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NOTE TO REGISTRAR: Please cross-index under "Seacottage Towns HOA, Inc."

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Wilmington, NC 28403

**DECLARATION
OF PLANNED COMMUNITY FOR
SEACOTTAGE TOWNS**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE
FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.**

Submitted electronically by "Marshall, Williams & Gorham"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the New Hanover County Register of Deeds.

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Article 1
Creation and Establishment of the Planned Community

THIS DECLARATION, made as of the ___ day of _____, 2023, by Laurel Companies, LLC, a North Carolina limited liability company, referred to as "Declarant" hereby submit the real property and improvements which comprise Seacottage Towns, a Planned Community, to the provisions of the North Carolina Planned Community Act (*N. C. Gen. Stat. §§ 47F-1-101 et seq.*) (referred to hereafter and in the Bylaws as the "Planned Community Act") in accordance with the provisions of the Planned Community Act and for the purpose of creating and establishing a Planned Community.

Article 2
Description of the Planned Community

Section 2.1 **Name.** The name of the Planned Community is Seacottage Towns (sometimes referred to as "Planned Community").

Section 2.2 **Location.** The Planned Community is located in the City of Wilmington, New Hanover County, North Carolina. The Planned Community or Property is that real property submitted to and controlled by the Planned Community Act, shown on a map entitled "Cottages at Wrightsville Avenue", and recorded in Map Book 72, Page 37, New Hanover County Register of Deeds.

Article 3
Definitions

The following terms as used in the Declaration and Bylaws for this Planned Community shall have the following meanings:

Section 3.1 ***Intentionally Omitted***

Section 3.2 ***Intentionally Omitted***

Section 3.3 **Assessments** means any and all sums levied by the Association against any Lot and its Owner as Common Expenses or other charges to include but not be limited to Common Expense liabilities, special Assessments, specific Assessments, fines, collection costs, late charges, interest, service, collection or administrative fees and reasonable attorney's fees as set forth in the Declaration and Bylaws.

Section 3.4 **Association** means Seacottage Towns HOA, Inc., a North Carolina nonprofit corporation, and its successors. The Homeowners Association shall be formed within one (1) year of the recordation of this Declaration.

Section 3.5 **Board or Board of Directors** means the Board of Directors of Seacottage Towns HOA, Inc, which is the governing body on behalf of and for the Association designated the Executive Board in *N.C. Gen. Stat. § 47F-1-103(13)*; Director or Directors means a member or members of the Board.

Section 3.6 **Bylaws** means the Bylaws of Seacottage Towns HOA, Inc.

Section 3.7 **Common Elements** means any and all real estate within the Planned Community owned or leased by the Association, other than a Lot. This real estate and any improvements located thereon are often referred to as common areas.

Section 3.8 **Common Expenses** mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. These include:

- (a) Expenses of administration, maintenance, repair or replacement of the Common Elements;
- (b) Expenses defined, referred to, or declared to be Common Expenses by the Documents or by the Planned Community Act;
- (c) Expenses agreed upon as Common Expenses by the Association;
- (d) Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association; and
- (e) Expenses levied against or which may be allocated to any particular Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.

Section 3.9 **Common Expense Liability** means the liability for Common Expenses allocated to each Lot as permitted by the Planned Community Act, the Declaration, Bylaws, or otherwise by law.

Section 3.10 **Declarant** shall mean Laurel Companies, Inc., its successors, and assigns.

Section 3.11 **Declaration** means this Declaration of Planned Community for Seacottage Towns.

Section 3.12 **Documents** mean the Declaration, Plats and/or Deeds recorded and filed for real property making up the Planned Community, the Articles of Incorporation of Seacottage Towns HOA, Inc., the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Document.

Section 3.13 **Limited Common Element** means a portion of the Common Elements allocated by the Declaration for the exclusive use of one or more but fewer than all of the Lots, including, but not limited to those areas so designated, if any, on any Plats filed or which may be filed in connection with this Planned Community.

Section 3.14 **Lot** means the physical portion of the Planned Community designated for separate ownership or occupancy by a Lot owner.

Section 3.15 **Lot Owner or Owner** means a person or legal entity who owns a Lot, but does not include a person having an interest in a Lot solely as security for an obligation. The Declarant is deemed not to be and shall not be considered a Lot Owner with respect to any duty to pay Assessments.

Section 3.16 **Intentionally omitted.**

Section 3.17 **Mortgage** shall refer to any mortgage, deed of trust, deed to secure debt or other transfer, or conveyance for the purpose of securing the performance of an obligation.

Section 3.18 **Notice and Opportunity to be Heard** means the right of a Lot Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right for an opportunity to be heard thereon. The procedures for such notice and opportunity to be heard are set forth in Article 19 of the Declaration.

Section 3.19 **Officer** shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Secretary, Treasurer and such other support and offices as the Board may determine necessary.

Section 3.20 **Person** means a natural person, corporation, limited liability company, business, trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

Section 3.21 **Planned Community** means Seacottage Towns.

Section 3.22 **Reasonable Attorney's fees** means attorney's fees reasonably incurred without regard to any limitations on attorney's fees which otherwise may be allowed by law.

Section 3.23 **Real Estate** means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

Section 3.24 **Resident** means and includes Owners, their immediate family members, tenants, and lessees.

Section 3.25 **Townhome or Townhome Unit** means the single-family structure located on the Lot.

Article 4 Special Declarant Rights

Section 4.1 **Declarant Control Period.** The Special Declarant rights and powers set forth in this Article 4 shall be exercised by the Declarant during the Declarant Control Period which shall terminate no later than the earlier of the following dates:

- (a) one year after the sale and closing of the last Townhome in this Planned Community; or
- (b) Declarant may terminate the Declarant Control Period any time prior to the above dates in its own discretion.

