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**NEW HANOVER COUNTY,**

**TAMMY THEUSCH PIVER**

**REGISTER OF DEEDS**

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ELECTRONICALLY RECORDED

Prepared by and return to: Ned M. Barnes, Attorney  
1009 N. Lake Park Blvd., Suite C-2  
Carolina Beach, NC 28428

**DECLARATION OF PLANNED COMMUNITY FOR  
1305 MACKEREL TOWNHOMES**

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

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF  
POLITICAL SIGNS**

**Article 1**  
**Creation of Planned Community**

The real property and improvements comprising 1305 Mackerel Townhomes, a Planned Community, are hereby submitted to the provisions of the North Carolina Planned Community Act *N.C. Gen. Stat. §§ 47F-1-101 et seq.* (referred to hereinafter 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 1.     **Name.**           The name of the Planned Community is 1305 Mackerel Townhomes.

Section 2.     **Location.**       The Planned Community is located in the Town of Carolina Beach, New Hanover County, North Carolina. The Planned Community or Property is that real property submitted to and governed by the Planned Community Act, as shown on a map entitled “Townhouse Plat for 1305 Mackerel Townhomes” recorded in Map Book 69, at Page 28, New Hanover County Register of Deeds.

**Article 3**  
**Definitions**

Section 1.     “Articles” shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, North Carolina as the same may be amended from time to time.

Section 2.     “Assessments” shall mean any and all sums levied by the Association against any Lot and its Owner as Common Expenses of other charges to include, but not limited to, Common Expense liabilities, special Assessments, specific Assessments, fines, collection costs, late fees, interest, service, collection or administrative fees and reasonable attorney’s fees as set forth in the Declaration and Bylaws.

Section 3.     “Association” shall mean 1305 Mackerel Townhome Owners Association, Inc., a North Carolina nonprofit corporation, and its successors.

Section 4.     “Board” or “Board of Directors” shall mean the Board of Directors of 1305 Mackerel Townhomes, which is the governing body on behalf of and for the Association. Director or Directors means a member or members of the Board.

Section 5.     “Bylaws” shall mean the Bylaws of 1305 Mackerel Townhomes.

Section 6. “Common Elements” shall mean any and all real estate within the Planned Community owned or leased by the Association, other than a Lot. The term Common Elements is to be construed as being synonymous with the term common areas.

Section 7. “Common Expenses” shall mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. Which shall 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 8. “Common Expense Liability” shall mean the liability for common Expenses allocated to each Lot as permitted by the Planned Community Act, the Declaration, Bylaws, or otherwise permitted by law.

Section 9. “Declarant” shall mean Ocean Cottages, Inc. a North Carolina corporation, its successors and/or assigns.

Section 10. “Declaration” shall mean this Declaration of Planned Community for 1305 Mackerel Townhomes.

Section 11. “Documents” means the Declaration, Plats and/or Deeds recorded and filed for real property comprising the Planned Community, the Articles of Incorporation of 1305 Mackerel Townhomes, the Bylaws, and the Rules and Regulations as they may be amended from time to time.

Section 12. “Limited Common Elements” shall mean 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 13. “Lot” shall mean the physical portion of the Planned Community designated for separate ownership or occupancy by a Lot owner.

Section 14. "Lot Owner" shall mean 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.

Section 15. "Mortgage" shall mean 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 16. "Notice and Opportunity to be Heard" shall mean 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.

Section 17. "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 18. "Person" shall mean 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 agency.

Section 19. "Planned Community" shall mean 1305 Mackerel Townhomes.

Section 20. "Reasonable Attorney's Fees" shall mean attorney's fees reasonably incurred without regard to any limitations on attorney's fees which otherwise may be allowed by law.

Section 21. "Real Estate" shall mean 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 22. "Resident" shall mean and include Owners, their immediate family members, tenants, and lessees.

Section 23. "Townhome or Townhome Unit" shall mean the single-family structure located on the Lot.

#### **Article 4 Declarant Control**

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein.

Section 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. Twelve (12) months from the recording of this Declaration.
- b. Declarant may terminate the Declarant Control Period any time prior to the above date in its own discretion.

Section 2. **Development Rights of Declarant.** For the duration of the Declarant's rights and obligations, Declarant shall have the right to conduct development, construction, marketing, and customer service operations within the Property in a customary and reasonable fashion.

Section 3. **Easements Reserved by Declarant.** Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, water 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 and 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. 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 Lot, 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. **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 reasonably 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 5. **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.

Section 6. **Amendment of Declaration by the Declarant.** During the Declarant Control Period, the Declarant reserves the right to amend the Declaration in its sole discretion.

Section 7. **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 8. **Right to Alter.** During the Declarant Control Period the Declarant reserves the right to change, alter or designate the location of Lot, roads, utilities, drainage facilities, easements and to change, alter or redesign the Townhomes.

## **Article 5**

### **Lots**

Section 1. **Lot Descriptions.** The Lots are designated on the map recorded in Map Book 69, Page 28, New Hanover County Register of Deeds. Any additional Lots added pursuant to the Declarant Rights referred to hereinabove in Article 4 will be designated on a map recorded in the New Hanover County Register of Deeds.

Section 2. **Common Expense Liability.** The Declarant has determined that the initial Common Expense Liability of each Lot shall be fifty percent (50%) for each Townhome. In the event additional Lots are added pursuant to the Declarant Rights in Article 4, such Common Expense Liability will be adjusted accordingly as further described by amendment of this Declaration or recording of a Supplemental Declaration. 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 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 69, Page 28, 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.

