

**DECLARATION OF COVENANTS CONDITIONS AND  
RESTRICTIONS FOR SOMERSET SUBDIVISION**

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*THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA IN SECTION 10.6.*

*THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS IN SECTION 10.11.*

**STATE OF NORTH CAROLINA**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR SOMERSET SUBDIVISION**

**COUNTY OF BEAUFORT**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOMERSET SUBDIVISION** (as may be amended or supplemented as set forth herein, "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2007 by SOMERSET, LLC, a North Carolina limited liability company, whose address is 222 West Stewart Parkway, Washington, N.C. 27889, (the "Declarant").

**WITNESSETH:**

A. Declarant is the owner and developer of certain real estate in Beaufort County, North Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property" or "Subdivision"); and,

B. Declarant is developing the Property known as "Somerset" by subdividing it into "Lots" that are to be used for residential purposes as well as common real estate and improvements that are to be owned by a homeowners association to which the Owner of a Lot must belong. Declarant intends to develop detached single family homes and single family townhomes on the Property; and,

C. At the time of the conveyance of a Lot to an Owner, the Declarant intends to make available the common amenities on the Property, if any, as they are built, and, at the time of completed development, the entire common real estate and improvements, including the dedicated streets, if any, shall be conveyed without cost or charge to the Association.

**THEREFORE**, the Declarant hereby declares that all of the Lots and Common Areas (defined below) located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

## **ARTICLE I**

### **DEFINITIONS**

As used in this Declaration, the following terms shall have the meaning ascribed to them in this Article I, such definitions being cumulative of those set forth elsewhere in this Declaration. In addition, all terms used in this Declaration which are defined in the Planned Community Act shall have the meanings ascribed to them in the Act, unless other definitions are ascribed to them in this Declaration.

Section 1.1 "Annual Organizational Board Meeting" means the annual organizational board meeting of the Board, which shall take place immediately after each Annual Meeting of the Members.

Section 1.2 "Annual Meeting" means the annual meeting of the Members held in Beaufort County, North Carolina, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.

Section 1.3 "Articles" or "Articles of Incorporation" shall mean those articles, filed with the Secretary of State of North Carolina, incorporating Somerset Homeowners Association of Washington, as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.4 "Assessments" means Regular Assessments, Special Assessments, Working Capital Assessments, Individual Assessments, Fine Assessments and Townhome Assessments.

Section 1.5 "Association" shall mean and refer to SOMERSET HOMEOWNERS ASSOCIATION OF WASHINGTON, to be formed as a non-profit corporation, its successors and assigns.

Section 1.6 "Board", "Executive Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.7 "Builder" shall mean and refer to any persons, firms or entities to whom or which Declarant conveys one or more Lots within the Property for the purpose of constructing a Dwelling unit thereon.

Section 1.8 "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.9 "Class A Members" shall mean as defined in Section 4.5.1 below.

Section 1.10 "Class B Members" shall mean as defined in Section 4.5.2 below.

Section 1.11 "Constituent Documents" shall mean the Declaration, the Bylaws, the Articles of Incorporation and the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

Section 1.12 "Common Elements" shall be referred to in this Declaration as "Common Area" and shall mean all the real estate (including retention ponds, storm drainage improvements, entrance signage, alleys, streets (including any dedicated streets prior to their acceptance for public maintenance) and all landscaping and other improvements thereon) owned by the Association for the common use and enjoyment of the Owners. Common Areas shall include, but not be limited to, the parcels designated on the Subdivision plat as Common Area, "Proposed Clubhouse" and "14' Alley."

Section 1.13 "Common Expenses" shall mean, refer to, and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common

Areas; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to judicial sale; and all administrative, accounting, legal, and managerial expenses. "Common Expenses" shall also include the cost of operation, maintenance, improvement, and replacement of any Community Facilities, including establishing reserves therefore. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision, including, but not limited to private road and parking lot resurfacing. "Common Expenses" shall also include all reserve funds or other funds established by the Association. "Common Expenses" shall be construed broadly.

Section 1.14 "Declarant" shall mean and refer to Somerset, LLC, a North Carolina limited liability company, its successors and assigns as a Declarant.

Section 1.15 "Default" shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

Section 1.16 "Development Period" means the period commencing on the date on which this Declaration is recorded in the Beaufort County Register of Deeds and terminating on the later to occur of (i) when Declarant no longer owns a Lot in the Subdivision, including any additional property annexed into the Subdivision; (ii) the date that Declarant relinquishes in writing Declarant's right to appoint Directors; or (iii) the occurrence of the date ten (10) years from the date of recording the Declaration, renewable for an additional ten (10) year period with the consent of a majority of Lot Owners other than the Declarant.

Section 1.17 "Dwelling Unit" shall mean and refer to the individual family living unit which has been or is to be constructed upon a lot. The term shall include, by way of illustration, but not limitation, townhouse or townhome units, patio homes and single family detached homes.

Section 1.18 "Fine Assessment" means the charge established by Section 5.6.2 of this Declaration.

Section 1.19 "Individual Assessment" means the charge established by Section 5.5 of this Declaration.

Section 1.20 "Lot" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed. The Declarant has initially created twenty-six (26) Lots in the Subdivision and has the right to establish additional Lots in accordance with the terms of this Declaration.

Section 1.21 "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.22 "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.

Section 1.23 "Plat" shall mean and refer to the record plat or plats of the Subdivision, whether one phase or multiple phases, recorded by Declarant, as the same may be amended or supplemented by Declarant from time to time.

Section 1.24 "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.25 "Property" or "Subdivision" shall mean and refer to that certain real estate described in Exhibit A and all other real estate that may be annexed into this Declaration and the Association by the Declarant.

Section 1.26 "Regular Assessment" means the charge established by Article V of this Declaration.

Section 1.27 "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling Unit, including, but not limited to, temporary guests and Tenants.

Section 1.28 "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.29 "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.30 "Special Assessment" means the charge established by Section 5.2 of this Declaration.

Section 1.31 "Subassociation" shall mean and refer to any homeowners association formed for the purpose of owning and maintaining real property and improvements thereon reserved for the exclusive use and benefit of Owners of Lots or Units within a specific phase or section of the Property.

Section 1.32 "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

Section 1.33 "Townhome Assessment" shall mean the charge established by Section 5.4 of this Declaration.

Section 1.34 "Working Capital Assessment" means the charge established by Section 5.3 of this Declaration.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

Section 2.1 Property Hereby Subjected to this Declaration. The Property and each portion thereof and all Dwelling Units shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

Section 2.2 Additional Lots Hereafter Subjected to this Declaration. The Declarant may, at any time, and from time to time, during the Development Period, subject additional Property to the Act and the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Lots by:

(a) executing and recording in the Office of the Register of Deeds of Beaufort County, North Carolina, a supplemental declaration to this Declaration describing such

additional property, and stating that this Declaration is thereby intended to, and shall thereafter apply to, such additional property; and

(b) recording in the Office of the Register of Deeds of Beaufort County, North Carolina, a plat of survey showing and depicting the additional property being thereby subjected to this Declaration.

From and after the subjecting of such additional property to the Act and to this Declaration, such additional property shall thereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including without limitation, all lien and assessment provisions set forth in this Declaration, and such additional property thereafter shall be considered part of the Property for all purposes under this Declaration.

Any supplemental declaration which may be executed and recorded pursuant to the provisions of this Article II for the purpose of subjecting additional property to the terms and provisions of this Declaration may set forth certain easements and restrictions which will apply only to the property being subjected to this Declaration by such supplemental declaration. Any such easements and restrictions which shall be set forth in any supplemental declaration shall thereafter be as binding on the property which is the subject of such supplemental declaration as if such easements and restrictions were set forth in their entirety in this Declaration. Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Property and, therefore, may alter the relative maximum voting strength of the various types of Members.

A supplemental declaration may contain such complementary additions to and modifications of the covenants and restrictions contained in this Declaration, including, without limitation, different voting rights and different annual and special assessments for the Lots or Units so annexed, as Declarant, in its sole discretion, may deem necessary or appropriate to reflect the different character or use of the property added. In no event, however, shall any supplementary declaration revoke, modify or add to the covenants and restrictions established by this Declaration so as to materially and adversely affect any portion of the Property already subject to this Declaration. A supplementary declaration annexing additional property need only be executed by the Declarant and, if applicable, by the owner of the property being annexed, and shall not require the joinder or consent of the Association or any of its Members.

Nothing contained in this Article shall be construed to obligate or require Declarant to make any additions to the Property.

Section 2.3 Merger. Additional property may also be made subject to this Declaration by merger or consolidation of the Association with another non-profit corporation formed for the same or similar purposes. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Property and the covenants and restrictions established upon property owned by the other association as one scheme. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 2.4 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of the Property then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision.

Except as otherwise provided in the Act, no approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject any additional property to this Declaration as additional Lots.