Section 4.2 **Declarant Developer Rights.** Declarant has the right to construct or to have constructed eight (8) Townhomes on the Property. Declarant shall also have the right to construct all streets, driveways and any and all infrastructure and all utilities related to construction of the Townhomes.

Section 4.3 **Marketing Activities.** Declarant shall also have the right to erect and maintain signs for advertising and marketing of the Townhomes.

Section 4.4 **Easements Reserved By Declarant.** Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, water lines, irrigation lines, telephone and electric power lines, cable television lines, sanitary sewer and storm drainage facilities, pumping and lift stations, drainage ditches, propane tanks and lines and for other utility installations over the Property and the Common Elements. Each owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Elements, acknowledge such reservations and the rights of Declarant to transfer such easements to the Association or to such utility companies as Declarant may chose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development. Certain easements reserved by the Declarant and the Association are shown on the plats. Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant and the Association shall have the continuing right (but not the obligation) and easement to maintain sewer and water lines located on the Lots, including the right to go into Townhomes and disturb the structure and floors thereof in order to maintain those lines located within or under said dwelling. Provided, however, all sewer and water lines located on the Lot and serving only one Townhome shall be maintained, repaired and replaced by the Lot Owner.

Section 4.5 **Declarant's Rights to Protect Land.** The Declarant shall have the right to protect the Common Elements from erosion by planting trees, plants and shrubs where and to the extent necessary or by such mechanical means as bulkheading, or other means deemed expedient or necessary by Declarant, as permitted by local ordinance. The right is likewise reserved to the Declarant to take necessary steps to provide and insure adequate drainage ways in the Common Elements.

Section 4.6 **Declarant's Right of Entry.** The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, propane tanks and lines and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in the Common Elements. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonable necessary to provide economical and safe utility installation and to maintain standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations and tanks within the Common Elements. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 4.7 **Declarant Exemption from Assessments.** Declarant shall be exempt from the payment of any Assessments and shall have no obligation to pay Assessments on any Lot or Townhome owned by the Declarant during the Declarant Control Period. Declarant may, but is under no obligation, to subsidize the management and operation of the Association.

Section 4.8 **Declarant Right to Appoint Board of Directors.** Notwithstanding anything in the Declaration or Bylaws to the contrary, the Declarant reserves the right to appoint the members of the Board of Directors of the Association. The right to appoint the members of the Board of Directors shall terminate on the sale and closing of at least four Townhomes.

Section 4.9 **Declarant Rights Regarding Amendment of Declaration.** During the Declarant Control period, the Declarant reserves the right to amend the Declaration in its sole discretion; provided that any proposed amendment requires the written consent of any buyer with a contract pending on one of the townhomes.

Section 4.10 **Transfer of Declarant Rights.** During the Declarant Control Period the Declarant may transfer its rights to any other person or entity in accordance with the Planned Community Act.

Section 4.11 **Right to Alter.** During the Declarant Control Period the Declarant reserves the right to change, alter or designate the location of Lots, roads, utilities, drainage facilities, easements and to change, alter or redesign the Townhomes.

Articles 5

Lots

Section 5.1 **Lots.** There may be up to eight (8) separate Lots. A Townhome Unit will be constructed on each Lot.

Section 5.2 **Lot Descriptions.** The Lots are designated on the map recorded in Map Book 72, Page 37, New Hanover County Register of Deeds. The Declarant will construct or have constructed up to eight (8) Townhome Units.

Section 5.3 **Allocated Interests.** The Declarant has determined that the Common Expense liability and the Allocated Interests of each Lot shall be twelve and a half percent (12.5%) for each Townhome. Common Expenses shall be shared by the Owners on the basis of the Allocated Interest of each Lot. Each Lot shall have one (1) vote on every matter for which a vote of the membership of the Association is required by the Documents.

Article 6 Common Elements

Section 6.1 **Common Elements.** Common Elements include all parts of the Planned Community located outside the boundaries of the respective Lots and include any real estate, both improved and unimproved, within the Planned Community owned or leased by the Association and as shown on the map recorded in Map Book 72, Page 37, New Hanover County Register of Deeds. By way of illustration but not limitation, Common Elements include real property often called common areas, facilities and amenities, including the Open Space #1 and Open Space #2.

Section 6.2 **Conveyance or Encumbrance.** The Common Elements shall be neither encumbered nor conveyed except as provided in the Planned Community Act, this Declaration, and the Bylaws.

Section 6.3 **Use of Common Elements.** Each Lot owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Lot Owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate Rules and Regulations limiting the use of some or all of the Common Elements to Lot Owners and their guests and to promulgate Rules and Regulations to provide for the exclusive use of a part of the Common Elements by a Lot owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any Lot owner may delegate, in accordance with the provisions of this Declaration and the Bylaws and reasonable Rules and Regulations of the Board, the right to use the Common Elements to immediate family members living on the Lot, to a limited number of guests, or to tenants who reside on the Lot. Limited Common Elements are reserved for the exclusive use of the townhome to which they are appurtenant.

Section 6.4 **Association's Acceptance of Common Elements and Permits.** No later than after the sale of the last Townhome, Declarant shall deed to the Association the Common and Limited Common Elements free and clear of any mortgages, deeds of trusts or ad valorem taxes and transfer any and all governmental permits, which the Association shall accept.

Article 7
Limited Common Elements

The Limited Common Elements consists of those portions of the Pervious Concrete Driveways depicted on the plat which extend past the boundaries of the Lots and into the Common Elements on the map recorded in Map Book 72, Page 37, New Hanover County Register of Deeds.

