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BY: SAMANTHA SPEAKER  
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NEW HANOVER COUNTY, NC

TAMMY THEUSCH PIVER

REGISTER OF DEEDS

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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE  
ANCHORS BEND TOWNES

THIS DECLARATION is made on the date hereinafter set forth by Anchor Homes, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant"):

WITNESS TO:

WHEREAS, Declarant is the owner of certain real property located in New Hanover County, North Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference (hereinafter sometimes referred to as the "Townhouse Property");

WHEREAS, the Townhouse Property is a portion of the property subject to the "Master Declaration Of Protective Covenants For Anchors Bend" recorded in Book 5265, Pages 605 through 662 (hereinafter referred to as the "Master Declaration") and subject to all Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the ANCHORS BEND HOA, INC., of record in the Office of the Register of Deeds for New Hanover County, North Carolina;

WHEREAS, Declarant desires to create on the Townhouse Property an exclusive residential community of townhouses to be known as the Anchors Bend Townes (hereinafter sometimes referred to as "Townes");

WHEREAS, Declarant desires to provide for enforcement of covenants and restrictions applicable to the Townhouse Property and, to subject all of the property within the Townhouse Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set

forth, each and all of which is and are for the benefit of said Townhouse Property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to administer and enforce the additional covenants and restrictions applicable to the Townhouse Property and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the ANCHORS BEND TOWNES HOA, LLC., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the Townhouse Property shown and described on that certain plat recorded on October 28, 2021 in Map Book 70, Page 115 in the Office of the Register of Deeds for New Hanover County, North Carolina to which reference is hereby made for a more particular description, is and hereafter shall be held, transferred, sold and conveyed subject to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Anchors Bend HOA, Inc., as the same may be amended and supplemented from time to time, except as specifically set forth herein, and to the additional restrictions, easements and covenants set forth herein which are for the purpose of enhancing the value of the Townhouse Property and which covenants shall run with the land and shall be binding upon all parties having any right, title or interest in the Townhouse Property as herein above described and shall inure to the benefit of each owner thereof.

## ARTICLE I DEFINITIONS

Section 1. "Master Association" shall mean and refer to the Anchors Bend HOA, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Declarant" shall mean and refer to Anchor Homes, LLC. It shall also mean and refer to any person, company or entity to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's right recorded in the applicable public registry for New Hanover County, North Carolina.

Section 3. "Townhouse Association" shall mean and refer to the Anchors Bend Townes HOA, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 4. "Townhouse" or "Townhouse Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision plat of the Townhouse Property with the exception of any Common Area owned in fee by the Townhouse Association or the Master Association and any public street rights-of-way shown on such recorded plat. In the event that any Townhouse Lot is increased or decreased in size by recombination or resubdivision through recordation of new plats, any newly-platted Townhouse Lot shall thereafter constitute a Townhouse Lot. Each Townhouse shall also be a Lot as described in the Master Declaration.

Section 5. "Townhouse Common Area" shall mean and refer to any and all real property, together with any improvements thereon, conveyed to the Townhouse Association. Except as otherwise provided in this Declaration, the Townhouse Common Area shall be maintained by the Townhouse Association or its successors in interest unless dedicated to public use as set forth in the Master Declaration.

Section 6. "Townhouse Owner" or "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any townhouse with the Anchor Bend Townes, including contract sellers, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 7. "Townhouse Property" shall mean and refer to the property described in Exhibit A to this Declaration and any additional property annexed pursuant to Article II of this Declaration.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF THE ANCHORS BEND TOWNES

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, used and occupied subject to the Master Declaration and to this Declaration as of the date of recording hereof, is described on Exhibit A attached hereto.

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

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. In addition to being a member of the Anchors Bend HOA, each owner of a Townhouse shall also be a member of the Anchors Bend Townes HOA. Membership shall be appurtenant to and may not be separated from ownership of any Townhouse which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Townhouses and may not be separated from ownership of any Townhouse.

