities, storm sewer, sanitary sewer, road right of way, and other conveyances for dedication to the public.

5. ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS:

5.1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Townhome which is subject to assessment.

5.2. The Association shall have two (2) classes of voting membership:

5.2.1. **Class I:** Class I members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot or Townhome owned. When more than one person holds an interest in any Lot or Townhome, all such persons shall be members. The vote for

such Lot or Townhome shall be exercised as they among themselves determined, but in no event shall more than one (1) vote be cast with respect to any Lot.

5.2.2. **Class II:** The Class II member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot or Townhome owned. For purposes of membership and voting rights under this paragraph, Declarant shall be deemed to own three (3) Lots or Townhomes for each undeveloped acre of land set out in the hereinbefore described real property and one (1) lot for each three (3) Townhomes owned, which Townhomes are subject to this Declaration. The Class II member is hereby exempt from any obligation to pay dues or special assessments of any nature whatsoever on any townhome owned by the Declarant or successor Developer. The Class II membership shall cease and be converted to Class I membership on the happening of either of the following events, whichever first occurs:

5.2.2.1. On that date which is fifteen (15) years from the date of the recording of this Declaration, or

5.2.2.2. At the discretion of Declarant.

5.2.2.3 As to each townhome upon sale of same to third party owner and not a successor developer.

6. ARCHITECTURAL CONTROL COMMITTEE:

6.1. Except for original and initial construction and subsequent modifications of improvements by the Declarant on any townhome which such construction is and shall be exempt from the provisions of this provision, no building, wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Committee have been approved in writing by the Architectural Control

Committee. Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected placed or altered upon the Premises only in accordance with the plans and specifications and plot plans so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Committee deem sufficient. Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The Declarant shall serve as the Architectural Control Committee until such time as the Association is controlled and run by the Townhome Owners.

6.2.1. Within thirty (30) days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the Lot or Townhome a response stating whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within thirty (30) days, the plan shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate and the thirty (30) day time period of response shall only commence upon the receipt by the Architectural Control Committee of the requested additional information. Conditional approvals may be granted and if approval with conditions is granted and thereafter construction begins, the construction shall be deemed approved by the owner of the Lot or Townhome of the conditions imposed.

6.2.2. Refusal of approval of plans, specifications and plot plans or any of them may be based upon any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee shall deem sufficient. The Architectural Control Committee shall make the following affirmative findings before any plans are approved:

6.2.2.1. That the improvements to be constructed will not have a negative economic impact on any other Lot or Townhome within the Subdivision.

6.2.2.2. That all required specific building standards and other conditions contained within the Restrictive Covenants, Bylaws and other Subdivision documents have been met.

6.2.2.3. That the improvements are architecturally compatible with proposed or constructed improvements on other Lots or Townhomes within the Subdivision.

6.2.2.4. That the natural features of the Lot or Townhome has been retained to the maximum extent possible.

6.3. The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior finishing color is changed.

6.4. Until such time as the sale of the last numbered Townhome in the subject property is evidenced by the recordation of a deed, all rights, privileges, powers and authority shall be granted herein to the initial Architectural Control Committee. The Declarant shall appoint the members of the initial Architectural Control Committee. The specific power to act hereunder at the time the last numbered Townhome is sold shall be exercised by the Declarant, its successors or assigns. The Declarant shall assign its powers hereunder to an Architectural Control Committee, whose representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of three (3) owners appointed by the Board and shall serve at the pleasure of the Board.

6.5. A majority of the Architectural Control Committee may take any action said Committee is empowered to take, may designate a representative to act for the Architectural Control

Committee, and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this covenant.

The Architectural Control Committee may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

6.6. Any Owner may appeal the decision of the Architectural Control Committee provided that all parties involved comply with the decision of the Architectural Control Committee until such time, if any, as the Board of Directors amends, or reverses the Architectural Control Committee's decision. Appeals petitions must be legibly written, state the grounds for appeal and be submitted to the Board of Directors within thirty (30) days of the decision of the Architectural Control Committee. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Control Committee within thirty (30) days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a Court of law or equity for relief.