Article 8
Use Restrictions and Purpose

Section 8.1 **Residential.** Each of the Lots in the Planned Community shall be used for residential purposes only. No Lot or any portion of the Property shall be used for or as a "Residential Institution" except to the extent such are expressly protected and permitted by law. For purposes of this Declaration, a "Residential Institution" shall mean and refer to a nursing home, child care center, boarding house, assisted or dependent-living facility, adult care center, adult care home, family child care home, group home, residential day care, house of detention, reform school, asylum, or institution of a kindred character.

Section 8.2 **Restrictions in General.** The Lots and Common Elements of the Planned Community and all Owners and other persons are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association.

Section 8.3 **Business Activities.** No business activities shall be conducted on any portion of the Planned Community, provided, however, private offices may be maintained in Townhomes so long as such use is incidental to the primary residential use of the Lot does not require the coming and going of customers or clients of such business, and is approved in writing by the Board of Directors. The property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes business activity, health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot or store or keep anything on a Lot which will increase the insurance rates for the Association or for other Lot Owners.

Section 8.4 **Alterations, Attachments, Construction and Planting by Lot Owner.** No Lot Owner shall construct on, make structural alterations or modifications to any of the Common Elements, or Limited Common Elements, without the written approval of the owners of all Townhome Units.

No Lot Owner shall build or construct any temporary structures on a Lot without the express written permission of the owners of all Townhome Units.

No Lot Owner shall build or construct any permanent structure on a Lot except in accordance with the Architectural Control provisions and standards set out in Article 16 of this Declaration and in accordance with any such Rules and Regulations, and specifications promulgated by the Board of Directors.

No Townhome Unit may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred without the express written consent of all Townhome owners.

Section 8.5 Motor Vehicles. No motor vehicles (other than private passenger vehicles), boat, boat trailer, jet ski, mobile home, motor home, trailer, camper, recreational vehicles, or any similar items shall be stored in or upon the Common Elements, or Limited Common Elements, unless placed upon a portion of the Common Elements, or Limited Common Elements, which is designated for such purpose, or which may be agreed to by written consent of the owners of all Townhome Units. All motor vehicles within the Planned Community shall be operational and bear current registration and inspection. The Board may by Rules and Regulations limit the number of private passenger vehicles that any Owner may park in the Planned Community and may designate parking places for Owners and their guests.

Section 8.6 Signs. No sign, (including but not limited to, “for sale”, “for rent”, or “political signs” as defined in N.C. General Statute §47F-3-121) advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of the Townhome or Lot or on any portion of the Common Elements without written permission from the owners of all Townhome Units.

Section 8.7 Flags and Banners. No flags or banners shall be exhibited, flown, affixed or displayed by any Owner on any portion of the Townhome or Lot or on any portion of the Common Elements without written permission from the owners of all Townhome Units, except that Owners may exhibit, fly or affix or display on the Townhome or Lot one traditional flag of the United States or North Carolina, of a size no greater than four (4) feet by six (6) feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set for the in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States, except that no flag poles are permitted. The other methods of display must be in a location approved by the Board of Directors. No political flags or banners are permitted.

Section 8.8 Prohibitions on Use of Common Elements. Except when specifically approved in writing by the owners of all Townhome Units, the Common Elements, including Limited Common Elements, shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind, except in common trash receptacles, nor shall they be used in any way for the drying or airing of clothing, rugs, or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activities shall be carried on nor condition maintained by any Lot Owner either on his/her Lot or upon the Common Elements, if such activities should despoil, or tend to despoil, the appearance of the Planned Community. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Owners in the Planned Community and is necessary for the protection of the Lot Owners and is enforceable by the Board of Directors.

Section 8.9 Animals. No animal shall be kept on the Planned Community, except dogs and cats kept as household pets. The rules and regulations may regulate, permit, or prohibit the breed and number of dogs and cats. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, or other nuisance. All

pets shall be properly registered, vaccinated and display at all times proof of same as required by law. All dogs allowed upon the Common Elements must wear a collar with a tag identifying the Owner. All pets kept on the Planned Community must be owned by the Lot Owner, his/her tenant, guest or invitee. No pets may be permitted to run loose upon the Common Elements, and any Lot Owner who causes or permits any animal to be brought or kept upon the Planned Community shall indemnify and hold the Association harmless for and from any loss, damage, or liability which it sustains as a result of the presence of such animal on the Planned Community, regardless of whether the Association or the Board of Directors has given its permission therefor. Whenever a dog is allowed outside the Lot, then the dog must be on a leash and any animal droppings which occur during such time as the dog is outside the Lot must be immediately collected by the Owner and disposed of as required by law. The Board may adopt further Rules and Regulations regarding pets, including, but not limited, behavior standards.

Section 8.10 Access to Lots. The Association or its agent shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to its owner, as may be necessary for the maintenance, repair, or replacement of any of the Common Elements, including Limited Common Elements. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to Common Elements, to another Lot, or to the Lot itself.

Section 8.11 Nuisances. No Owner or Occupant of a Unit may use or allow the use of a Lot in any manner that creates disturbing noises, vibrations, odors, vapors, or smoke, including, without limitation, the use of sound systems or lights that will in the sole discretion of the Board of Directors interfere with the rights, comfort or convenience of the other Owners or Occupants. The Board of Directors, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the Planned Community shall be kept in a clean and sanitary condition. No rubbish, refuse, or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any Lot Owner (or his/her family, tenants, guests or agents) who shall dump or place any trash or debris upon any portion of the Planned Community shall be liable to the Association for the actual cost of removal thereof and the same shall be added to and become a part of the Assessment next coming due to which the Lot owner is subject; or alternatively the Association may impose a fine against the Lot Owner for violation of this section.