There shall be two classes of Townhouses with respect to voting rights:

(a) Class A Townhouses. Class A Townhouses shall be all Townhouses except Class B

Townhouses as the same are hereinafter defined. Ownership of a Class A Townhouse shall entitle the Owner of such Townhouse to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Townhouse, all such persons shall be Members and the voting rights appurtenant to their Townhouse shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Townhouse.

(b) Class B Townhouses. Class B Townhouses shall be all Townhouses owned by Declarant which have not been converted to Class A Townhouses as set forth below. Declarant shall be entitled to nine (9) votes for each Class B Townhouse it owns. The Class B Townhouses shall cease to exist and shall be converted to Class A Townhouses when no Declarant owns any Townhouses within the Townhouse Property. When the Class B Townhouses cease to exist and are converted to Class A Townhouses, Declarant shall transfer management of the Anchors Bend Townes HOA, Inc. to a duly elected Board of Directors consisting of Class A Townhouse owners.

(c) Declarant's Voting Rights. Until the Class B Townhouses cease to exist, as provided above, Declarant shall be vested with the sole voting rights of the Townhouse Association on all matters (including election and removal of directors and officers of the Townhouse Association), except such matters as to which the Declaration, the Articles of Incorporation, or the Bylaws of the Townhouse Association specifically require a vote of the Class A Townhouse Members.

(d) Suspension of Rights. The Townhouse Association shall have the right to suspend the voting rights of an Owner subject to a hearing or opportunity to present evidence in accordance with Section 47F-3-107 of the Act for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. In addition to the obligation of each owner of a Townhouse to pay assessments to the Master Association as set out in the Master Declaration, each owner of a Townhouse, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 11 of this Article IV and all costs of collection, including reasonable attorney's fees, shall be a charge against and, a continuing lien upon the Lot against which such assessment is made subject to 47F-3-116 of the Act, as amended. Each such assessment or charge, together with interest and costs of collection, including reasonable

attorney's fees, subject to notice provided in accordance with 47C-3-116(e) of the Act, shall also be the personal or corporate obligations of the person(s) or corporation(s) owning such Townhouse at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Townhouse against which the assessment of charge was made.

It is the intent of the Declarant that any monetary fines imposed against a Townhouse Owner pursuant to the Bylaws of the Townhouse Association or this Declaration shall constitute a lien against the Townhouse of such Townhouse Owner to the same extent as if such fine were an assessment against such lot.

**Section 2. Purposes of Assessments.** The assessments levied by the Townhouse Association shall be used to promote the recreation, health, safety and welfare of the residents of the Townhouse Property and to enhance the value of the Townhouse Property.

**Section 3. Working Capital Assessment.** At the time of closing of each sale of a Townhouse, including the initial sale of same, a sum equal to Five Hundred Dollars (\$500.00) shall be collected from the purchase of such Townhouse and transferred to the Townhouse Association as part of its working capital. The purpose of such working capital contributions is to ensure that the Townhouse Association will have adequate cash available to defray operating costs, meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amount paid pursuant to this Section shall not be considered as an advance payment of any regular or special assessment.

**Section 4. Insurance Assessment.** At closing of the purchase of a Townhouse from Declarant, each Townhouse Owner shall contribute a prorated share of the annual insurance premium for the Townhouse purchased from the Declarant. Thereafter, the Townhouse Association shall assess the Owners, in advance, for each Townhouse's prorated share of Insurance premiums. The Owner shall have thirty (30) days following receipt of the invoice for the Insurance Assessment to pay the assessment or the assessment shall become a lien against the Townhouse.

**Section 5. Annual Assessments.**

(a) **Maximum Annual Assessment.** Declarant shall establish the Maximum Annual Assessment and initial annual assessment for Class A Townhouses.

For so long as a Class B Townhouse(s) exists, the Board of Directors, in its sole discretion, shall have the authority to adopt an annual budget without a vote of the membership. Once Class B Townhouses cease to exist, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the Members, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the Maximum

Annual Assessment for the previous year unless such increase is approved as set forth in Section 5(b), below.