6.7. Submissions for approval may be made to the Architectural Control Committee in care of the Association to any of the following:

6.7.1. The address to which an Owner is directed to send assessments or dues as appears on the most recent billing statement;

6.7.2. The address of the Association's Registered Agent as it is listed in the Office of the Secretary of State; or

6.7.3. At such addresses as may be provided in writing (on the letterhead of the Association and signed by the managing agent or officer of the Association) to the applicant upon request for instructions regarding submission.

7. ASSESSMENTS OR DUES :

7.1. **Purpose of Assessments:** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Properties and for capital improvements and maintenance of the Common Area and any improvements thereon. The Declarant, or any Successor Declarant is exempt from this Section until all of Lots are sold out of the Declarant's initial ownership.

7.2. **Creation of the Lien and Personal Obligations of Assessments:** The Declarant, for each Lot or Townhome owned within the Properties, hereby covenants, and each Owner of any Lot or Townhome by acceptance of a deed, therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

7.2.1. Annual Assessments or Charges;

The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney fees (as provided in North Carolina General Statutes §6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title.

7.3. **Minimum Annual Assessment:** Assessments shall commence beginning the first day of the month following conveyance of the Common Area to the Homeowners Association. The Declarant shall not be required to pay assessments on any lots not sold to a third party buyer. Any Successor Declarant is also exempt in the same manner as aforesaid.

The Owner of each Lot upon which there has been completed a structure shall be obligated to pay the full amount of the assessment. For the purposes of this paragraph, "completed" structures shall

mean a structure which has actually tapped into any water or wastewater treatment system or has had provided to it either such service by private means. The Initial Annual Assessment for the Townhomes shall be in the amount of Eighty Dollars (\$80.00) per month which represents fees for the water, sewer and maintenance of the common areas.

7.4 Special Assessments:

The Homeowners Association may assess the Owners for expenses incurred by the Association for maintenance, repair and renovation costs for which the Homeowner is responsible to third parties or costs associated with the common areas and/or facilities thereon.

7.5. Collection of Assessments:

7.5.1. The first pro-rata payment of the balance of the current year assessment shall be due and payable beginning the first day of the month following conveyance of the Common Area to the Homeowners Association. In addition thereto, at closing, the Declarant shall cause to be collected from the purchaser, an amount equal to one-twelfths (1/12) of the then current minimum annual assessment for said Lot or Townhome and an amount equal to the Purchaser's pro-rata share of the next due annual insurance premium payable by the Association. This shall be used for the sole purpose and use as a working capital fund. The Board of Directors shall fix the amount of the assessment against each Lot or Townhome at least thirty (30) days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors of the Association and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments, quarterly and semiannually as well as annually. 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 or Townhome have been paid.

7.5.2. From and after January 1 of the year immediately following the conveyance of the first Lot or Townhome to an Owner, the maximum assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote

of the membership. Except, however, increases attributable solely to the addition of new amenities, new Common Areas or police and security purposes, shall not be subject to this limitation.

7.5.3. From and after January 1 of the year immediately following the conveyance of the first Lot or Townhome to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote 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. Except, however, increases attributable solely to the annexation of new areas including new Common Areas, shall not be subject to this limitation.

7.5.4. If an additional property owner's association(s) is established on any property which is or may become subject to this Declaration by a supplemental declaration hereto, then, notwithstanding anything contained therein to the contrary, all assessments made by and for any such association shall be paid to the Silver Creek Townhome Homeowners Association, Inc., for bookkeeping and record keeping purposes, and shall then be transferred as necessary to the appropriate association. Silver Creek Townhome Association, Inc. may charge a reasonable fee for its record keeping services and deduct same from assessments collected.

7.6. **Special Assessments for Capital Improvements:** In addition to the annual assessments and special assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, of a capital improvement upon the Common Area, including fixtures and personal property related thereto.

7.7. **Remedies for Non-Payment of Assessments:** Any assessments which are not paid when due shall be delinquent. The assessment shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board of Directors, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association shall file a lien of record against any Lot or Townhome where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the Office of

the Clerk of Superior Court of Carteret County, North Carolina, in a manner provided therefor by Article 8 of Chapters 44 and 44A of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his Property.