Section 8.12 Antenna. There shall be no exterior antenna for television, radio, citizen band, ham radio, nor any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals on a Lot, whether attached to a Townhouse or free standing, except as allowed by FCC Regulations but with the express written permission of the Owners of all Townhome Units.

Section 8.13 Lawful Use. No immoral, improper, or unlawful use shall be made of the Planned Community nor any part thereof. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

Section 8.14 Restriction on Transfer of Common Elements. The Association shall not seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, without the written approval of Owners of all Townhome Owners. The granting of easements for

public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph.

Section 8.15 Rules and Regulations. The Board of Directors may from time to time promulgate reasonable Rules and Regulations for the Common Elements, Townhouses Units, and Lots, respecting the use restrictions set out in this Article, but such Rules and Regulations shall be consistent with this Declaration and not in derogation of or intended as an amendment thereof.

Section 8.16 Prohibition of Time-Sharing. Time-sharing and time shares as defined in the North Carolina Time Share Act (*NC. Gen. Stat. § 93A-39 et seq.*) of any Lot in the Planned Community is prohibited.

Section 8.17 General. The Board of Directors may, from time to time, without consent of the Lot Owners, promulgate, modify, or delete Rules and Regulations applicable to the Lots, Common Elements, or Planned Community as a whole. Such Rules and Regulations shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by the vote of at least 50% of the Owners of Townhome Units. Such Rules and Regulations may be enforced by the Association in accordance with the Planned Community Act, the Declaration and By-Laws, to include but not be limited to the imposition of monetary fines and penalties.

All Lot Owners, tenants, mortgagees, and occupants of Lots shall comply with the Declaration, Bylaws, and Rules and Regulations. The acceptance of a deed or the exercise of any incident of Ownership or the entering into of a lease or the entering into occupancy of a Lot constitutes agreement that the provisions of the Declaration, Bylaws, and Rules and Regulations are accepted by, ratified by, and are binding on all Lot Owners, tenants, mortgagees, occupants and their guests and invitees.

Article 9 Insurance

Section 9.1 Coverage. To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage set forth herein, as a Common Expense in accordance with this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners at their respective last known addresses.

Section 9.2 Property and Casualty Insurance. The Association shall procure and maintain property and casualty insurance in an amount equal to 80% replace cost value on the Lots, on the Townhouses constructed on the Lots and in an amount equal to 100% of the replacement value of any structure constructed on the Common and Limited Common Elements insuring against all risks of direct physical loss, including fire and extended coverage periods. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master property and casualty insurance policy for the entire project, for the Owners to purchase insurance policies covering each Lot individually, then upon the

unanimous consent of all Lot Owners, the insurance coverage described herein may be turned over to the Owners to purchase individual policies. If the responsibility for maintaining the insurance coverage on the project is turned over to the individual Owners, then the Association shall be named as additional insured on each policy, each Townhome shall be insured for its full replacement value, and the provisions of Section 9.5 shall be modified accordingly.

Section 9.3 Liability Insurance. The Association shall maintain liability insurance in reasonable amounts covering all occurrences, commonly insured against for death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the Common Elements and covering the Association, the Board of Directors, Officers, and all agents and employees of the Association and all Lot Owners and persons entitled to occupy any Lot or other portion of the Planned Community.

Section 9.4 Policy Requirements. the insurance policies carried in accordance with Section 9.2 and 9.3 above must provide that:

1. Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;
2. The insurer waives its right of subrogation under the policy against any Lot Owner or members of the Lot Owner's household;
3. No act or omission by any Lot Owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy; and
4. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, except as provided under Article 17.6.

Section 9.5 Association as Trustee. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the mortgagees of Owners, if any. The proceeds from property and casualty insurance claims shall be payable to the Association as trustee for all Lot Owners and mortgagees of Owners. It shall be the duty of the Board of Directors at least annually to conduct an insurance review to determine that the policies in force are adequate to meet the risks of the Association. Such a responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify insurance policies in existence to meet the needs of the Association. All insurance shall run to the benefit of the Association, the respective Lot Owners, and their respective mortgagees as their interests may appear. Policies may contain reasonable deductibles, the payment of which shall be controlled by Article 17.6.

Section 9.6 Other Insurance. The Board of Directors may also obtain as a Common Expense:

1. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;

2. Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain a cross liability endorsement;

3. Such other insurance as the Board of Directors may determine to be necessary.

Section 9.7 **Insurance By Owners.** Owners are required to maintain property insurance to adequately insure the replacement cost of the drywall, wallcovering, flooring and contents of each Townhouse, fixtures and appliances in each Townhouse, and any upgrades or betterments made to each Townhouse or Lot after original construction. Owners are also required to maintain flood insurance to adequately insure the structure of each Lot.

Article 10

Damage, Repair and Reconstruction

Section 10.1 **Duty to Repair.** In the event that all or any part of the Common Elements of the Planned Community or any Townhouse shall be damaged or destroyed, such Townhouse and Common Elements shall be repaired or replaced and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47F-3-113 of the Planned Community Act.

Section 10.2 **Repair and Reconstruction.** The Board of Directors or its duly authorized agents shall arrange for and supervise the prompt repair and restoration of the damage in accordance with the original plats and plans or reconstruction compatible with such plats and plans.

The procedure for repair and construction shall be as follows:

(a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to the Common Elements, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring any structures to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against all of the Lot Owners. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as decided by the Board of Directors.

(c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the Plans and specifications under which the structure(s) of the Planned Community was originally constructed.