Section 2.5 Rerecording of the Plat. As Dwelling Units are constructed on the Lots, the Declarant may, at any time, and from time to time, prior to the expiration of the Development Period, re-record the Plat to adjust the boundary lines of Lots owned by the Declarant. Notwithstanding any provision of this Declaration, or of any statutory or common law, which may provide to the contrary, from and after the date of each re-recording of the Plat by the Declarant, the boundary lines of all Lots shall be as the same are shown and depicted on such re-recorded Plat. The right of the Declarant under this Section 2.5 to re-record the Plat shall terminate at such time as the Declarant shall have re-recorded the Plat after a Dwelling unit shall have been constructed on each of the Lots.

No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to adjust the boundary lines of the Lots owned by the Declarant pursuant to the provisions of this Section 2.5.

### **ARTICLE III**

#### **PROPERTY RIGHTS IN COMMON AREAS**

Section 3.1 Owner's Easements of Enjoyment. Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Each Tenant shall have a non-

transferable right to use and enjoy the Common Areas, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

3.1.1 The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;

3.1.2 The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time;

3.1.3 All applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas;

3.1.4 The right of the Association to grant permits, licenses and public or private easements over Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or

3.1.5 The right of Declarant or the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities for park purposes.

Section 3.2 Extension of Use. Any Owner may extend his right of enjoyment to the Common Areas to the immediate and/or extended members of his family, his Tenants, guests or contract purchasers of the Owner's Lot.

Section 3.3 Title to Common Areas. The Declarant shall convey by deed all Common Areas to the Association in fee simple absolute upon the completion of the Common Areas in each Phase of the Subdivision. Any such conveyance shall be accepted by the Association subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

Section 3.4 Use of Common Areas by Declarant. In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Development Period, and shall have the same right to use Common Areas for promotional, sales and similar purposes until all of the Lots and Dwelling Units have been sold.

Until such time as Declarant and Builder have completed all of the contemplated improvements and have sold all of the Lots within the Subdivision:

(a) Declarant shall have the right to alter the boundaries of the Common Area, whether or not it has been previously deeded to the Association, provided that such alteration does not substantially, materially and adversely affect the function and use of the Common Area. The Association and each Owner hereby irrevocably appoints the Declarant as his attorney-in-fact to execute and/or deliver any documents, plats, deeds, or other written matters necessary or convenient to accomplish the addition of Common Area or Properties, or both, to create easements as deemed necessary by Declarant, and to adjust the boundary or boundaries of the Common Area.

(b) Neither the Association nor its Members, nor the use of the Common Area by the Association and its Members, shall interfere with or impede the completion of the improvements or the marketing and sale by the Declarant and the Builder of Lots and homes.

(c) Declarant and Builder shall have the right to make such use of Lots and the Common Area as may facilitate completion of development and sale of Lots and Units by the Declarant and the Builder. Without limiting the foregoing, Declarant shall have the right to maintain or permit the Builder or others to maintain sales offices, model Dwellings and Units, administrative offices, and construction offices (which may be trailers or temporary or permanent buildings), or any or all of same, on Lots or the Common Area. Declarant and the Builder shall also have the right to erect and maintain signs on Lots and/or the Common Area, to bring prospective purchasers upon the Common Area, to use the Common Area for sales and marketing activities for the Subdivision, to grant the right to use the Common Area to a prospective purchaser or any other individual or group, in Declarant's sole discretion, and to conduct any and all other marketing activities deemed appropriate by the Declarant, and to permit the Builder and others to exercise such rights in conjunction with or separate from the Declarant.

(d) In addition to all other rights of the Declarant, no amendment shall be made to this Declaration, and no rule or regulation shall be adopted, interpreted or enforced by the Association, so as to modify the assessments or other charges applicable to the Declarant or a Builder or assessed against the Lots owned by either, or which shall restrict, impair, or, in Declarant's sole judgment, materially adversely affect the activities of the Declarant with regard

to construction, use of Common Area and delegation of the right to use the Common Area, or the marketing and sale of Lots by the Declarant and Builder, whether or not such activities are enumerated in the preceding paragraphs, without the express prior written consent of Declarant.

## ARTICLE IV

### HOMEOWNERS ASSOCIATION

Section 4.1 Homeowners Association. There has been created a North Carolina non-profit corporation, known as Somerset Homeowners Association of Washington, N.C., Inc., which shall be responsible for the maintenance, management and control of the Common Areas and the levy of assessments or charges upon each Lot as more specifically set forth in this Declaration.

Section 4.2 Board of Directors and Officers. The Board of Directors, and such officers as the may be elected or appointed in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board of Directors may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 4.3 Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4.4 Membership of Association. Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of fee simple title to a Lot automatically transfers membership in the Association without necessity of further

documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to Assessment.

Section 4.5 Classes of Membership. The Association shall have two (2) classes of Membership:

4.5.1 Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot within the Property, shall automatically be a Class A Member of the Association except the Declarant during the Development Period; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.5.2 Class B Members. The Class B Member during the Development Period shall be the Declarant. The Class B Membership shall cease and be converted to Class A membership upon the expiration of the Development Period.

4.5.3 Voting. Each Member shall have one vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period.

Section 4.6 Maintenance Obligations of the Association.

4.6.1 Common Areas. The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces; (b) all lawns, trees, grass and landscape areas, shrubs and fences,

except as otherwise set forth hereinbelow; (c) all conduits, ducts, utility pipes, plumbing, wiring and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not for the exclusive use of a single Dwelling Unit.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Section 4.7 Maintenance Obligation of the Lot Owners. The responsibilities of each Lot Owner shall include:

4.7.1 Except as provided in Section 6.6.1 and 6.6.2 of Article VI, to clean, maintain, keep in good order, repair and replace at his or her expense all portions of his or her Lot, including, but not limited to any improvements located thereon. Any repair, replacement and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony.

4.7.2 To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

4.7.3 Not to paint or otherwise alter, decorate or change the appearance of any exterior portion of the improvements on his Lot, without the written consent of the Association.

4.7.4 Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exists.

4.7.5 Each Owner of a Lot shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot

Owner, or owned by any guest, invitee, Tenant or licensee of such Lot Owner. To the extent that any Common Area is damaged is an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.4 and Section 8.7 below.

Section 4.8 Construction Defects. The obligations of the Association and of Owners to repair, maintain and replace the portions of the Subdivision for which they are respectively responsible shall not be limited, discharged or unreasonably postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the project. The undertaking of repair, maintenance or replacement by the Association or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved. Likewise, this Section 4.8 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if by repairing the defect, Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 4.9 Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Lot Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Association or any Lot Owner in performing his obligation hereunder. Likewise, this Section 4.9 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if, by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 4.10 Association. The administration of the Subdivision shall be vested in the Association. The Owner of any Lot, upon acquiring title, shall automatically become a Member of the Association and shall remain a Member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall automatically cease. The Association shall have full power and responsibility to administer, operate, sustain,

maintain, and govern the Subdivision including but not limited to, the powers and responsibilities to make prudent investments of funds held by it; to make reasonable Rules and Regulations; to borrow money; to make Assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the Bylaws and any other documents or instruments relating to the establishment, existence, operation, and alteration of the Subdivision. The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in Section 47F-3-102 of the Planned Community Act.

Section 4.11 Board of Directors. Unless otherwise specifically stated in this Declaration, the Association shall act exclusively through its Board of Directors (the "Board"). The Association in accordance with the Bylaws shall choose the Board. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

Section 4.12 Limitations on Association's Duties.

4.12.1 The Association did not construct the improvements in the subdivision. The Association does not warrant in any way or for any purpose, the improvements in the Subdivision. Construction defects are not the responsibility of the Association.

4.12.2 The Association shall have a reasonable time in which to make any repair or do any other work, which it is required to do under the Constituent Documents. The Association must first have actual knowledge of a problem. Any determination of the reasonableness of the Association's response, must allow for the facts that the Association is volunteer and that the funds available to the Association are limited.

4.12.3 In case of ambiguity or omission, the Board may interpret the Declaration and the other Constituent Documents, and the Board's interpretation shall be final if made without malice or fraud. Notwithstanding the foregoing, the Declarant may overrule any interpretation affecting it, for so long as Declarant owns any portion of the Property; and such interpretation cannot be enforced against the Declarant, its successors or assigns.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 5.1 Regular Assessments. Regular Assessments for the payment of the Common Expenses shall be made in the manner provided herein, and in the manner provided in the Bylaws. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses.