Section 2. **Conveyance of Encumbrance.** The Common Elements shall be neither encumbered nor conveyed except as provided in the Planned Community Act, this Declaration, and the Bylaws.

Section 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 4. **Association's Acceptance of Common Elements.** No later than thirty (30) days after the sale of the last Townhome or expiration of the Declarant Control Period, Declarant shall deed to the Association the Common and Limited Common Elements free and clear of any mortgages, deeds of trust 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 consist of those areas labeled "LCE" on the map recorded in Map Book 69, Page 28, New Hanover County Register of Deeds or those added in additional phases pursuant to the Declarant Rights in Article 4.

#### **Article 8 Use Restrictions**

Section 1. **Residential Use.** Each of the Lots in the Planned Community shall be, and the same hereby are, restricted exclusively to single-family residential use. 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 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 3. **Business Activities.** No business or business activity shall be carried on, in or upon any Lot at any time except, however, private offices may be maintained in Townhomes so long as such use is incidental to the primary residential use of the Lot and does not require the

coming and going of customers or clients of such business, and is approved in writing by the Board of Directors. However, the Board may, but shall not be obligated to, permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, is consistent with the foregoing and does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. 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 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 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 Board of Directors.

No Lot Owner shall build or construct any temporary structures on a Lot without the express written permission of the Board of Directors.

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.

Neither 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 Board of Directors.

**Section 5. Motor Vehicles.** No motor vehicles (other than private passenger vehicles, boats, boat trailers, jet skis, and jet ski trailers), mobile homes, trailers, campers, 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 Board of Directors. 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 places for the Owner and their guests.

**Section 6. Signs.** No sign, including but not limited to "for sale", "for rent", or "political signs" as defined in N.C. Gen. Stat. § 47F-3-121, advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner without written permission from the Board of Directors.

**Section 7. Flags and Banners.** No flags or banners shall be exhibited, flown, affixed or displayed by any Owner on any portion of the Townhome, Lot, or any portion of the Common Elements without written permission from the Board of Directors, except that the Owners may exhibit, fly, affix, or display on the Townhome or Lot one 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 forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States.

**Section 8. Prohibitions on Use of Common Elements.** Except when specifically approved in writing by the Board of Directors, 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 Lot Owners and is enforceable by the Board of directors.

**Section 9. Animals.** No animal shall be kept on the Planned Community, except household pets ordinarily kept in homes. The rules and regulations may regulate, permit, or prohibit the kind and number of domestic household pets. 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 becoming obnoxious or offensive on account of noise, odor, aggression, 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 are 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 is sustained 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, 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.

**Section 10. Access to Lot.** The Association or its agent shall have access to each Lot from time to time during reasonable working hours, as may be necessary for the maintenance, repair, or replacement responsibilities in Article 17. 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 11. Nuisances.** No unlawful, noxious or offensive trade or activity shall be conducted or permitted upon any Lot, or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner, or increase vehicular and/or foot traffic as determined in the sole discretion of the Board of Directors. Noxious, destructive or offensive activity shall not be carried on within any portion of the Property. No Owner or Occupant of a Lot may use or allow the use of the Lot at any time, in any way or for any purpose that may endanger

the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, 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 their 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 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 Board of Directors.

Section 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 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 the Board of Directors. 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 15. **Rules and Regulations.** The Board of Directors may from time to time promulgate reasonable Rules and Regulations for the Common Elements, Townhouse Units, and Lots, respecting the use restrictions set forth 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 16. **Prohibition of Time-Sharing.** Time-sharing and time shares as defined in the North Carolina Time Share Act (*N.C. Gen. Stat. § 93A-39 et. seq.*) of any Lot in the Planned Community is prohibited.

Section 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 a majority of the Lot Owners, or, during the time there are only two (2) Units subject to the Declaration, by the approval of both Owner. 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, guests, 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 1. Association Insurance. The Association shall maintain, to the extent reasonably available:

(a) Property insurance on the Common Elements, Limited Common Elements and the Townhome Units, with exception of the interiors of the Townhome Units, which shall be insured by the Lot Owners, insuring against all risks of direct physical loss commonly insured against including fire, wind, hail and extended coverage perils. Specifically, the Association shall not insure the wallboard, plasterboard, sheetrock, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Townhome Units, cabinets, appliances, plumbing, wiring, insulation, personal property or any other portion of the Townhome located within the finished interior walls of the Townhome Units or any portion of the Townhome Units that can typically be covered by "HO-3 or HO-6" insurance policies. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) 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 Elements.

(c) Such additional insurance as the Board of Directors, in the exercise of its business judgment determines advisable including without limitation, directors and officers' liability insurance, fidelity insurance, and workers compensation insurance.

(d) If the insurance described in subsection (a) and (b) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(e) Insurance policies carried pursuant to subsection (a) of this section shall 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 to subrogation under the policy against any Lot Owner or member of the Lot Owner's household.

3. No act or omission by any Lot Owner, unless acting within the scope of the Owner's 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, Section 6.

**Section 2 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, Section 6.

## **Article 10 Damage, Repair and Reconstruction**

**Section 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 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 Associations 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 the 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 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 (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 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 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 4 Declarant Easements.** Declarant shall have easements for development and marketing as set forth in Article 4.

**Section 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 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 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.

**Section 2 Apportionment of Common Expenses.** Except as set forth in this Article, Common Expenses shall be assessed against all Lots in accordance with Article 5, Section 3.

#### **Section 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.

(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 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 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-