The Association may bring an action at law against the Owner personally obligated to pay any assessment and interest. Costs and attorney fees of fifteen percent (15%) of the lien amount for the prosecution of any such action shall be added to the amount of such assessment. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina. The Association also reserves the right to terminate any service provided by the Association to an Owner, including but not limited to water, in the event of non-payment of dues.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments. In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such and resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45 of the North Carolina General Statutes. The trustee shall be authorized to retain an attorney to represent him in such proceeding. The proceeds of the sale shall, after the trustee retains his commission, together with any additional attorney fees incurred by the trustee, be applied to the costs of the sale, including but not limited to costs of collection, taxes,

assessment, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the Property, and any advancements made by the Association in the protection of the security.

7.8. **Subordination of the Lien to Mortgages:** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Townhome shall not affect the assessment lien. However, the sale or transfer of any Lot or Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Townhome from liability for any assessments thereafter becoming due or from the lien thereof

8. GENERAL RESTRICTIONS:

8.1. **Subdivision Restrictions:**

8.1.1. **Residential Use:** No Lot or Townhome, or portions thereof shall be put to any use other than for residential purposes, except that any Lot may be used by the Declarant for a street or roadway. As to that property designated as "Project Property or Area" and set out hereinabove, no structure shall be erected, altered, placed or permitted to remain on any Lot other than that multifamily dwelling (Townhome) with separate living quarters for each family, not to exceed two (2) stories in height, (which may include separate living quarters for one or more members of the Owners' family or relative), and such other buildings as may be reasonably appurtenant to the dwelling, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. This covenant shall not be construed as prohibiting the use of a new dwelling as a model home for sales purposes. Notwithstanding the above, any additions to the Project property in the Development Area may be used for such other purposes as may be set out and/or limited in a Supplemental Declaration.

8.1.2. **Townhome Quality:** The area of each Townhome, exclusive of open porches, shall contain at least two bedrooms and either two or two and 1/2 baths.

8.1.3. **Storm water Runoff:** The built upon area for each Lot shall be in compliance with storm water runoff rules . "Built upon area" shall mean that portion of the Lot which is covered or impervious or partially pervious cover including buildings, pavement, recreational facilities, etc., but not including decking. This requirement as to built upon area shall not be waivable. This covenant is intended to insure continued compliance with storm water runoff rules adopted by the State of North Carolina or any municipality or county, or any regulatory body or agency thereof, and therefore, benefits may be enforced by the State of North Carolina or any municipality or county or any regulatory body or agency thereof, provided, however, that nothing in these covenants shall prohibit Declarant or any Owner from exceeding density limits through permits properly obtained through all regulatory bodies having jurisdiction.

8.1.4. **Prohibited Structure:** No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanent. No trailer, mobile home, camper or like vehicle, or any other structure which is finished or partially finished at a manufacturing unit or plant and transported for quick assembly or which is designated to be disassembled and relocated shall be used as a residence at any time. It is specifically the intention and purpose of this covenant to prohibit the location of mobile homes, trailers, modular homes, relocatable houses, or similarly type structures on the property for use as a residence. This covenant shall not be construed as prohibiting the use of such a structure as a sales/rental model or office or construction site facility.

8.1.5. **Nuisances:** No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot or Townhome, nor shall anything be done on any Lot or Townhome that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots or Townhomes, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain upon the Premises. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands. Declarant or Association, its successors or assigns, reserve the right to enter upon and cut grass, weeds, or undergrowth on any Lot or easement, but shall be under no obligation to do so. The Declarant or Association may contract for, and assess to Owner, any maintenance necessary

to enforce this covenant.

8.1.6. **Animals:** No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any Townhome except that household pets may be kept provided that said pets are not kept for breeding or commercial purposes. Any such household pet shall not be allowed off the Lot of the Owner of said pet unless said pet is attended and on a leash. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot or Townhome.

8.1.7. **Garbage and Refuse Disposal:** No Lot or Townhome shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot or Townhome and shall be kept exclusively in sanitary containers approved by the Architectural Control Committee. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Architectural Control Committee and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction.

8.1.8. **Exterior Lighting:** All light bulbs or other lights installed in any fixture located on the exterior of any dwelling, building or other structure located on any Lot or Townhome shall be clear or white lights or bulbs. No mercury vapor or similar wide area lighting similar to street lights shall be allowed without the express written consent of the Architectural Control Committee.