Section 5.2 Special Assessment. In addition to levying Regular Assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may levy Special Assessments to construct, structurally alter, or replace improvements which are a part of the Common Areas, or to cover other unbudgeted expenses, provided that funds shall not be assessed for any capital improvement in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) for any one item or in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) in the aggregate in any one calendar year ("Capital Expenditure Limit") without the prior written consent of two-thirds (2/3) of the votes of each Class of Members who are voting either in person or by proxy at a meeting duly called for such purpose or unless expressly stated in the annual budget. The Board of Directors shall have the authority to adjust the Capital Expenditure Limit annually to account for inflation, which adjustment shall be effective each January (hereinafter referred to as the "Adjustment Date") commencing January 1 of the next year following the year during which the sale of the first Lot by Declarant. As of each Adjustment Date, the Capital Expenditure Limit shall be increased from the Capital Expenditure Limit on the date of this Declaration ("Effective Date") by a percentage equal to the percentage increase, if any, in the Consumer Price Index, All Urban Consumers ("CPI-U"), (1982-1984=100), All Items, as compiled and published by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI") from the Effective Date to the Adjustment Date. If after the date of this Declaration the CPI is converted to a different standard reference base or otherwise revised or ceases to be available, the determination of any new amount shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by any other nationally recognized publisher or similar statistical information reflected by the Board. Until the expiration of the Development Period or the date on which Declarant no longer owns a Lot, whichever is earlier, Declarant shall be one of the consenting Members, or the capital improvement shall not be made. The Board of Directors shall calculate each Lot's proportionate share of the Special Assessment for the capital improvements, and shall give the Owner(s) written notice of the proportionate share and of the date(s) that the Special Assessment is due and

payable. Notwithstanding the foregoing, Declarant shall have no obligations to pay any Special Assessment with respect to any Lot owned by it.

Section 5.3 Working Capital Assessment. Upon the initial transfer of record of the Lot from the Declarant (or successor declarant or designated declarant) to the Owner (other than a successor declarant or designated declarant), the purchaser is required to pay a sum equal to two (2) full months of the Regular Assessment due on his or her Lot as his or her initial contribution to the working capital of the Association. This sum is not an advance payment of the monthly Regular Assessment; rather the sum is allocated to a working capital fund to meet unforeseen expenditures and operating expenses or to purchase any additional equipment or services. While the Declarant is in control of the Association, it cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs. When control of the Association is transferred to the Owners, the working capital fund shall be transferred to the Association for deposit to a segregated fund. After control of the Association is transferred to the Owners the Declarant shall be responsible to collect the initial contribution to the working capital account and forward such funds to the Association. Additionally, at the closing, each purchaser of a Lot is required to pay a pro-rata share of the Regular Assessment due in the month of closing.

Section 5.4 Townhome Assessment. The Board shall have the power to levy specific assessments against a particular townhome unit or townhome units constituting less than all dwelling units within the Property to cover casualty insurance, maintenance and repair of the exterior of the townhome units and for maintaining the grass and the grounds and landscaping of each Lot within a townhome sub-development.

Section 5.5 Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his pet(s), or Resident, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.6 Date of Commencement of Assessments; Due Dates; Determination of Regular Assessments; Fine Assessments.

5.6.1 The monthly Regular Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day following the initial conveyance of the Lot to the Owner and shall be adjusted according to the number of days remaining in the month. The Declarant, its successors and assigns, shall not be required to pay the Regular Assessment for any Lot which it owns until such time as Declarant transfers the Lot to a third party. The Board of Directors shall fix the amount of the monthly Regular Assessment to be paid by each Class A Member against each Lot at the beginning of each calendar year. Written notice of the monthly Regular Assessment shall be sent to every Class A Member subject thereto. The Board of Directors shall establish the due dates.

5.6.2 The Board of Directors, or an adjudicatory panel established by the Board of Directors, may levy a reasonable Fine Assessment, as a fine or penalty for violation of this Declaration, all in accordance with the Planned Community Act. A lien may be filed for this Fine Assessment and this Fine Assessment may be enforced by foreclosure as set forth in the Planned Community Act and otherwise treated as a Regular Assessment.

5.6.3 Both Regular and Special Assessments for a Owner shall be determined by the Association based upon the proportion that each Lot bears to the aggregate number of Lots located on the Property, except those owned by Declarant which are not assessed in accordance with Section 5.5.1 above. The Association's governing body may, at its discretion, waive the Regular Assessment for any year or part of a year for any Lot not occupied as a residence.

5.6.4 In addition to the Regular assessment, the Board shall prepare a separate budget covering the estimated maintenance expenses for each Townhome sub-development within the subdivision that are expected to be incurred during the coming year. The Townhome Assessment for maintenance expenses shall be levied at a uniform rate among all Townhome units within the benefited Townhome sub-development;

The Board shall cause a copy of such budget and notice of the amount of the Townhome Assessment to be sent to each owner in the effected Townhome Sub-Development at the same time of sending the notice of Regular Assessment. Such budget and assessment shall become effective unless disapproved by a majority of the owners of the Townhome Units in the Development to which the Townhome Assessment applies. However, there shall be no obligation to call a meeting for purposes of considering the budget except on petition of owners of at least ten percent (10%) of the Townhome Units in such

Townhome Sub-Development, which petition must be submitted to the Board within ten (10) days after delivery of the Notice of Assessment. If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 5.7 Billing. The Association shall inform each Owner of the amount of the total Regular Assessment and the Townhome Assessment, if applicable, due from the Owner of that particular Lot. This Regular Assessment and Townhome Assessment, if applicable, may be paid in monthly installments or as otherwise required by the Association. Each Owner must pay his required Regular Assessment and Townhome Assessment in advance on the first calendar day of each month, unless the Association otherwise directs. Payment is to be made to such person at such an address as Association determines. Special Assessments are due thirty (30) days after the bill for the Special Assessment has been mailed or otherwise sent out by Association, unless the Association otherwise directs. The Owners of the initial Lots in the Subdivision, except Declarant, shall be obligated to begin paying the Regular Assessment and Townhome Assessment, if applicable, as of the first day of the initial conveyance of the Lot from Declarant to the Owner. If the Subdivision is expanded and additional Lots are brought into the Subdivision during a given Assessment year, those additional Lots shall begin paying the Regular Assessment and Townhome Assessment, if applicable, on the first day of the initial conveyance of the Lot from Declarant to the Owner.

Section 5.8 Common Surplus. If the Regular Assessment and Townhome Assessment, if applicable, collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Regular Assessment and Townhome Assessment, if applicable, for the following year; or (c) apply the Common Surplus to the reserve.

Section 5.9 Assessment Certificate. The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate.

Section 5.10 Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Owners. All books and records must be kept in accordance with good accounting procedures and must be reviewed at least once a year by an independent accounting firm.

Section 5.11 Non-Payment of Assessment. Any Assessments levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Lot which shall bind the Lot in the hands of the then Owner and the Owner's successors and assigns.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of eighteen percent (18%) per year or at such other reasonable rate set by Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Lot.

Section 5.12 Priority of Association Lien. The lien provided for in this Article V shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record before a claim of this lien hereunder has been docketed in the office of the clerk of superior court in Beaufort County, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the Planned Community Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 5.13 Disputes as to Common Expenses; Adjustments. Any Owner who believes that the portion of Common Expenses chargeable to his Lot, for which an assessment

lien has been filed by the Association, has been improperly charged against his or her Lot, may bring action in an appropriate court of law.

Section 5.14 Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association. Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 5.15 Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage first deed of trust or by deed in lieu of foreclosure, such acquirer of title, his, her or its successors and assigns, shall not be solely liable for the share of the Common Expenses or other Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by such acquirer, other than Assessments for which a claim of lien has been docketed with the Beaufort County clerk of superior court prior to the recordation of the lien being foreclosed. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Lot from paying future Assessments.

Section 5.16 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs and reasonable attorneys fees shall be a lien against the Lot in accordance with Section 5.10 and Section 5.11 herein.

Section 5.17 Late Charge. The Association may impose a charge against any Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as may be

determined by the Association from time to time. Additionally, if an Owner shall be in Default in payment of an installment upon an assessment or of a single monthly assessment, the Association has the right to accelerate all monthly Assessments remaining due in the current fiscal year. The total of such Assessments, together with the delinquent Assessments shall then be due and payable by the Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such acceleration amount is not paid by the due date, the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 5.18 Miscellaneous.

5.18.1 The Association may change the interest rate due on delinquent Assessments (including any late charges), except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all Assessments then delinquent.

5.18.2 The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Lot owned. Otherwise notice sent by Association to the Lot is sufficient for any notice requirement under this Declaration.

5.18.3 The lien under this Article V arises automatically, and no notice of lien need be recorded to make the lien effective.

5.18.4 The Assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.

5.18.5 Any Assessment otherwise payable in installments shall become immediately due and payable in full without notice upon Default in the payment of any installment. The acceleration shall be at the discretion of the Board.

5.18.6 No Owner may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot.

5.18.7 This Section 5.18 applies to every type of Assessment.

5.19 Declarant Exempt From Assessments. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any assessment provided for in this Article V. Rather, all Lots owned by the Declarant shall be exempt from the payment of all assessments for as long as such Lots are owned by the Declarant. At such time as any Lot which is owned by the Declarant shall be conveyed or transferred away by the Declarant, all liens and assessments provided for in this Article V shall become immediately levied against such Lot and the owner of such Lot shall immediately become liable for the payment of all such assessments. The amount of each Regular Assessment and Townhome Assessment, if applicable, which shall become so payable with respect to any Lot shall be prorated according to the respective portions of the fiscal year that such Lot was owned by the Declarant and by such successor owner.