(d) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from Assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be

disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

(e) **Method of Disbursement.** The construction fund shall be paid by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

Article 11 Easements and Additional Rights

Section 11.1 Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in, to and over the Common Elements (but not the Limited Common Elements), and the easement granted herein shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against that Owner's Lot remains unpaid for a period of thirty (30) days or more or for any infraction of the Declaration, Bylaws or Rules and Regulations;
- (b) the right of the Association to limit the number of guests of Owners;
- (c) the right of the Association to borrow money for the purpose of maintaining, improving, or repairing the Common Elements and facilities; and

Section 11.2 Easements of Association. There shall exist the following easements from each Lot Owner to the Association for the benefit of the Association and each other Lot Owner (as the case may be):

- (a) Easements through the Common Elements for ingress and egress for all persons making use of such Common Elements in accordance with the terms of the Documents;
- (b) Easements through the Lots, and Common Elements for maintenance, repair, and replacement of the Common Elements including control of pests. Use of these easements, however, for access to the Lots shall be limited to reasonable hours, except that access may be had at any time in case of emergency;
- (c) Easements through the Lots and through the Common Elements for all facilities for the furnishing of utility services, which facilities shall include, but not be limited to, conduits, drainage, plumbing, and wiring.

Section 11.3 Utility Easements. There is hereby created a blanket easement upon, across, over and under all of the Planned Community for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, storm drainage, gas,

telephones, and electricity and a master television antenna system. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the Common Elements in the performance of their duties. Further, an easement is hereby granted to the Association, its respective officers, agents and employees, and to any management company selected by the Association to enter in or to cross over the Common Elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, drains, electrical lines, water lines, or other utilities may be installed or relocated on said property except as approved by the Board of Directors. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this article shall in no way affect any other recorded easement on the Planned Community.

Section 11.4 Declarant Easements. Declarant shall have easements for development and marketing as set forth in Article 4.

Section 11.5 Party Walls.

(a) Each wall which is built as part of the original construction of the Townhouses upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Adjoining Owners shall be responsible for any maintenance of any party wall. The Owners shall share equally the cost of any such maintenance.

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

(d) Notwithstanding any other provision of this Article, an Owner who by his neglect or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Article 12
Assessment and Collection of Common Expenses

Section 12.1 Purpose of Assessments. The Assessments for Common Expenses as described in Section 47F-3-115 of the Planned Community Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety,

welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Planned Community as may be more specifically authorized from time to time by the Board. Common Expenses shall include operating costs for the maintenance obligations of the Association pursuant to this Declaration, as well as the water bills for each Lot, including irrigation.

Section 12.2 Apportionment of Common Expenses. Except as set forth in this Article, Common Expenses shall be assessed against all Lots in accordance with the Allocated Interests in the Common Expenses as set forth in this Declaration.

Section 12.3 Common Expenses Attributable to Fewer than All Lots.

(a) If a Common Expense is caused by the negligence or misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.

(b) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Lots to which that Limited Common Element is assigned, equally, or in any other proportion that the Declaration provides, except for landscaping and irrigation costs, which shall be shared equally among the Lot Owners.

(c) Any Common Expense or portion thereof benefiting fewer than all of the Lots shall, in the discretion of the Board, be assessed exclusively against the Lots benefited.

(d) The costs of insurance provided by the Association shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.

Section 12.4 Lien for Assessments.

(a) Any Assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of New Hanover County in the manner provided in Section 47F-3-116. The Association may foreclose the lien under power of sale under Article 2A of Chapter 45 and Chapter 47F of the General Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorney's fees, interest, service, collection, or administration fees in connection with the collection of any type of Assessment charged pursuant to Sections 47F-3-102(10), (11), and (12), 47F-3-107(d), 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as Assessments under this Section. No Lot Owner may exempt himself from the obligation to pay any Assessment by waiver of the use or enjoyment of the Common Elements, easements or facilities or by abandonment of his Lot, nor may any Lot Owner refuse to pay any Assessment on the grounds his Lot does not benefit from any Assessment. A Lot Owner may not setoff amounts due to the Association

on the grounds he/she has a claim against the Association, and any such claim must be brought as a separate proceeding against the Association.

(b) The lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until ninety (90) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(d) This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

(e) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

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

Section 12.5 Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Planned Community during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual Assessments to be levied against each Lot for the coming fiscal year. Within 30 days after adoption of any proposed budget for the Planned Community, the Board shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget. The Board shall set a date for a meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than ten (10) not more than sixty (60) days after mailing of the summary and notice. The budget and the assessment established therefrom is ratified unless at the meeting the owners of at least three (3) Townhome Units vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until

such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

Section 12.6 Personal Liability of Lot Owners. The Owner of a Lot at the time any Common Expense Assessment or portion thereof is due and payable is personally liable for such Assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described in Section 12.4 above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot Owners to pay Assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid Assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual Assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

Section 12.7 Acceleration. If a Lot Owner is in default in payment of any Assessment or charge, including, but not limited to, the regular installments of the annual Assessment based on the budget, the Board of Directors may accelerate the remaining balance of the annual Assessment, including regular installments based on the budget, special Assessments, and specific Assessments, upon ten (10) days written notice to such Lot Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

Section 12.8 No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Assessments are made.

Section 12.9 Special Assessments.

(a) If the annual Assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners without a vote of the Owners.

(b) The Board of Directors may levy special Assessments for capital improvements upon the Common Elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the owners of four (4) Townhome Units at a special meeting of the Association duly called for that purpose.

Section 12.10 Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets,

the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required may be fixed by the Board and included within the budget and assessment as provided in Section 12.5 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Section 12.11 **Initial Contribution.** Each person or entity who purchases a Townhouse located on a Lot from the Declarant shall at the time of closing contribute an initial capitalization fee in the amount of \$1,676.00 to the Association, which will not be a credit toward the Lot Owner's annual assessment. The initial capitalization fee shall be collected from said person or entity at closing and paid to the Association. The initial capitalization fees shall be used by the Association for any operating expenses the Board deems necessary and any remaining funds shall be deposited in the Association's reserves.