8.1.9. **Sight Distance at Intersections:** No fence, wall, hedge or shrub planting which obstructs sight lines at elevators between two feet (2') and six feet (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line eliminations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree

shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

8.1.10. **Mailboxes:** All mailboxes shall retain the same style, design, color and location of the mailbox as originally provided at construction of any Townhome. The Architectural Control Committee reserves the right to approve the style, design, color and location prior to any original installation or replacement. Application shall be made to the Architectural Control Committee prior to installation or replacement. By accepting a deed to any subject property, Owner gives the Architectural Control Committee the right to remove any nonapproved mailbox in a reasonable manner; all costs for the same shall be paid by Owner, and all damages against the Architectural Control Committee are waived. Declarant may provide a "cluster" style of mailbox units.

8.1.11. **Signs:** No sign, billboard, or other advertising of any kind, including without limitation professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, Townhome, right of way or Common Area save and except a professionally prepared "for sale" or "for rent" sign not to exceed four (4) square feet in size. Although approval by the Architectural Control Committee is not required prior to the display of such signs, the Architectural Control Committee may itself remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under paragraph 6 and all subsections thereof of this Declaration. A valid easement shall exist on any Lot or Townhome for such removal by the Architectural Control Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot or Townhome during the period of the construction of the dwelling on the Lot, but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Property in the Development area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the Declarant, its successors or assigns.

8.1.12. Antennas Satellite Dishes: There shall be no exterior antennas or satellite dishes of any kind for receiving and/or sending of television, radio, or other signals unless same has first been approved by the Architectural Control Committee. Excepted from this are all satellite dishes provided by DIRECTV or DISH Networks so long as they are placed on the townhome itself, unless said owner applied for a variance due to physical impossibility or impracticability to place said antenna on the building itself.

8.1.13. Driveways/Parking: All driveways constructed on any Lot shall be paved with either asphalt or concrete. The use or construction of a headwall or other ornamental structure, gravel, rock or other material at or around the driveway culvert shall be prohibited. The earthwork extending from the driveway to each end of the culvert shall be gently sloped and sodded, as approved in each case. An Owner shall be provided a minimum of two (2) paved off-street parking spaces. Such lots will be numbered and assigned to each unit. On street parking is prohibited except for temporary, short gatherings.

8.1.14. Vehicles, Boats; Storage, Travel Trailers etc: No vehicle without a current inspection sticker, a vehicle more than five thousand (5,000) pounds empty weight, a pleasure or work boat whether on a trailer or not, or a bus shall be parked overnight on any Lot; provided, however, guests of an Owner may so park such vehicle for a period not to exceed seven (7) days each calendar year. Bicycles may be parked or other items may be stored only on that part of any Lot away from the street lying beyond the front line of the Townhome so that it is not viewable from any street. No automobile or other vehicles (motorcycles or other similar items) shall be repaired or placed on blocks or stands.

8.1.15. Window Appearance: Only white 2 inch blinds for window dressings in each dwelling unit shall be utilized. This is for exterior visibility purposes only.

8.1.16. Trees: Except as to development or construction by Declarant, or as may be approved by the Architectural Control Committee, no tree four inches (4 ") in diameter at any location on said tree or ten feet (10') in height shall be cut, removed or intentionally damaged on any

Lot unless first approved by the Architectural Control Committee.

8.1.17. **Clotheslines:** Clotheslines shall be not permitted within the Subdivision.

8.1.18. **Fences:** Except as erected by the Declarant and maintained by the Association, no fence of any form shall be erected or permitted to be erected within the Subdivision. The term fence shall include but not be limited to a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure.

8.1.19 **Prohibited Vehicles:** No off-road vehicles, including but not limited to, go-carts, dirt bikes, mini-bikes, ATV (2 wheel or 4 wheel) may be operated in the Subdivision. Bicycles and golf carts may be used in the Subdivision.

8.2. Multi-Family Dwelling Special Provisions:

8.2.1. **Conveyance of Multi-Family Unit:** Regardless of any provision in these restrictive covenants to the contrary, nothing shall prohibit or prevent the conveyance of a part or portion of any Lot in order to convey one (1) separate living quarters residence of a multi family dwelling.