## **ARTICLE VI**

### **TOWNHOMES**

Section 6.1 Townhomes Development. Declarant intends to develop single family townhomes on Lots G1, G2, G3, G4 and G5, as depicted on the Plat recorded in Plat Cabinet \_\_\_\_\_, Slide \_\_\_\_\_, Beaufort County Register of Deeds, which townhomes are hereinafter identified as "Somerset Townhomes Phase I". In addition to all of the other sections of this Declaration, all of the Townhomes in Somerset Townhomes Phase I shall also be subject to the covenants, conditions and restrictions set forth in this Article VI.

#### Section 6.2 Party Walls.

(a) In General. The walls connecting adjacent townhome units and situated on or about the boundary line separating said townhome units shall be referred to herein as "Party Walls". To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for damage due to negligence or willful acts or omissions shall apply thereto. Notwithstanding the depiction of the boundaries of any Lot on the Plat, the centerline of any Party Wall shall constitute that portion of the common boundary line that runs between the attached areas of the townhome units separated by said Party Wall. Irrespective of whether the deed of conveyance of a Lot and townhome unit located thereon shall make a specific reference to the rights to a party wall or an easement for lateral support, conveyance of each Lot and townhome unit located thereon shall be deemed to include all undivided interest in so much of the width of the entire length of the Party Wall separating such townhome unit from the adjoining townhome unit as is situated on said townhome unit, together with a grant of easement of lateral support for such part of said wall as is situated on the adjoining townhome unit; and there shall be deemed reserved in

the conveyance of each of such Lots and townhome units located thereon a like easement of lateral support.

(b) Sharing of Repair and Maintenance. The cost of repair and maintenance of a Party Wall shall be shared by the Owners sharing use of the wall in proportion to such use and benefit.

(c) 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 Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Reconstruction and Repair. The Owner of any townhouse unit may reconstruct or repair a Party Wall used by such townhouse unit, and shall have the right to go upon the adjoining Lot to the extent reasonably necessary to perform such work. Such work shall be done expeditiously. Upon completion of such work, such Owner shall restore the adjoining Lot to as near the same condition as prevailed on it before the commencement of such work as is reasonably practicable.

(e) Weatherproofing. Notwithstanding any other provision of this Section 6.2, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(f) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section 4 shall be appurtenant to the Lot owned by such Owner and shall pass to such Owner's successors in title.

(g) Certification by Adjoining Owner That No Contribution Is Due. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Section 6.2, request of the adjoining Owner(s) a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge. However, where the adjoining Owner claims a right of contribution, the certificate shall contain a recital of the amount claimed.

Section 6.3 Casualty Insurance. The Executive Board shall maintain, to the extent available, casualty insurance upon the Common Elements and the Townhome buildings. "Buildings" shall mean the structures erected upon a Lot. Such insurance shall be an amount equal to but not less than one hundred (100%) percent of the full insurance value of the Buildings to the unfinished walls of a Building, including any fixtures, appliances, improvements and alterations that are part of the Building, on a replacement cost basis exclusive of land,

excavation, foundations and other items normally excluded from the property policies, and shall insure against such risk and contain such provisions as the Executive Board from time to time shall determine.

The owner of each Lot and Townhome located thereon shall obtain and maintain in effect at all times a master multi-peril policy of property insurance covering all insurable portions of said Townhome not insured by the Association, on a replacement cost basis in an amount not less than 100% of the insurable value, based upon replacement costs of the same.

Section 6.4 Other Insurance. The Executive Board shall obtain such other insurance coverages as the Executive Board shall determine from time to time to be desirable.

Section 6.5 Damage or Destruction of Townhomes. In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Townhomes covered by the insurance written in the name of Association, the Executive Board shall have such damage or destruction repaired or rebuilt by the Association. The Executive Board 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 property. Repair or reconstruction, as used in this Section, means repairing and restoring the Townhomes to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Executive Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

Section 6.5.1 Repair and Restoration. Any damage or destruction to Townhomes covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty (80%) percent of the voting membership otherwise agree. 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 such period, then the period shall be extended until such information shall be made available; however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether or not destruction shall be repaired or reconstructed.

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 costs thereof, the Executive Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners except Declarant in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair or reconstruction or if the improvements are not repaired or reconstructed, such expenses shall be deposited to the benefit of the Association.

In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event, the Townhome Lot shall be restored to its natural state and maintained as an undeveloped portion of the Townhome Subdevelopment by the Association in a neat and attractive condition.

Section 6.5.2 Duty to Repair. In the event of damage to or destruction of any Townhome or Common Element as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration of the Townhome and/or Common Element (including any damaged Building upon the Lot but not including any decoration or coverings for walls, ceilings or floors or other furniture, furnishings, fixtures or equipment in the Townhome, or an Owner's or occupant's personal property, furniture, fixtures, or equipment) and the Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense. Any surplus insurance proceeds remaining after repairs have been completed shall be treated as a common surplus. Any reconstruction or repair shall be in accordance with the plans and specifications of the original Townhomes and Common Elements or according to the plans and specifications approved by the Board.

Section 6.5.3 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance or repair of the damaged or destroyed property.

Section 6.5.4 Individual Insurance. Each Owner shall obtain insurance at his own expense, insuring personal property, additional living expense, personal liability, and any other coverage obtainable to the extent in the amount such Owner deems necessary to protect his own interest; provided that such policy shall insure one hundred (100%) percent of the cost of the improvements and betterments of the Townhomes, including but not limited to the wall coverings, paint, carpet, appliances, plumbing fixtures and heating and air conditioning systems. Provided further that any such insurance shall contain waivers of claims against the Board, or employees or agents thereof, or against any manager retained by the Board, or its officers, directors, employees or agents, for any loss or damage to any of the improvements upon the Lot, or to any Owner or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, however, that this waiver shall not apply to any such loss or damage due to intentional acts. Provided further that any such insurance shall provide that it is without contribution as against the insurance purchased by the Board. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Board to the proration of insurance purchased by an Owner under this Section 6.5.4, such Owner shall be liable to the Board to the extent of such reduction and shall pay the amount of such

reduction to the Executive Board upon demand and assign the proceeds of his or her insurance, to the extent of such reduction, to the Executive Board.

Section 6.6    Maintenance and Repair of Townhomes.

6.6.1    The owner of a Townhome shall be obligated to maintain and repair the interior of his or her Townhome, which excludes the exterior walls and the roof of such Townhome, at his or her sole cost and expense. The exterior of the Townhomes shall be maintained and repaired by the Association. In no event shall any change be made in the exterior appearance of any Townhome (including, without limitation, painting and the application of any brick, stucco, paneling or other siding) by an Owner.

6.6.2    The Association shall be responsible for maintaining the grass and the grounds of each Lot within a townhome sub-development which is not located inside a fence. Such maintenance shall consist of normal grass mowing and any other activity necessary to keep such grounds in a condition that is satisfactory to the Board, including, but not limited to, edging, fertilization, weed control, planting bed weeding, and annual pine straw application to planting beds.

6.6.3    In addition to the applicable lawn maintenance requirements set forth in Section 10.27 of Article X, the owner of each Lot within a townhome sub-development shall be obligated to keep and maintain any portion of the backyard area of such Lot which is enclosed within a fence or wall in a neat, sanitary and attractive condition which is satisfactory to the Board. Such maintenance shall include, without limitation, cutting the grass, weeds and other vegetation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, grass, ivy and other foliage as may be planted in and on such backyard area.

Section 6.7    Failure of Maintenance. In the event that the owner of any Lot shall fail to maintain any portion of his Lot, including the Townhome that is located on such Lot and the Backyard Area of such Lot, (including any fence that may have been erected in such Backyard Area), all as required under the terms and provisions of this Article, the Board shall have the right, exercisable by it or through its agents or employees, to undertake such maintenance after giving the owner of such Lot at least ten (10) days notice and an opportunity to correct the unsatisfactory condition. The owner of the Lot upon which such maintenance work is performed by the association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the

performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article V of this Declaration. In addition, all such costs shall be paid to the Association by such owner at the time as the next due regular assessment payment, as provided in Article V of this Declaration, or at such earlier time, and in such installments, as the Board shall determine.

## ARTICLE VII

### EASEMENTS AND ENCUMBRANCES

Section 7.1 Easement for Encroachments. All utility lines, and all other improvements as originally constructed by or on behalf of Declarant or its assigns shall have an easement to encroach upon any setback, Lot or Common Area as a result of the location of the building, utility lines and other improvements across boundary lines between and along Lots and/or the Common Areas, or as a result of building or improvement movement or alterations or additions from time to time, provided that such alterations or additions have complied with the requirements of this Declaration.

Section 7.2 Lot's Utility Easements. Easements are granted in favor of each Owner to and throughout the Common Areas and, if necessary, the setback areas of any other Lots, as may be necessary for the installation, maintenance, repair and use of underground water, gas, sewer, power and other utilities and services including power and communication, now or hereafter existing, including maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components. The foregoing notwithstanding, no Owner (other than Declarant) may exercise the easement rights reserved in this Section 7.2 without the prior written approval of the Board as described in Section 7.6 below and the Declarant, so long as it owns a Lot in the Subdivision.