(b) Annual Assessments: Ratification of Budgets. After Class B Townhouses cease to exist, the Board of Directors shall adopt a proposed budget at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Class A Townhouse Members, hereinafter referred to as "Members", of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as required by Section 7 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Any annual assessment ratified by the Members shall continue thereafter from year to year as the annual assessment until changed by the Board and ratified by the Members as set forth herein.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Townhouse Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 5(b) of this Article.

Section 7. Assessment Rate: Collection Period. Except as provided in Section 8 of this Article, the annual and special assessments shall be fixed at a uniform rate for all Townhouses and may be collected on a yearly, semi-annually, quarterly or monthly basis, as determined by the Board of Directors.

Section 8. Declarant's Assessments. Notwithstanding any other provision of this Townhouse Declaration or the Bylaws of the Townhouse Association, the Declarant shall not be obligated for, nor subject to, any annual or special assessment for any Townhouse or other property that it owns within the Townhouse Property, provided, however, that the Declarant shall be responsible for paying the difference between: (i) the operating expenses of the Townhouse Association; and (ii) the total operating revenues of the Townhouse Association from all sources (said difference being hereinafter referred to as the "Operating Deficit"). For purposes

of this Section, the term "operating expenses" shall not include contributions to any reserves for replacement, operating reserves, depreciation reserves, capital expenditures, or special assessments.

Declarant may, by written notice given by the Declarant to the Townhouse Association on or before November 30 of any year, to be effective as of January 1, terminate its obligation to pay the Operating Deficit and waive its right to exclusion from assessments. In such event, each Townhouse owned by the Declarant which contains a dwelling for which a Certificate of Occupancy has been issued shall be assessed at the same rate as all other Townhouses. Upon sale of a Townhouse by Declarant to any other person or entity, such Townhouse shall be assessed at Class A Townhouse rate, commencing on the day on which title to such Lot is transferred to such third party.

Section 9. Notice and Quorum for any Action Authorized Under Sections 5 and 6. After Class B Townhouses cease to exist, written notice of any meeting called for the purpose of taking any action authorized under Section 5(a) or 6 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members, in person or by proxy, entitled to cast thirty percent (30%) of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and if called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting.

Section 10. Date of Commencement of Annual Assessments: Amount of Initial and Subsequent Annual Assessments: Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Townhouses in any phase on the first day of the month following the conveyance of a Townhouse within that phase to an Owner other than the Declarant, Unless a lower amount is set by the Board of Directors and ratified by the Members, the first annual assessment shall be the "Maximum Annual Assessment" set forth in Section 5 of this Article and shall be prorated according to the number of days remaining in the calendar year.

The Townhouse Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Townhouse Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 11. Effect of Nonpayment of Assessments Remedies. An assessment not paid within ten (10) days after the due date, shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Townhouse Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien

against the Townhouse for which such assessment is due. Interest, late payment charges, reasonable attorney's fees, and the costs of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Townhouse Common Area or by abandonment of his Townhouse.

**Section 12. Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage on a Townhouse lot. Sale or transfer of a Townhouse Lot shall not affect any assessment lien; however, the sale and transfer of a Townhouse Lot pursuant to foreclosure of a first mortgage, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessment which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Townhouse Lot from liability for any assessment thereafter becoming due or from the lien thereof; but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

**Section 13. Exempt Property.** All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

**Section 1. Responsibilities.** The Townhouse Association, subject to the rights of the Owner set forth in this Declaration, shall be responsible for the exclusive management and control of the Townhouse Common Area and shall keep the Townhouse Common Area including the roadways and parking areas, in a good, clean and proper condition, order and repair. Such maintenance shall include, but is not limited to, mowing, edging, fertilizing, weeding, applying pine straw or mulch and pruning of trees and shrubs within the Townhouse Common Area; maintaining the irrigation system for the Townhouse Common Area; and repairing and replacing paved areas within the Townhouse Properties, as needed. In the event that the need for maintenance, repair or replacement of any of the Common Area is caused by the willful or negligent act of the Townhouse Owner, his family, or his invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Townhouse is subject.