Section 12.12 **Interest, Late Charges and Payments.** In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due Common Expense assessment or installment thereof, past due special Assessments, fines, or other past due charges shall bear interest at 18% per annum. The Board shall set a late charge to be assessed against Lot Owners for late payment of any Common Expense Assessments or installment thereof, special Assessments, fines, or any other charges. Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

Section 12.13 **Statement of Accounts, Fees and Charges.** The Association shall, upon request, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an officer or agent of the Association setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate. If the request is in connection with the sale or transfer of a Townhouse, the Association or its agent may charge the seller or buyer a reasonable fee to provide the statement and to change the Association's records. The Association and its agent may also charge a reasonable service, collection, or administration fee in connection with the collection of any type of Assessment.

Section 12.14 **Surplus Funds.** Any surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment shall be retained in the general operating funds or long-range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be considered the property of or paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future Common Expense Assessments.

Article 13

Association of Lot Owners

Section 13.1 **Association Authority.** The Association shall manage and administer the Planned Community and shall have all powers and duties granted to it in the Documents. Any

authority to be exercised, or duty or obligation to be performed by the Association, may instead be exercised or performed by the Owners with their unanimous consent.

Section 13.2 Association Membership. All Lot Owners by virtue of their ownership of a Lot in the Planned Community are members of the Lot Owners' Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Documents, such Owners shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

Section 13.3 Powers and Duties. Acting by and through its Board of Directors and/or its membership in accordance with the provisions of the Documents, the Association shall have the powers and duties necessary for the administration of the affairs of the Planned Community which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws and Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect Assessments for Common Expenses for Lot Owners;
- (d) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Planned Community;
- (f) Make contracts and incur liabilities;
- (g) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- (h) Cause additional improvements to be made as a part of the Common Elements subject to the provisions of Section 13.5 of this Declaration;
- (i) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 47F-3-112 of the Planned Community Act;
- (j) Grant easements, leases, licenses, and concessions through or over the Common Elements;
- (k) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than Limited Common Elements described in

Subsections 47F-2-102(2) and (4) of the Planned Community Act and for services provided to Lot Owners;

(l) Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Dollars (\$100.00) per violation or per day for a continuing violation of the Declaration, Bylaws, and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the Planned Community Act;

(m) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or Bylaws;

(n) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;

(o) Assign its right to future income, including the right to receive Common Expense Assessments;

(p) Exercise all other powers that may be exercised in this State by nonprofit corporations; and

(q) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 13.4 **Right to Assign Future Income.** The Association may assign its future income, including its right to receive and collect Common Expense Assessments, only by the affirmative vote of Owners of all Townhome Units at a meeting called for that purpose.

Section 13.5 **Additions and Alterations by the Board of Directors.** Whenever, in the judgment of the Board of Directors, the Common Elements shall require additions, alterations, or improvements costing in excess of five thousand dollars (\$5,000.00) during any period of twelve (12) consecutive months, and the making of such additions, alterations, or improvements shall have been approved by the affirmative vote of at least three (3) Townhome Units at a special or annual meeting or by written consent, the Board of Directors shall proceed with such additions, alteration, or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing five thousand dollars (\$5,000.00) or less on a cumulative basis during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Owners and the cost thereof shall constitute part of the Common Expense. Notwithstanding the foregoing, if, in the opinion of both of the members of the Board of Directors, such additions, alterations, or improvements are exclusively or substantially exclusively for the benefit of the Owner or Owners requesting the same, such requesting Owners shall be assessed and pay therefore in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board of Directors.

Article 14 Leases

In order to assure a community of congenial Lot Owners and thus protect the value of the Lots, the sale or leasing of a Townhouse by an Owner shall be subject to the following provisions in accordance with the terms and conditions of the Documents and the Planned Community Act. Owner agrees to cause all occupants of his or her Townhouse to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Townhouse are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or Rules and Regulations for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines constitute a lien against the Lot in accordance with the Planned Community Act and Declaration. Any lessee charged with a violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction as set forth in the Bylaws. Any violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. If the Owner fails after written notice to evict the lessee, the Board of Directors may evict the lessee or take any other legal action to have said lessee removed from the Planned Community.

Article 15 Amendments

This Declaration may be amended only by an instrument in writing executed by the owners of all Townhomes. No amendment shall become effective until recorded in the office of the Register of Deeds of New Hanover County, North Carolina. As long as Declarant holds title to a Townhome, any amendment requires the express written consent of the Declarant.

Article 16 Architectural Control

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved by unanimous approval of the Owners. The exterior color of a Townhome cannot be changed unless the color scheme of the entire Townhome development is similarly changed. Any such change requires the unanimous approval of the Owners.

Pursuant to North Carolina General Statute 22B-20, no solar collector may be installed without approval of the Board of Directors, and no solar collector is permitted that is visible by a person on the ground:

- (1) On the facade of a structure that faces areas open to common or public access;
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or
- (3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

If a solar collector meets the restrictions set forth above and is approved by the Board of Directors, the title owner(s) of the Townhome shall enter into a binding agreement, recorded at the New Hanover County Register of Deeds that requires the title owner(s) of the Townhome, and any successors in interest, to be responsible for: (i) all damages caused by the installation, existence, or removal of solar collectors; (ii) indemnification of the Association for any damages caused by the installation, existence, or removal of solar collectors; and (iii) maintenance, repair, replacement, or removal of solar collectors.

Article 17 Maintenance Responsibility

Section 17.1. **By the Association.** The Association shall maintain and keep in good repair, as a Common Expense, all of the Common and Limited Common Elements, including but not limited to the landscaped areas in the Common and Limited Common Elements.