Section 7.3 Utility Easements. Easements are reserved and/or granted hereby in favor of the Declarant and/or the Association through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon any Lot) and the Common Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components throughout the Common Areas. Without limiting any other provision in this Article VII, it is understood that Declarant's easement rights reserved herein

may be utilized for the benefit of property within or outside of the Subdivision. Each Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Declarant, or the Association, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 7.3. The easements may be assigned and/or granted by the Declarant and/or the Association to any utility or service company.

Section 7.4 General Easements. An easement is hereby reserved and/or granted in favor of the Declarant and/or the Association in, on, over and through the Common Areas and/or the Lots for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Areas and/or Lots, including all improvements thereon as required or permitted by the Constituent Documents or applicable law. An easement is hereby reserved in favor of Declarant over the Common Areas for the purpose of advertising or promoting sales of Lots in the Subdivision.

Section 7.5 Access Easement. Appurtenant to each Lot is an easement over any Common Area for necessary pedestrian and vehicular ingress and egress to and from any such Lot over the Common Areas, to and from a public thoroughfare. The easement shall be over such walkways, driveways, streets, alleys or other ways as are designated by the Declarant and/or the Association and shall be subject to the terms of the Constituent Documents.

Section 7.6 Use of Easement. Any use of the rights and easements granted and reserved in this Article VII shall be reasonable. If any damage, destruction, or disturbance occurs to a Lot or Common Area as a result of the use of any easement or right, the Lot or Common Area shall be restored by, or at the direction of, the Association promptly in a reasonable manner at the expense of the person or persons making the use of the easement or right that resulted in the damage, destruction or disturbance. Before beginning work, Association may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. Additionally, should any Owner other than Declarant elect to exercise its easement rights hereunder, it shall be required to obtain the Board's prior written approval (not to be unreasonably withheld), after providing the Board with detailed plans of its proposed work, as well as evidence of appropriate insurance and other such reasonable information or assurances as the Board may require. No easement may be granted across,

through, over, or under any Lot or Common Area, which materially restricts ingress and egress to the Lot or Common Area, unless reasonable alternate ingress and egress is provided or unless the restrictions is only temporary. All easements reserved hereunder shall be perpetual and non-exclusive.

Section 7.7 Reservation of Access Easement by Declarant. Declarant reserves an easement for itself, its grantees, successor and assigns, to enter upon the Subdivision for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. The easement shall be over the streets, sidewalks, bridges and other access ways of the Subdivision. Declarant further reserves the right to connect, at Declarant's expense, to any street, roadway, walkway or other means of access that are located on the Common Areas of the Subdivision. This reservation of access easements and the right of connection should be construed liberally in favor of the Declarant, in order to facilitate the development of all or any portion of the Subdivision or any land adjacent to the Subdivision.

Section 7.8 Reservation of Construction Easement by Declarant. The Declarant reserves the non-exclusive right and easement to temporarily go upon the Subdivision in order to complete the development of the Subdivision and the construction of the improvements to be located therein, and to develop other neighboring land. The easement should be construed broadly in favor of the Declarant, including giving Declarant the right to store temporarily construction materials, equipment or dirt. After the construction is finished, Declarant must, at Declarant's cost, repair any damage done to the Subdivision including to any landscaping. As soon as reasonably possible after Declaration has completed construction on the neighboring land, Declarant must remove all debris, equipment, materials and dirt from the Subdivision.

Section 7.9 Roadway Easement. Declarant reserves for its benefit and does hereby grant to all Owners the non-exclusive right of ingress and egress on, over and across all public and private roadways (the "Roadways") located on or to be located on a portion of the Subdivision which private roadways extend between one or more publicly dedicated streets. Roadways, other than those (if any) that have been accepted by applicable governmental authorities for maintenance, constitute Common Areas and shall be maintained, insured, and repaired by the Association in accordance with this Declaration. The Declarant hereby reserves the right (but not the obligation), in its sole discretion, to annex additional Roadways into the Subdivision. Notwithstanding the foregoing to the contrary, no part of the Roadway shall be dedicated or transferred to a unit of local government without acceptance of the unit of local government involved.

Section 7.10 Declarant's Easements: General. The easements and grants reserved for and granted to the Declarant also benefit and bind any heirs, successors and assigns of Declarant and their respective guests, invitees or lessees, including, without limitation, assignees of Declarant who do not own property within Somerset Subdivision.

Section 7.11 Easements to Run with Land. All easements and rights described in this Article VII are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

Section 7.12 Reference to Easements and Deeds. Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

## **ARTICLE VIII**

### **INSURANCE**

Section 8.1 General Insurance. The Association shall carry a master policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and if required by law, workmen's compensation insurance with respect to the Subdivision and the Association's administration thereof in accordance with the following provisions:

8.1.1 The Association shall purchase a master policy for the benefit of the Association, the Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Bylaws. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.

8.1.2 All Common Areas now or at any time hereafter constituting a part of the Subdivision shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one hundred (100%) percent of the replacement value thereof, with a deductible agreed to by the Board of Directors, exclusive of the cost of the land, foundations, footings, excavation, and architect's fees, without deduction for depreciation. The policy shall have cost of demolition, water damage (excluding floods, backing up of sewers and drains, the running off of surface water, and the overflow of a body of water), and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board of Directors, after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement cost thereof (subject to the deductible provisions described above) and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Owner as hereinafter permitted. Such policy shall also contain either a waiver by the insurer of any increased hazard clause, a severability of interest endorsement, or a provision stating that the coverage will not be affected by the act, omission or neglect of any person unless such act, omission or neglect is within the knowledge and control of the Association prior to the occurrence of the loss. Such policy shall not provide coverage for any items of personal property owned by any Owner.

8.1.3 Such master policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Association and to any mortgagee or mortgagees of any Owner not less than thirty (30) days prior to any expiration, substantial modification or cancellation of such coverage.

8.1.4 Such insurance by the Association shall not prevent an Owner of a Lot to obtain insurance on its own property, but no Owner may at any time purchase individual policies of insurance covering any item which the Association is required to insure. If any Owner does purchase such a policy, he or she shall be liable to the Association for any damages, expenses or losses which it suffers or incurs as a result thereof, and the Association shall have the same lien rights provided by Article V hereof

for Common Expense payments with respect to any such damages, expenses or losses not paid to it by such Owner.

8.1.5 The Board of Directors shall review the insurance coverage required under this Section 8.1 at least annually, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage that most closely approximates the required coverage with the deductible provisions as determined by the Board of Directors. In any event, all such insurance must comply, at a minimum, with the applicable requirements set forth in the North Carolina Planned Community Act.

8.1.6 If the required insurance coverage under this Section 8.1 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Subdivision may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Subdivision; and shall be due and payable to the mortgagee by the Association immediately. The repayment of this obligation shall be secured by a Special Assessment against all Owners under Article V of this Declaration and shall not require a vote of the Members of the Association, anything to the contrary in this Declaration notwithstanding.

8.1.7 The Association shall also maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The Association shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Owners, individually and as a group (arising out of their ownership interest in the Common Areas), to another Owner.

Section 8.2 Fidelity Insurance. The Association must have fidelity coverage against dishonest acts on the part of Officers and employees, Members of the Association, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Owners.

Section 8.3 Directors' and Officers' Errors and Omissions Insurance. The Association shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present against expenses actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and indemnification for Directors and Officers as the law of North Carolina permits. The policy or policies shall be in an amount to be reasonably determined by the Association.

Section 8.4 Premiums. All premiums upon insurance purchased by the Association shall be Common Expenses. Notwithstanding the foregoing, the Owners may be responsible for certain deductibles to the insurance policies purchased by the Association as outlined in Section 8.1 and Section 8.7 herein.

Section 8.5 Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association for the use of the Owners and their mortgagees as their interest may appear; provided, however, the proceeds of any insurance received by the Association because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise be permitted by this Declaration.

Section 8.6 Power of Attorney. Each Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Association. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds and to distribute the same to the Association, the Owners and their respective mortgagees as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Owners and the Subdivision as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

Section 8.7 Responsibility of Owner. The Association shall not be responsible for procurement or maintenance of any insurance covering any Lot, except for Townhome Units as provided in Section 6.3 of Article VI, or the contents of any Lot nor the liability of any Owner for injuries not caused by or connected with the Association's operation, maintenance or use of the Common Areas or other property located in the Subdivision. Each Owner shall, at his or her

own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his Lot. In addition, except for Townhome Units as provided in Section 6.3 of Article VI, each Owner shall maintain fire and extended coverage insurance on any improvements located on his lot, and the contents of any improvements located on his Lot. The Association may request the Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time.

Each Owner agrees that if any Owner(s) damages a building or other improvements now or at any time hereafter constituting a part of the Common Areas of the Subdivision which is covered under the Association's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to a building or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event an Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner as an Individual Assessment, which shall be due and payable following seven (7) days written notice.