8.2.2. Party Walls

8.2.2. 1. **General Rules of Law to Apply:** Each wall which is built as a part of the original construction of the Townhomes upon the Property and placed between the separate living quarters of a multi family dwelling shall constitute a party wall, and, to the extent not inconsistent with the provisions of this paragraph, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

8.2.2.2. **Sharing of Repair and Maintenance:** The costs of reasonable repair and maintenance of a party wall shall be shared by the Owner who makes use of the wall in proportion

to such use.

8.2.2.3. 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 costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution for the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

8.2.2.6. Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions of this paragraph, each party shall choose one (1) arbitrator, and the decision shall be by a majority vote of all of the arbitrators. The arbitrators shall choose another arbitrator to break any tie or deadlock.

8.2.3. Street Lighting Agreement: The Declarant and Association reserve the right to subject the real property to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both which may require an initial payment and/or a continuing monthly payment to an electric utility company or Association by the Owner of a Lot or Townhome .

8.2.4. Restriction on Further Subdivision: No Lot or Townhome which has been designated as such by Declarant by either recorded plat or by Supplemental Declaration shall be

further subdivided or separated into smaller Lots, without the prior written consent of the Association. This restriction shall not apply, however, to Declarant.

8.2.5. Easements

8.2.5.1. Utility Easements: There is hereby reserved by the Declarant, its successors and assigns, the utility easements as shown on the recorded plats of the parcels or included within the Supplemental Declarations pertaining to the Parcels. Said easements may be used for the purpose of installing, maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity and cable television. Declarant reserves the right to transfer the existing water system to a water/sewer provider that may install a metered system for each unit.

In addition to the above, there is hereby reserved for the benefit of each Owner, an easement over each parcel or Lot of each Owner a blanket easement and right of way on, over and under the ground within a parcel or Lot for the purpose of installing, maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity, cable television and garbage or refuse collection and pick up.

8.2.5.2. Easement to Correct Drainage: For a period of two (2) years from the date of conveyance of the first Lot in a Parcel, the Declarant reserves a blanket easement and right of way on, over and under the ground within a Parcel to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. Following such action, the Declarant shall restore the affected property to its original condition as near as practical. The Declarant shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. At the expiration of such two (2) year period, said easement to correct drainage shall automatically be held by the Association.

8.2.5.3. **Encroachments:** In the event any portion of a Common Area encroaches upon any Living Unit or any Living Unit encroaches on a Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

8.2.5.4. **Minor Encroachments:** In the event any portion of the Living Unit (multi family dwelling) or structure immediately adjacent to another Living Unit (multi family dwelling) or structure encroaches upon the other unit or real property as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, it shall not be a violation of these restrictions and a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

8.2.5.5. **Association Maintenance:** Easements are also reserved over those portions of the Common Areas, if any, that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Area or the air and light space above such Common Area.

8.2.5.6. **Grant to Others:** The Declarant or Association may grant permits, licenses, and easements over any Common Area or utility easement reserved elsewhere for utilities, roads, or other purposes reasonably necessary or useful for the Project maintenance or operation of the Project.

9. **VARIANCES:** The Association may allow reasonable variances and adjustments of the restrictions set forth in this Declaration in order to overcome particular difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that any such variance granted must be done in conformity with the intent and purposes of the general development scheme and provided also that in every instance such variance or adjustment shall not materially be detrimental or injurious to other property or improvements within the Properties.

10. VA OR FHA APPROVAL: So long as there exists a Class II membership, the following actions will require the prior approval of the VA or FHA: Annexation of additional properties (other than those set forth herein) dedication of Common Areas, amendment to the Declaration.

11. REMEDIES:

11.1. Remedies of Breach: In the event of a violation or breach of any of these restrictions, covenants, agreements and conditions by any person or concern claiming by, through or under the undersigned, or by virtue of any judicial proceedings, the Association, its successors and assigns and the Owners of the number Lots or Townhomes in the Subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. Costs and reasonable attorney fees shall be recoverable by the Association as part of any judgment or order to enforce these restrictive covenants. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

11.2. Remedies Extended to the State of North Carolina: To ensure that this Subdivision is maintained consistent with the laws of the State of North Carolina, the State of North Carolina is specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an Owner or the Association. The State of North Carolina is specifically made a beneficiary of these restrictive covenants. This Declaration is subject to all of the remedies allowable in Chapter 47F of the North Carolina General Statutes as the same may apply hereto.