The Association shall maintain, repair and replace as a Common Expense the exterior of the Townhouses as follows:

- (a) Exterior surfaces, as decided by the Board of Directors, in its sole discretion. Exterior surfaces shall not include any portion of the foundation of the Townhouses or any exterior surfaces not visible from outside of the Townhouses.
- (b) Siding.
- (c) Soffits.
- (d) Roofs, roof coverings, roof flashing, roof decks and roof vents.
- (e) Front Doors (but not including locks).
- (f) Fences.

Notwithstanding anything above that could be construed to the contrary, the Lot Owners (and not the Association) shall have maintenance, repair and replacement responsibility for the following:

- (a) All glass surfaces (window panes, glass doors, etc.).
- (b) Windows and window systems, including screens.

- (c) Exterior water faucets.
- (d) Garage doors.
- (e) All portions of the driveways, including those which are Limited Common Elements.
- (f) Exterior electrical outlets, wires or cables.
- (g) Entry doorbell.
- (h) HVAC.
- (i) Exterior Lights and fixtures.
- (j) Any Owner added improvements.
- (k) First and Second Floor Covered Decks and Third Floor Open Decks.
- (l) Exterior vents for bathrooms, dryers and stoves.
- (m) Any other portion of the Townhouse or Lot not specifically required to be maintained, repaired or replaced by the Association.

The Association shall be authorized to perform, after fifteen (15) days' written notice to a Lot Owner, any maintenance, repair or replacement upon a Lot for which the Owner is responsible and to charge the Owner, as provided for Assessments herein, with the costs of maintenance, repair or replacement plus fifteen per cent (15%).

Section 17.2. By the Owner. Every Lot Owner shall maintain, repair, and replace at his expense all portions of his Townhouse located on the Lot which are not maintained by the Association as set forth in Section 17.1 above. Each Lot owner shall maintain, repair, and replace, when necessary, all damage to the Townhouse and any other permanent structures located on the Lot unless the Association or its insurance coverage is responsible for remedying any such damage. All damages to the Common Elements intentionally or negligently caused by a Lot owner, his family, guests, invitees, agents, servants, lessees, employees, or contractors shall be repaired promptly by such Lot owner, except to the extent such damage is covered by hazard insurance required to be maintained by the Association, in which case the Association waives its right of indemnity to the extent of funds received and paid pursuant to said insurance policy. If the Lot owner defaults in his obligations herein and if any such default is not cured by him within fifteen (15) days from written demand by the Association, the same may be cured by the Association and the cost thereof shall be assessed against the Lot owned by the subject Lot owner. The Owners shall be responsible for maintenance and repair to all utilities and services to the Lots.

Section 17.3. **Restrictions on Lot Owners.** No Lot owner shall perform or cause to be performed any maintenance, repair, or replacement work upon his Lot which disturbs the rights of the other Lot Owners or jeopardizes the soundness or the safety of the Common Elements. If the Lot owner shall cause any work so performed on the Lot, which in the sole opinion of the Board violates the terms of this paragraph, it shall be immediately corrected and he shall refrain from recommencing or continuing any such work without written consent of the Board. A Lot owner shall not repair, alter, replace, or move any of the Common Elements or Limited Common Elements without the prior written consent of the Board.

Section 17.4. ***Intentionally Omitted.***

Section 17.5. **Responsibility for Damages.** If damage for which a Lot Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any Common Element or Limited Common Element, or the property of another Lot Owner, the Association may direct such Lot Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Lot Owner.

If, on the other hand, damage is inflicted on any Lot by an agent of the Association in the scope of his/her activities as such agent, the Association is liable to repair such damage or to reimburse the Lot Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Lot Owner. In both such above-described instances, when the claim involved is five hundred dollars (\$500.00) or less, the Board of Directors, or its designee, shall determine if a Lot Owner is responsible for damages to any Common Element or whether the Association is responsible for damages to any Lot. The Board, or its designee, shall accord the party charged with causing the damage with notice, an opportunity to be heard, presentation of evidence and notice of decision in accordance with those procedures set forth in Article 18 of this Declaration. The Board, or its designee, may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each Lot Owner charged or against the Association. Liabilities of Lot Owners shall be Assessments in accordance with Section 47F-3-107 of the Planned Community Act and the Declaration. Liability of the Association may be used by the Lot Owner as an offset against amounts owed to the Association.

Section 17.6. **Insurance Deductibles.** Notwithstanding any other provisions of the Declaration or Bylaws, this Article 17.6 shall control and interpret who is liable for any deductible under any insurance policy purchased by the Board. The deductible, if any, on any insurance policy purchased by the Board shall be paid by the Association as a Common Expense in the event that the cause of any damage or destruction to any portion of the Townhouse originated in or through the Common Elements or an apparatus located within the Common Elements; provided, however, that the Board may assess any deductible amount necessitated by either the intentional act or omission, negligence, abuse, misuse or neglect of a Lot Owner, or his or her family, guest, tenant or the family or guest of said tenant, against such Lot Owner. In the event that the cause of any damage or destruction to any portion of the Townhouse (Townhouse Units, Common Elements or Limited Common Elements) originated in or through a Townhouse or any component thereof, including, but not limited to, any water leak, discharge or overflow from a toilet, sink, shower, bathtub, water heater, ice maker, washer, pipe, appliance, aquarium, water bed, dishwasher, HVAC, window or door, then the Owner of said Townhouse shall pay for all damages up to the

amount of the deductible under the Association's insurance policy without regard to whether the Lot Owner or his or her family, guest, tenant or the family or guest of said tenant was negligent, and without regard to whether the Board, in its sole and unconditional discretion, decides not to submit a claim to the insurance company. Nothing herein shall be deemed to require that the Association maintain, repair or replace any portion of the Townhouse that it is not otherwise required to maintain, repair or replace under the Declaration or the Bylaws. If an Lot Owner fails to pay for all damages up to the amount of the deductible under the Association's insurance policy and the Association pays for any damages up to the amount of the deductible under the Association's insurance policy, then the costs paid by the Association shall be charged to the Lot Owner as an assessment for which the Association shall have a lien.