Section 8.8 Release. All policies purchased under this Article VIII by either the Association or the individual Owners shall provide for the release by the issuer, thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Owners, member of their family, their employees, their tenants, servants, agents and guests, the Association, any employee of the Association, the Board, or any occupant of any improvement located in the Subdivision, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 8.9 Approximate Coverage. If any of the required insurance coverage under this Article VIII becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Association shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

Section 8.10 Additional Policy Requirements. All such insurance coverage obtained by the Association shall be written in the name of the Association, for the use and benefit of the

Association, the Owners and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

8.10.1 Exclusive authority to adjust losses under policies in force on the Subdivision obtained by the Association shall be vested in the Association provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

8.10.2 In no event shall the insurance coverage obtained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

8.10.3 All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.

8.10.4 The Association shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

8.10.4.1 a waiver of subrogation as discussed in Section 8.8;

8.10.4.2 that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;

8.10.4.3 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; and

8.10.4.4 that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

## **ARTICLE IX**

### **HARMONY, ENVIRONMENTAL CONTROLS**

Section 9.1 Architectural Control Committee. Except for original construction performed by or on behalf of Declarant or as otherwise in these covenants provided, no building, fence, electric pet fence, sidewalk, drive, mailbox, wall, playhouse, swimming pool, garage, carport or other structure, or improvement or anything attached thereto visible from the outside of the structure or improvement (including, without limitation, storm doors, windows, drapes or window coverings) shall be erected, placed, altered, or maintained within the Subdivision nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any architectural control committee appointed by said Board of Directors. Refusal of approval of plans, location or specification by said Board of Directors or architectural control committee may be based upon any reasonable ground, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the discretion of said Board of Directors or architectural control committee shall deem sufficient. After approval by the Board of Directors or architectural control committee is given, no alterations may be made in such plans except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished the Board of Directors or architectural control committee for its records.

## **ARTICLE X**

### **USE RESTRICTIONS**

Section 10.1 Use and Occupancy. The Association shall make Rules and Regulations to govern the use and occupancy of the Subdivision. In addition, the following covenants, conditions, and restrictions, as to use and occupancy shall run with the land and shall be binding upon each Owner, his heirs, tenants, licensees and assigns.

Section 10.2            Purpose of Subdivision. Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for other than housing and the common area community purposes for which the property was designed, and each Lot shall be used only for residential purposes, unless the Board of Directors authorizes some other use. Except for the construction, sales and management activities (including, without limitation, the right of Declarant and Builder to maintain one or more model houses, or sales offices) of the Declarant and Builder, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Subdivision property. To the extent permitted by law, an Owner may use a portion of his or her Lot for an office or studio (other than a music and/or dance studio) provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of said Owner's Lot.

Section 10.3            Obstruction of Common Areas. There shall be no storage or parking of any items, including baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in any part of the Common Areas, except as permitted by the Rules and Regulations. Patio porches (except screened in and/or enclosed porches) and decks, may be used only for their intended purposes.

Section 10.4            Parking. Except for vehicles being used by persons providing services to the Declarant, the Association, the Owners or otherwise used or authorized to be used at the Subdivision by the Declarant, no part of the Subdivision may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, all-terrain vehicles, camp car, golf cart, recreational vehicle, camper, truck which exceeds 3/4 ton, boat, boat trailer, or any vehicle with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "Special Vehicles"), unless such Special Vehicles are parked in the garage of the Owner who owns such Special Vehicle and the garage door of such Owner is completely closed at all times when a Special Vehicle is parked therein or unless such special vehicle is parked in special areas designated by the Declarant or the Association. Operative vehicles, other than Special Vehicles, used by a resident of a Lot as a primary source of transportation may be parked in the driveway of such Owner or in any garage space owned by the Owner. However, the residents of any one Lot may not collectively park more than four (4) operative vehicles other than Special Vehicles in the Subdivision. No vehicle shall be parked within any street right-of-way in the Subdivision. Inoperative vehicles may not be parked within the Subdivision unless these inoperative vehicles are parked in the garage and the garage door is completely closed. No

auto maintenance and/or repairs may be performed on the Subdivision except if performed inside the garage of a Owner. Vehicles, whether owned by an Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking in the Project, the Owner of the vehicle or other vehicle user hereby waives any claim against the Association resulting directly or indirectly out of the towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Association. Note that the Association is not obliged to try to determine the owner of a vehicle and first give notice, before towing the vehicle. If an Owner is not sure about the right to park at any particular area or space, the Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Owner or if the Board does not answer the written request by the Board, the Owner may park in the space until further written notice to the contrary from the Board. Note that the Association's right to tow a vehicle includes the right to immobilize it.

Section 10.5                      Compliance With Insurance Policies and Waste. Nothing shall be done or kept in any Dwelling Unit, in the Common Areas or on a Lot which will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Dwelling Unit, in the Common Areas or on a Lot which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas. All laws shall be obeyed.

Section 10.6                      Exterior Surfaces of Buildings. Owners shall not cause or permit anything to be hung, installed or displayed on the inside or outside of windows (except as provided herein) or hung on the outside of the doors (including but not limited to decorative door arrangements) or placed on the exterior walls of a building, and no sign (other than those described in Section 10.11 hereof and neighborhood identification signs, street signs, directional signs or signs concerning the use of the Common Areas), awning, canopy, flag pole, flag, banner, shutter, radio, television antenna or satellite dish shall be affixed to or placed upon the exterior walls or roof or any part of the building, the Lot, or the Common Areas without the prior written consent of the Association. The flag of the United States of America and the State of North Carolina, with maximum dimensions of 36 inches by 60 inches may be displayed upon the exterior of any Dwelling Unit, the Lot, or the Common Areas, so long as the location is approved in writing by the Association and is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended. Unless otherwise approved in writing by the Association, Owners shall not cause or permit any curtains, shades, shutters or

other window coverings to be hung inside or outside any windows, doorways, and/or patio doors which will show any color on the outside other than white or beige tones. **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.**

Section 10.7            Animals and Pets. No animals of any kind shall be raised, bred, or kept on any Lot or in the Common Areas, except that two dogs, two cats or one of each, or two other household pets may be kept on a Lot, subject to the Rules and Regulations, provided that it is not kept, bred or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations of the Association. Dogs, cats or other household pets must be kept within the confines of the Owner's Lot except when being held on hand leash by the pet owner of the animal. No Owner shall install a fence and/or electric fence on any portion of the Common Area without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Area. An Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal on a Lot shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Areas.

Section 10.8            Nuisances. No noxious or offensive activity shall be carried on in the Common Areas or on the Lot of an Owner, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants.

Section 10.9            Impairment of Structural Integrity of Building. Nothing shall be done on any Lot, or in, on or to the Common Areas which will impair the structural integrity of any building or which, absent the prior written approval of the Board, would structurally change any building.

Section 10.10 Laundry or Rubbish and Open Fires in Common Areas and Facilities. No clothes, sheets, blankets, other than temporary picnic blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas, or on any Lot in a manner visible from any Common Area, neighboring Lot, Dwelling Unit or street. The Common

Areas shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage or other rubbish shall be deposited only in covered sanitary containers as provided in Section 10.14 below. No open fires shall be permitted on any part of the Subdivision other than fires in charcoal grills or other similar cooking devices located upon Lots or grills or similar devices (if any), owned by the Association and constituting a portion of the Common Areas, provided the use of such devices does not violate any local governmental rules or regulations.

Section 10.11 Prohibited Activities. Except as otherwise provided in this Declaration, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, shall be conducted, maintained or permitted on any part of the Subdivision. A Lot Owner is permitted to place and maintain a standard "For Sale" or "For Rent" sign only in the window of the dwelling unit; provided, however it is of a typical size within the industry. A Lot owner is permitted to place and maintain political signs on the Lot provided (a) the display cannot be earlier than forty five (45) days before the day of the election and later than seven (7) days after an election day, and (b) the size and number of signs is in compliance with the ordinances for the town of Washington, N.C., or if there are no applicable ordinances, at least one political sign with the maximum dimensions of twenty four (24) by twenty four (24) inches. No other sign that is visible from the outside of the house may be placed on any part of the Subdivision except as expressly permitted by the Board of Directors. Declarant and/or the Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. An Owner must obtain the prior written consent of the Board of Directors in the event an Owner desires to maintain a "For Sale" or "For Rent" sign which is not of a typical size within the industry, or desires to maintain other displays or advertising, unless otherwise provided for under the Rules and Regulations. The right is reserved by the Declarant to use any such unsold or unoccupied Dwelling Units or other structures in the Subdivision as models and/or offices in connection with the construction, sale or rental of Lots. Declarant reserves the right to construct identification and informational signs on any part of the subdivision, the purposes of which are to assist Declarant in identifying the community and the location of the Lots, sale's offices, amenities, sale models or other uses within Somerset Subdivision. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

So long as the Declarant owns a Lot no action may be taken nor may any Rule or Regulation be adopted or amended that would (a) directly or indirectly alter the exterior appearance of any part of the Subdivision; (b) reduce or discontinue any maintenance standard or practice in effect as of the date when the Declarant no longer controls the Board; (c) adversely affect the Declarant's sale or leasing of any Lots; or (d) otherwise adversely affect the Declarant,

any of its rights, or any Lot owned by it without, in each case, first obtaining the Declarant's written consent.