12. RIGHTS OF MORTGAGEES:

12.1. Notice of Action: A holder or insurer of a mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the description of the secured properties) will be entitled to timely written notice of:

12.1.1. Any condemnation or casualty loss that affects either a material portion of the Project or the Lot or Townhome securing its mortgage.

12.1.2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot or Townhome upon which it holds a mortgage.

12.1.3. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

12.1.4. Any proposed amendment to the Project instruments effecting a change in the boundaries of any Lot or Townhome, ownership of Common Elements, if any, the number of votes in the Association pertaining to any Lot or Townhome or any proposed change in the restrictive covenants on the Properties.

13. INSURANCE:

13.1. **Association Blanket Insurance:** The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain a blanket, all risk insurance for all insurable improvements on the Common Area. If blanket all risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

13.2. **Association Liability Insurance:** The Board of Directors shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have at least One Million and 00/100 Dollars (\$1,000,000.00) single person limits as respects bodily injury and property damage, a Three Million and 00/100 Dollar

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(\$3,000,000.00) limit per occurrence, and a Five Hundred Thousand and 00/100 Dollar (\$500,000.00) minimum property damage limits.

13.3. **Association Premiums:** Premiums for all insurance on the Common Area shall be common expenses of the Association. This policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total. Cost of insurance coverage obtained by the Association for the Common Area shall be included in the regular assessment.

13.4. **Association Beneficiary:** All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

13.4.1. All policies shall be written with a company licensed to do business in the State of North Carolina which holds a Best's rating of A or better and is assigned a financial size category of X1 or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

13.4.2. All policies on the Common Area shall be for the benefit of Owners and their mortgagees as their interests may appear.

13.4.3. Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

13.4.4. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

13.4.5. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the area.

13.4.6. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

13.4.6.1. A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

13.4.6.2. A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

13.4.6.3. That no policy may be canceled, invalidated or suspended on account of anyone or more individual Owner;

13.4.6.4. That no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

13.4.6.5. That any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

13.4.6.6. That no policy may be canceled or substantially modified without at least thirty (30) days prior written notice to the Association.

13.5. **Disbursement of Proceeds**: Proceeds of insurance policies shall be disbursed as follows:

13.5.1. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portions thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital improvement account. This is a covenant for the benefit of any mortgagee of a Townhome and may be enforced by such mortgagee.

13.5.2. If it is determined, as set forth hereinafter in Section 13.6.2. of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section 13.5. 1. above.

13.6. **Damage and Destruction**

13.6.1. Immediately and after the damage or destruction by fire or other casualty to

all or part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

13.6.2. Any damage or destruction to the Common Area shall be repaired or

reconstructed unless the Voting Members representing at least sixty-seven percent (67%) of the total votes of the Association whose common property is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available, provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

13.6.3. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

13.7. **Repair and Reconstruction:** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of each Class, levy a special assessment against all Owners in proportion to the number of Lots or Townhomes owned, provided, if the damage or destruction involves a Lot or Lots/Townhome or Townhomes, only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

13.8 **Individual Insurance:** Each Townhome Owner shall obtain and maintain insurance, at his own expense, affording coverage for his Townhome Unit and his personal property. The following insurance coverage shall be maintained in full force and effect by the Owners covering the Townhomes, to wit;

13.8.1 Casualty insurance covering the individual Townhomes including all improvements upon the land supporting the units, shall be procured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation, foundations, street and parking facilities) as determined annually by the insurance company affording such coverage; and

provided that such policies may be written on a coinsurance basis of not less than ninety percent (90%). Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief. Flood insurance shall likewise be obtained by the Owners if the Townhome should be found to be located in a special flood hazard area or if required by lending or governmental agencies. Also, each Townhome Owner must have the normal liability coverage that normally accompanies a hazard insurance policy.

13.8.2 Premiums upon insurance policies purchased by the townhome owners shall be paid by the respective owners. The owners shall provide to the other owners upon request evidence of said insurance. Should an owner fail to obtain insurance then the other owners may obtain such insurance in the name of the other owner and association. The premium for this coverage shall become an assessment payable to the association from the uninsured owner. Proceeds on account of damages to the Townhome shall be owned by the Unit owners and mortgagees as their interest may appear.