In addition to maintenance upon the Townhouse Common Area, the Townhouse Association shall provide exterior maintenance upon each Townhouse, which is subject to assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, decks, walks, driveway and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance, repair or replacement to the Townhouse is caused by the willful or negligent act of

the Townhouse owner, his family, or his invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Townhouse is subject.

The Townhouse Association shall be responsible for the payment of all costs, charges and expense incurred in connection with the operation, maintenance, administration and management of the Townhouse Common Area and the performance of its other obligations hereunder. The Townhouse Association shall operate and maintain areas designated by the Declarant as Townhouse Common Areas, whether or not title to such areas has been formally conveyed to the Townhouse Association. The Townhouse Association shall also be responsible for enforcement of the Covenants and restrictions continued in this Declaration

Section 2. Manager. The Townhouse Association may employ and pay for the services of a person or entity, including the Declarant (the "Manager"), to assist the Association in managing its affairs and carrying out its responsibilities hereunder and such other persons or entities, including attorneys and accountants, as the Association deems necessary or advisable, whether such persons or entities are engaged, furnished or employed by the Manager or directly by the Association. The Association may enter into a management agreement for such management services upon such terms as the Board of Directors may deem appropriate.

Section 3. Personal Property for Common Use. The Townhouse Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided by the Articles of Incorporation or Bylaws of the Townhouse Association.

Section 4. Implied Rights. The Townhouse Association may exercise any other right or privilege and take any action authorized by this Declaration, the Townhouse Association's Article of Bylaws, or the Act of the North Carolina Nonprofit Corporation Act (Chapter 55A), as from time to time amended, and every other right or privilege reasonable necessary to effectuate the exercise of any right or privilege or the taking of any action authorized herein or there.

Section 5. Declarant's Reserved Rights; Townhouse Association's Obligation of Cooperation. The Townhouse Association shall accept conveyance of any Townhouse Common Area conveyed to it, in fee or by easement, by Declarant or, at the request of Declarant, by an owner of any property within or to be annexed into the Townhouse Property and upon request of Declarant and without further consideration, shall execute any document necessary to evidence such acceptance. Until such time as Declarant has completed all of the contemplated improvements and have sold all of the Townhouse Lots.

(a) Declarant shall have the right to alter the boundaries of the Townhouse Common Area, whether or not it has been previously deeded to the Townhouse Association, subject to 47F-3-112 of the Act, and provided that such alteration does not substantially, materially and adversely affect the function and use the Townhouse Common Area. The Townhouse Association and each Owner hereby in-evocably appoints the Declarant as his attorney-in-fact to execute

and/or deliver any documents, plats, deeds, or other written matters necessary or convenient to accomplish the addition of Townhouse Common Area or Properties, or both, to create easements as deemed necessary by Declarant, and to adjure the boundary or boundaries of the Townhouse Common Area.

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

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

(d) Declarant shall have the right, but not the obligation, to loan money to the Townhouse Association in such amounts and upon such terms and conditions as to which the Declarant may agree. Payments due to the Declarant under any such loans may, at Declarant's option, be credited against any assessments coming due at any time from the Declarant.

(e) In addition to all other rights of the Declarant, no amendment shall be made to this Declaration, and no rules or regulation shall be adopted, interpreted or enforced by the Townhouse Association, so as to modify the assessments or other charges applicable to the Declarant or assessed against the Townhouse Lots owned by Declarant, or which shall restrict, impair, or, in Declarant's sole judgment, materially adversely affect the activities of the Declarant with regard to construction, use of Townhouse Common Area and delegation of the right to use the Townhouse Common Area, or the marketing and sale of Townhouse Lots by the Declarants, whether or not such activities are enumerated in the preceding paragraphs, without the express prior written consent of Declarant.

In exercising any of the rights provided or granted under this article, neither Declarant nor the Townhouse Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Townhouse Common Area to less than the area required by the appropriate governmental authority as of the date of this Declaration.