Section 10.12 Alteration of Common Areas. Nothing shall be altered or constructed in or removed from the Common Areas except as otherwise provided in this Declaration and except upon the written consent of the Association. In addition, an Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables, on any portion of the Subdivision (including any Lot).

Section 10.13 Rental of Lots. In order to protect the equity of the Owners and to carry out the purpose for which the Association was formed by preserving the character of the Property as a homogeneous predominantly owner-occupied residential community and to avoid the character of a renter-occupied apartment complex, no more than fifty percent (50%) of the Lots in the Subdivision may be leased by the respective Owners at any one time. Each Owner in the Subdivision must obtain the approval of the Board prior to leasing his Lot, which approval shall not be unreasonably withheld if less than fifty percent (50%) of the Lots in the Subdivision are then currently being leased, and provided the following conditions are met: (a) not less than the entire Lot is being leased, (b) the term is not less than six (6) months; and (c) it is not being rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days, or (ii) any rental if the occupants of the Lots are provided customary hotel service such as room service for food and beverage, maid service and furnishing of laundry and linen. All leases of any Lot shall be in writing. All such leases shall provide that they are subject to all of the provisions of the Declaration, the Bylaws and the Rules and Regulations and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease. A copy of each such lease shall be given to the Declarant and the President of the Association immediately after it is executed.

If any lessor or lessee is in violation of any of the provisions of the foregoing documents, the Association may bring an action in its own name and/or in the name of the lessor to have the lessee evicted and/or to recover damages. If the Court finds that the lessee is or has violated any of the provisions of the Declaration, the Bylaws or the Rules and Regulations, the Court may find the lessee guilty of forcible detainer notwithstanding the facts that the lessor is not a party to the action and/or that the lessee is not otherwise in violation of lessee's lease or other rental agreements with lessor. For purposes of granting the forcible detainer against the lessee, the Court may consider the lessor a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (i.e., the Association). The remedy provided by this Section

10.13 is not exclusive and is in addition to any other remedy or remedies that the Association has. If permitted by present or future law, Association may recover all of its costs, including Court costs and reasonable attorney's fees, and such costs shall be a continuing lien upon the Lot which shall bind the Lot in the hands of the then Owner and the Owner's successors and assigns.

Section 10.14 Trash Disposal. Each Owner shall deposit all trash, garbage, or other rubbish by as directed and instructed by the Board. Owners shall keep trash containers at all times in each Owner's garage (if applicable), or in such other location as set forth in this Article X, except on the days which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Owners in the location designated for collection by the local waste removal authorities shall only remain in such location for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Owner in violation of this Article X, and may assess the Owner for the cost of such removal, which amount shall be payable on the date the next installment of the regular assessment is due.

Section 10.15 Nondiscrimination. No owner (including the Declarant), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale, lease or rental of any Lot nor in the use of the Common Areas.

Section 10.16 Deviations. Declarant at its sole discretion, is hereby permitted to approve deviations to restrictions in Article X in instances wherein its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that certain Lot only.

Section 10.17 Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Sites shall be clear, white or non-frosted lights or bulbs. Light wattage and placement shall be approved by the Board or Architectural Control Committee.

Section 10.18 Service Utilities. Fuel Tanks. Wood Piles. Trash. All service utilities, fuel tanks, wood piles and trash and garbage containers are to be enclosed within a fence, wall or plant screen of a type and size approved by the Declarant or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any roadway within the subdivision, or from any other residence within the subdivision. Notwithstanding the foregoing, unless prohibited by any federal, state or local law, statute, ordinance or regulation, all fuel tanks shall be located under ground.

Section 10.19 Garage Doors. Garage doors shall remain closed at all time except when necessary for ingress and egress.

Section 10.20 HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit on a Lot. Additionally, air conditioning and heating equipment and apparatus on each Lot shall be screened from view from the Roadway within the subdivision, or from any other residence within the subdivision.

Section 10.21 Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration, no fence or wall (including densely planted hedges, rows or similar landscape barriers) (i) shall be erected, placed, maintained or altered on any Lot nearer to any Roadway fronting such Lot than the front building corner of the main Dwelling Unit constructed on such Lot (unless otherwise approved by the Architectural Control Committee) and (ii) shall not exceed six (6) feet in height. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall.

Section 10.22 Mail and Newspaper Boxes; House Numbers. Declarant shall provided to each Owner a standard mailbox/newspaper box for such Owner's use on such Owner's Lot. No other mailbox or newspaper box shall be erected or maintained on any Lot. The location of the mailbox/newspaper box on a Lot must be approved in writing by the Architectural Control Committee. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the Architectural Control Committee.

Section 10.23 Vegetable Gardens. Vegetable gardens shall not be permitted on any Lot.

Section 10.24 Lawn Furniture and Statues. No lawn furniture or decorative items, such as statuette or renderings of animate or inanimate objects, or bird baths or bird feeders, shall be maintained in the front or side yards of any Lot unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the Architectural Control Committee. Lawn furniture and decorative items such as statuette renderings of animate or inanimate objects, or bird baths or bird feeders may be maintained in the rear yards of any lots, so long as confined to the patio areas. The terms of this section to the contrary notwithstanding, lawn furniture or decorative items such as statuette renderings of animate or inanimate objects, and bird baths or bird feeders shall only be allowed within the bricked wall section of each Townhome.

Section 10.25 All –Terrain Vehicles and Golf Carts. No all-terrain vehicles which are not designed for common use on the streets in any municipality in North Carolina, shall be driven in the Roadways or sidewalks of the Subdivision. Golf carts shall be used only in strict compliance with the rules governing same set out by the Association.

Section 10.26 Minimum Size Dwelling (a) No detached Dwelling unit shall be constructed on any Lot unless such Dwelling unit contains a minimum of fourteen hundred (1,400) square feet of enclosed dwelling area. (b) No Townhome unit shall be constructed on any Lot unless such Townhome unit contains a minimum of twelve hundred (1,200) square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling, provided however, that such term does not include garages, terraces, decks, open porches, and like areas.

Section 10.27 Lawns and Lawn Maintenance. Each Lot on which there is a completed Dwelling shall be maintained in a neat, sanitary and attractive manner condition by the Owner thereof, or as appropriate, the Association. In this context, the word "Lot" shall include that portion of the property from the outside of the structure on the applicable Lot to the adjacent paved road surface. "Neat" shall require, at a minimum that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. No Owner shall allow the grass on a Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. All improved Lots must have grass lawns; no gravel or similar type lawn are permitted. Lot maintenance shall also include without limitation, cutting weeds and other vegetation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, ivy, grass and other foliage as may be planted in and on such lot.

Notwithstanding the forgoing, the Association shall be responsible for the lawn care of the unfenced area of the Lots, to include mowing, edging, fertilization, weed control, planting bed weeding, annual pine straw application to planting beds and any other such lawn care as deemed desirable by the Board of Directors, in its sole discretion. The association shall not have the obligation to provide any lawn care within fenced areas of a Lot.

In the event that the need for maintenance, repair or replacement of the lawns is caused by the willful or negligent act of the Lot owner, his family or invitees, and specifically the failure to water the lawn, the cost of such maintenance, repair or replacement shall be added to and become part of the assessment to which Lot is subject .

Section 10.28 Failure to Maintain. If an Owner fails to maintain the Lot or the improvements thereon, the Association, after giving such Owner at least ten (10) days' written notice, shall be authorized to undertake such maintenance at the Owner's expense. By accepting title to his Lot, each Owner shall be deemed to grant access upon the Owner's Lot and Dwelling for such purpose and such entry shall not constitute a trespass. If such maintenance is undertaken by the

Association or Declarant, the charge therefore all costs of enforcement and collection shall be sue red by a line against the Lost as provided in Article V hereof.

Section 10.29 New Construction. Construction of new buildings shall only be permitted on Lots, it being the intent of this Covenant to prohibit the moving of any existing new or used building onto a Lot. Provided, however, nothing herein shall prohibit Declarant or Builder from moving an existing new or used building onto a Lot to be used for storage or for use as construction or sales office.

Section 10.30 Stormwater Permitting Covenants. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW7050831 as issued by the Division of Water Quality under NCAC2H.1000.

a. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.

b. These covenants are to run with land and be binding on all persons and parties claiming under them.

c. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

d. Alteration of the drainage as shown of the approved plans may not take place without the concurrence of Division of Water Quality.

e. The maximum built-upon area per lot is as shown in Attachment A of the permit. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

f. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by an persons.

g. Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

h. All roof drains shall terminate at least 30' from the mean water high mark.

## ARTICLE XI

### ENFORCEMENT

#### Section 11.1 Enforcement.

11.1.1 The Association or any Owner may enforce these covenants, conditions and restrictions. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any lawsuit filed to enforce this Declaration by injunction or restraint, there shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

11.1.2 In addition to all other remedies of the Association, the Association shall have the right to assess a maximum fine of \$150.00 per day (or such higher amount as may be allowed by law) per violation against any Owner who violates any provision of this Declaration or the Articles, Bylaws or Rules and Regulations of the Association after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Directors or as may be set forth in the Bylaws.