14. AMENDMENT:

14.1. These restrictive covenants are subject to being altered, modified, canceled or changed at any time as to said Subdivision as a whole or as to any subdivided lot or part thereof during the first fifteen (15) year period by written document executed by the Declarant or until such time as the Association is not controlled by the Declarant or any Successor Declarant, which ever first occurs. Once the Association is not controlled by the Declarant, then these restrictive covenants are subject to being altered, modified, canceled or changed at any time as to said Subdivision as a whole or as to any subdivided Lot or part thereof by written document executed by not less than Sixty-Seven percent (67%) of the Lot or Townhome Owners, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina.

14.2. Notwithstanding the above, Declarant may amend this Declaration in accordance with Paragraph 3.1 above to add additional property to this Declaration.

15. DECLARANT'S RIGHTS:

15. 1. Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the county in which this Declaration is recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth hereinabove in any manner whatsoever.

15.2. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, its successors and assigns, may be reasonably required, convenient, or incidental to the sale, resale or rental of such Lots or Townhomes, including, but not limited to, business offices, signs, model units, and sales/rental offices. The Declarant shall have an easement for access to such facilities and activities shall include specifically the right to use residences owned by the Declarant, if any, and any which may be owned by the Association.

15.3. The Declarant shall have the rights:

15.3.1. To use or grant the use of a portion of the Common Area for the purpose of aiding in the sale, or rental, or management of Lots or Townhomes;

15.3.2. To use portions of the Property for parking for prospective purchasers or lessees of Lots or Townhomes and such other parties as the Declarant determines;

15.3.3. To erect and display signs, billboards, and placards and store and keep the same on the Property;

15.3.4. To distribute audio and visual promotional material upon the Common Area;

and

15.3.5. To use or permit to be used any Lot or Townhome which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility.

15.4. So long as Declarant continues to have rights under this paragraph, no person or entity shall record any Declaration of restrictive and protective covenants or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such Declaration of restrictive and protective covenants or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

15.5. This provision may be amended without the express written consent of the Declarant; provided however, the rights contained in this provision shall only terminate upon the earlier of:

15.5.1. Fifteen (15) years from the date of this Declaration is recorded; or

15.5.2. Upon recording by Declarant of a written statement that all sales activity has ceased.

16. Septic Facilities

16.1 Developer reserves the right to construct waste water or septic systems for disposal of sewage, which system includes waste water treatment and sewage disposal areas (including replacement areas) and lines and pumps as required to deliver effluent to the wastewater treatment facility and then to disposal areas. Once completed, the Association shall have the responsibility, and is obligated, to maintain such septic systems in good and operable condition, and the Association shall give a first priority to expenditure of its funds for such purposes. Nevertheless, if the Association is not an exclusive user of the such systems, then its only responsibility is to pay its proportionate cost based upon its annual percentage use thereof. This includes costs, repairs, and maintenance of said systems.

Developer shall transfer to the Association any and all permits issued by the Carteret County Health Department, or other regulatory agencies, authorizing the construction and operation of such existing systems, and the Association shall abide fully by all terms and conditions of such permits, and any agreements entered

into between Developer and the Carteret County Health Department relating to such systems. The Association shall further cause such permits to be renewed as and when required, and shall comply with all requirements of the Carteret County Health Department, or other regulatory agencies, as may be imposed from time to time in accordance with the permits, or as required to renew the permits.

The Carteret County Health Department is hereby granted the right of ingress and egress over and across all Common Properties and all Lots as may be necessary to allow the inspection of any and all component parts of the sewage collection system, including septic, tanks, distribution systems, pumps and sewage disposal and replacement areas. Furthermore, the Carteret County Health Department is granted the right to go upon the Common Properties and the Lots, as required, to take any action it deems necessary relating to the operation and maintenance of such systems, should the Association fail to do so, and the Association shall be responsible for all costs incurred by the Carteret County Health Department because of the failure of the Association to take action as requested or directed by the Carteret County Health Department.

The Association shall allow no construction or landscaping on any Common Properties that is inconsistent with the rules and regulations imposed by the Carteret County Health Department from time to time relating to the use, operation and maintenance of any component part of the sewage disposal system located on Common Properties.