Section 17.7. **Freeze Damage Protection.** The Board of Directors may make Rules and Regulations as it deems necessary to implement and enforce freeze prevention measures.

Article 18 Enforcement Powers

Section 18.1 **Rules Making Authority.** The Planned Community shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the Common Elements. Provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of the owners of at least three (3) Townhome Units at an annual or special meeting. No Rule or Regulation shall be in direct conflict with either the Declaration or the Bylaws.

Section 18.2 **Fining Powers.** Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners, which fine(s) shall constitute an Assessment against the Lot in accordance with Article 11 hereof, and become a personal obligation of the Lot Owner, and a lien upon the Townhouse Unit; and to suspend an Owner's right to vote. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective. Charges for late payments of Assessments under Article 12 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

Section 18.3 **Abatement and Enjoinment of Violations.** In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner fifteen (15) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually

incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of Assessments.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of Assessments.

Article 19

Enforcement Procedures

In accordance with Section 47F-3-107.1 of the Planned Community Act, the Board of Directors or its designated representatives or committee shall not impose a fine or charge for damages against a Lot Owner unless and until the following procedure is followed:

Section 19.1 Notice. Prior to the imposition of any fine or charge for damages, the Board or a committee appointed by the Board shall serve the Lot Owner with written notice setting forth (a) the nature of the alleged violation; (b) the proposed fine or charge for damages to be imposed; (c) a statement that the alleged violator may present a written request for a hearing to the Board or a committee appointed by the Board, within fifteen (15) days of the mailing of the notice; and (d) a statement that the proposed fine or charge for damages shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) days of the notice. Service of the notice is deemed adequate if mailed by First Class Mail to the address of record of the Lot Owner, though the Association may also serve said notice by email to the Lot Owners' email address of record. If a timely request for a hearing is not received, the fine or charge for damages stated in the notice shall be imposed; provided however, the Board or its committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the Lot Owner. In the event of the same violation which reoccurs within one (1) year from the date of any notice hereunder, the Board or its committee may impose a fine without further notice to the Lot Owner or a hearing.

Section 19.2 Hearing. If the hearing is requested within the allotted fifteen (15) day period, the hearing shall be held before the Board or a committee appointed by the Board. The hearing may be held by conference call at the discretion of the Board or committee. The office of the Association's management agent or attorney shall be deemed a suitable and convenient location, among others, located in New Hanover County, North Carolina, for the hearing. The Lot Owner shall be given notice of the hearing and afforded a reasonable opportunity to be heard and present evidence. Prior to the effectiveness of any fine hereunder, proof of proper notice shall be placed in the minutes of the hearing. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Officer, Director or Agent who delivered such notice. The notice requirement shall also be deemed satisfied if the Lot Owner or his/her representative appears at the hearing. The minutes of the hearing shall contain a

written statement of the results of the hearing and the fine or sanction, if any, imposed, which written statement shall be mailed by first class mail to the Lot Owner.

**Article 20
Condemnation**

If part or all of the Planned Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47F-1-107 of the Planned Community Act.

**Article 21
Termination**

Termination of the Planned Community shall be accomplished only in accordance with Section 47F-2-118 of the Planned Community Act.

**Article 22
Security**

NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PLANNED COMMUNITY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH PERSON USING THE PLANNED COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO TOWNHOUSE UNITS AND TO THE CONTENTS OF TOWNHOUSE UNITS RESULTING FROM ACTS OF THIRD PARTIES.

**Article 23
Miscellaneous Provisions**

Section 22.1 **Captions.** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof.

Section 22.2 **Gender.** The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 22.3 **Waiver.** No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 22.4 **Invalidity.** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 22.5 **Conflict.** The Documents are intended to comply with the requirements of Chapter 55A of the North Carolina General Statutes. The Planned Community shall not be subject to the North Carolina Planned Community (Chapter 47F), though selected specific provisions (referred to by statute number) are incorporated herein by reference where indicated. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control, unless the statutes specifically allow that the Documents may vary from the statutes in which case the Documents control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

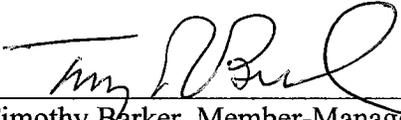
Section 22.6 **Arbitration.** Each Owner, by accepting a deed to a Lot, agrees that any Owner may require that all unresolved matters between the Owners be submitted to binding arbitration pursuant to the Uniform Arbitration Act set forth in North Carolina General Statutes §1-567.1 et seq. as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written by its authorized Member-Manager.

SIGNATURE PAGE FOLLOWS

This is 22nd day of June, 2023.

Declarant: LAUREL COMPANIES, LLC

 (SEAL)
Timothy Barker, Member-Manager

STATE OF North Carolina
COUNTY OF North Carolina

I, Stephanie Nicole Martin, a Notary Public in and for the State and County aforesaid, do hereby certify that Timothy Barker, Member-Manager of Laurel Companies, LLC, a North

Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

WITNESS my hand and official stamp or seal, this 22nd day of June, 2023.


Notary Public

My Commission expires:

May 02, 2026

STEPHANIE NICHOLE MARTIN
Notary Public
New Hanover Co., North Carolina
My Commission Expires May 02, 2026