11.1.3 In addition to the above rights, the Association may also enter upon a Lot or any land upon which a violation exists to remove any violation, perform maintenance or make repairs thereon which is the responsibility of an Owner who has failed to remove said violation or to perform such maintenance or make such repairs (i) after having given such owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any action brought by the Association hereunder may be brought in its own name, in the name of its Board or in the name of its managing agent. In any case of flagrant or repeated violation by an Owner, he or she may be required by the Association to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

Section 11.2 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 11.3 Restrictions Run With Land. The easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and the Owners subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 11.4 Amendment. The Association (the Declarant controlling the Association until the expiration of the Development Period) may amend this Declaration at any time, as long as consistent with the design, scheme and purposes of this Declaration, by the affirmative vote or written agreement of the Owners to whom not less than seventy-five percent (75%) of all of the votes in the Association are allocated in accordance with Section 4.4 and Section 4.5 above. Any amendment must be recorded in the Beaufort County Register of Deeds. Following the end of the Development Period, no such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed amendment is sent to every Member at least thirty (30) days in advance of any action taken, and no such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas herein created (unless such amendment is consented to in writing by Declarant and all other beneficiaries of such permanent easements, rights of interests).

Section 11.5 Reservation of Special Declarant Right. Declarant reserves the right to maintain sales and management offices, model units, construction trailers, storage or staging areas, and advertising signs upon Lots or the Common Areas until the expiration of the Development Period and to exercise all other "Special Declarant Rights" as defined in the Planned Community Act. Without limiting the foregoing, and notwithstanding anything herein to the contrary, during the Development Period, Declarant shall have the right to annex additional Lots or Common Areas into the Subdivision by filing a supplement to this Declaration in the Beaufort County Register of Deeds together with an amendment to the Plat (if applicable) as set forth in Article II. Such additional Lots or Common Areas need not be contiguous to the Property. Declarant shall have the right to assign all or a portion of any rights or easements reserved herein by a written assignment thereof, recorded in the Beaufort County Register of Deeds.

Section 11.6 Management and Service Contracts. Any agreement for the professional management of the Subdivision of the Common Areas may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

Section 11.7 Binding Determination. In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Association, the determination thereof (i) by Declarant for so long as Declarant retains control of the Association; and (ii) thereafter by the Board of Directors of the Association shall be final and binding on each and all such Owners; providing that any determination which directly or indirectly affects Declarant shall require Declarant's prior consent to become binding upon Declarant.

Section 11.8 Captions and Titles. All captions, titles or headings in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 11.9 Notices. Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of (i) the date when received by such Owner, or (ii) the date which is three days after mailing (postage prepaid) to the last address of such Owner set forth in the books of the Association. The address of an Owner shall be at his Lot (or any of them if more than one) unless otherwise specified in

writing to the Association. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

Section 11.10 Governing Law. This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of North Carolina, and suit to enforce any provision hereof or to obtain any remedy with respect hereto shall be brought in state court in Greene County, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

Section 11.11 Approvals. In the event approval by the Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA") shall be required for any Lot, Declarant shall have the unilateral right, without the approval of the Members of the Association, to amend this Declaration to include any provisions required by HUD or VA.

## **ARTICLE XII**

### **MORTGAGEE'S RIGHTS**

Section 12.1 Notice of Rights of Mortgagee of a Lot. As used herein, the term "Mortgagee" shall mean the holder of a first lien mortgage or deed of trust on a Lot or Dwelling Unit who provides notice to the Association with its name and address with a request to receive any notices and other rights provided to "Mortgagees" under this **Article XII**. A Mortgagee of a Lot or Dwelling Unit shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot with respect to any obligation of the Owner under the Declaration, the Bylaws of the Association or the Articles of Incorporation of the Association. Any Mortgagee of a Lot can make the request for notification. The notification shall be sent not later than the 65th day after the occurrence of an uncured Default.

Section 12.2 Rights of First Refusal. Any right of first refusal now or hereafter contained in this Declaration or any amendment or modification hereto or otherwise arising in favor of the Association or certain Owners shall not apply to or preclude or impair in any way the right of the first Mortgagee to (i) foreclose or take title to the Lot pursuant to the remedies

provided in its mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of a default under the Mortgage; or (iii) sell or lease a Lot acquired by the Mortgagee.

Section 12.3 Rights of Mortgagee. Unless at least seventy five percent (75%) of the Mortgagees (based upon one vote for each first mortgage or deed of trust owned), and a vote of seventy-five percent (75%) of the votes allocated to the Members entitled to vote hereunder, the Association shall not:

12.3.1 by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Subdivision or Common Areas or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots or Dwelling Units (the granting of easements for public utilities or for other purposes consistent with the intended use of the Subdivision, or the conveyance or dedication of Roadways shall not be deemed a transfer within the meaning of this clause);

12.3.2 change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or Dwelling Unit;

12.3.3 by act or omission change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Dwelling Units, the exterior maintenance of the Dwelling Units, the maintenance of common fences or driveways or the upkeep of lawns and plantings in the Subdivision;

12.3.4 fail to maintain fire and extended coverage insurance on insurable Common Areas on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

12.3.5 use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of such Common Areas.

Section 12.4 Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

Section 12.5 Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot or Dwelling Unit and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Lot or Dwelling Unit, and first

mortgagees making such payments shall be owed immediate reimbursement therefor from the Owner.

Section 12.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or any other document or instrument affecting the title to the Property, Common Areas, any Lot, any Dwelling Unit, or the organization or operation of the Association shall give an Owner or any other party priority over any rights of first mortgagees of Lots or Dwelling Units within the Subdivision pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Areas.

### **ARTICLE XIII**

#### **NON-DEDICATED STREETS**

Section 13.1 Use. All non-dedicated streets constructed within the Subdivision are reserved as easements of public access for the common use of Owners and their families, guests and invitees, by commercial vehicles authorized to make pick-ups and deliveries, by public and private utilities personnel, trucks and equipment, by postal authorities and mail carriers, by emergency personnel and vehicles such as police, fire and ambulance, and by such other persons or classes of persons authorized by the Board of Directors of the Association, as a means of ingress or egress, and for such other uses as may be authorized from time to time by said Board. Such non-dedicated streets may also include underground utility lines, mains, sewers or other facilities to transmit and carry sanitary sewerage and storm water drainage. Except as provided by this Declaration, no acts shall be taken or things done by an Owner or the Association which are inconsistent with the reservation and grant of use and enjoyment hereinabove provided.

Section 13.2 Snow Removal, Maintenance, Reconstruction or Resurfacing. The Association, at the cost and expense of the Association, shall provide snow removal from, maintenance to and resurfacing or reconstruction of any non-dedicated streets or any storm water drainage facilities included as a part thereof or installed thereunder as it deems necessary or appropriate from time to time within its sole discretion.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

SOMERSET, LLC, a North Carolina limited liability company

BY: \_\_\_\_\_  
Chris W. Furlough, Member/Manager

BY: \_\_\_\_\_  
Karl M. Anderson, Member/Manager

NORTH CAROLINA

BEAUFORT COUNTY

I, \_\_\_\_\_, a Notary Public of said County and State certify that CHRIS W. FURLOUGH being personally known to me or identified by satisfactory evidence, came before me this day and acknowledged that he is a Member/Manager of SOMERSET, LLC, a North Carolina limited liability company, and that by authority duly given, he voluntarily executed the foregoing instrument, as the act of such limited liability company.

Witness my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of said County and State certify that KARL M. ANDERSON, being personally known to me or identified by satisfactory evidence, came before me this day and acknowledged that he is a Member/Manager of SOMERSET, LLC, a North Carolina limited liability company, and that by authority duly given, he voluntarily executed the foregoing instrument, as the act of such limited liability company.

Witness my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

JSB/dnt #3  
095201-00001

EXHIBIT A

Legal Description

BEING that certain parcel or tract of land containing a total of 15.09 acres (which includes 26 lots together with associated Common Areas including private alleys, drives and streets) as described on that certain map for record entitled "MAP FOR RECORD OF: PHASE I SOMERSET", dated January 17, 2007, prepared by Jarvis Consultants, Inc. and appearing of record in Plat Cabinet \_\_\_\_\_, Slide \_\_\_\_\_, Beaufort County Register of Deeds.

JSB/dnt #3  
095201-00001

CONSENT OF MORTGAGEE

\_\_\_\_\_, an \_\_\_\_\_ banking corporation and the holder of a deed of trust recorded in the Office of the \_\_\_\_\_ County, North Carolina Register of Deeds, in Book \_\_\_\_\_, Page \_\_\_\_\_, hereby consents to the execution and delivery of the foregoing Declaration of Covenants, Conditions and Restrictions, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the Beaufort County Register of Deeds and further subject and subordinate the above-described deed of trust to the provisions of the foregoing Declaration with attached exhibits (including, without limitation, any easements reserved therein).

IN WITNESS WHEREOF, \_\_\_\_\_, by its authorized officer, has caused this Consent to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