16.2 Developer reserves the right to construct a central wastewater treatment plant system includes waste water treatment and sewage disposal areas (including replacement areas) and lines and pumps as required to deliver effluent to the wastewater treatment facility and then to disposal areas, which may serve both the subject townhome development and a separate development (to be determined). Such a treatment plant would be constructed at no cost to the Townhome owners. Developer may, at the finish of construction of said plant, may chose to abandon the existing waste water treatment and sewage disposal areas (including replacement areas) and lines and pumps or to use it for other purposes, and to cancel all the associated easements. If the Developer does construct a central plant, Developer shall transfer to the Association non-exclusive rights to the permits issued by the Carteret County Health Department, or other regulatory agencies, authorizing the construction and operation of such existing systems, and the Association shall abide fully by all terms and conditions of such permits, and any agreements entered into between Developer and the

Carteret County Health Department relating to such systems. The Association shall further cause such permits to be renewed as and when required, and shall comply with all requirements of the Carteret County Health Department, or other regulatory agencies, as may be imposed from time to time in accordance with the permits, or as required to renew the permits. The Association shall have perpetual nonexclusive right to the use of said system for septic and sewage disposal. The Association shall be responsible for its pro-rata share of all costs attributable to the new systems involving septic and sewage disposal. Declarant also reserves the right to transfer the system to a water/sewer provider that may install a metered system for each unit.

17. GENERAL PROVISIONS:

17.1. **Durations:** The covenants and restrictions set forth herein shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive ten (10) year periods unless otherwise terminated by a vote of seventy-five percent (75%) of the then record Owners of all Lots or Townhomes within the Properties.

17.2. **Severability:** Invalidation of anyone of the covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.

17.3. **Captions:** The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

17.4. **Construction:** Whenever the context so requires, the use herein of any gender shall be deemed to include the plural and the plural shall include the singular.

17.5. **Litigation:** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the membership and a majority of the Board of Directors. This Section shall not apply, however to:

17.5.1. Actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens);

17.5.2. The imposition and collection of personal assessments;

17.5.3. Proceedings involving challenges to ad valorem taxation; or

17.5.4. Counterclaims brought by the Association in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, have caused this restrictive covenants to be signed by its duly authorized managing partners the day and year first above written.

MCNEILL & ASSOCIATES RENTALS INC.

By: [Signature] (SEAL)

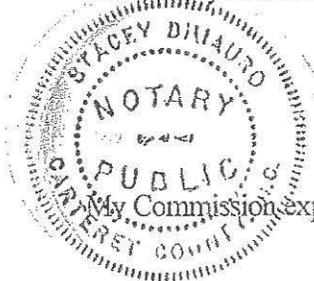
L.E. MCNEILL

NORTH CAROLINA

CARTERET COUNTY

I, Stacey DiMauro, a Notary Public of the county and state aforesaid, certify that L. E. MCNEILL either known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that he is President of MCNEILL & ASSOCIATES RENTALS, INC., a Corporation and that he as President, being authorized to do so, executed the deed forgoing on behalf of the Corporation.

Witness my hand and seal this the 21 day of November, 2008



[Signature]
Notary Public

My Commission expires: 04/11/2009

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EXHIBIT "A"

SILVER CREEK TOWNHOMES

PHASE I:

BEING all of Tract Three and Four, including lots and common areas as shown on that map or plat entitled "Map for Silver Creek Townhomes Phase I, Tract Three and Four, McNeill and Associates, Inc.," prepared by Charles A. Rawls and Associates and recorded in Map Book 31, Page 611, Carteret County Registry.

PHASE II:

BEING all of Tract Five, including lots and common areas as shown on that map or plat entitled "Map for Silver Creek Townhomes Phase II, Tract Five McNeill and Associates, Inc.," prepared by Charles A. Rawls and Associates and recorded in Map Book 31, Page 612, Carteret County Registry.

PHASE III:

BEING all of Tract One, including lots and common areas as shown on that map or plat entitled "Map for Silver Creek Townhomes Phase III, Tract One, McNeill and Associates, Inc.," prepared by Charles A. Rawls and Associates and recorded in Map Book 31, Page 613, Carteret County Registry.

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