ARTICLE VI  
PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment and Access.** Except as limited by the provisions of this Section 1 and by the rules and regulations adopted by the Board of Directors of the Townhouse Association, every Owner shall have a right and easement of enjoyment in, use of, and access to, from and over the Townhouse Common Area, which right and easement shall be appurtenant to, and shall pass with title to every Townhouse Lot subject to:

(a) the right of the Townhouse Association to charge reasonable admission and other Fees for the use of the Townhouse Common Area and to limit the use of such facilities to Owners and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Townhouse Association to suspend the voting rights of an Owner subject to a hearing for opportunity to present evidence in accordance with 47F-3-107.1 of the Act for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Townhouse Association to dedicate, sell or transfer all or any part of the Townhouse Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. After Class B Lots cease to exist, no such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Townhouse Association and at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed document recorded in the applicable public registry for New Hanover County, North Carolina. Nothing herein shall be deemed to prohibit the Board of Directors of the Association, without consent of the Members, from granting easements over and across the Townhouse Common Area to any public agency, authority or utility for the installation and maintenance of sewage, utility (including cable television) or drainage facilities when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of properties with the Townhouse Property. Notwithstanding anything herein to the contrary, the Townhouse Common Area shall be preserved for the perpetual benefit of the owners of Townhouse Lots within the Townhouse Property and shall not be conveyed except to a governmental entity or another non-profit corporation organized for similar purposes.

(d) the right of the Townhouse Association to borrow money and, after Class B Lots cease to exist, with the assent of Member entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the

rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Townhouse Association as set forth herein.

(e) the right of the Townhouse Association to exchange all or part of the Townhouse Common Area for other property and consideration and like-kind value and utility, provided, however that, after Class B Lots cease to exist, any such dedication shall require the assent of the Members as set forth in subparagraph (c) above, and further provided that, if the Board of Directors of the Townhouse Association determines, in its sole discretion, that such exchange is necessary to cure an encroachment or setback violation on any Lot, the Board may effect such exchange without the consent of or approval by the Members.

(f) the right of the Townhouse Association to adopt, promulgate and enforce rules and regulations concerning the use of the Townhouse Common Area.

(g) the right of the Townhouse Association to otherwise deal with the Townhouse Common Area as provided in the Articles of Incorporation and Bylaws of the Townhouse Association.

#### Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the owner within the Townhouse Property in New Hanover County, North Carolina.

(b) Tenants: Contract Purchasers. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be assigned by such Owner to tenants or contract purchasers who occupy a residence with the Townhouse Property or a portion of said residence, as their principal residence in New Hanover County, North Carolina. So as not to overburden the use of the Townhouse Property, if an Owner assigns said right and easement of enjoyment and access to Owner's tenants or contract purchasers, then so long as such assignment is in effect, Owner shall forfeit his right and easement of enjoyment and access.

(c) Guests. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

(d) Suspension of Rights. The rights of any delegate or assignee of an Owner shall be Suspended by, upon and during suspension of such Owner's rights.

Section 3. Conveyance of Common Area To The Townhouse Association. No later than the time Declarant no longer exercises voting control over the Townhouse Association as provided in Article III hereof, Declarant shall convey, and the Association shall accept, fee simple

title to all Townhouse Common Area (except Common Area easements) within the Townhouse Property, and shall reserve for or grant to the Townhouse Association all Townhouse Common Area easements, all subject to such easements, reservations, conditions and restrictions as they may be of record, and the Association shall accept all such conveyances, grants and reservations, provided however, that so long as Declarant owns any Lots within the Common Area deeded to the Townhouse Association for the purpose of constructing and maintaining any improvements on the Townhouse Common Area as it deems necessary or advisable, provided that any such improvements must comply with the requirements of the appropriate governmental authority. Any improvements placed on the Townhouse Common Area by Declarant shall become the property of the Townhouse Association upon completion of such improvements.

**Section 4. Regulation and Maintenance of Townhouse Common Area and Townhouse Common Area Easements.** It is the intent of the Declarant that the Townhouse Common Area be preserved for the perpetual benefit of the Owners.

(a) **Regulation of Townhouse Common Area.** The Townhouse Association may adopt and promulgate rules and regulations governing the use of the Townhouse Common Area by Owners and their family, tenants, guests and invitees. No Owner or other permitted user shall use the Townhouse Common Area or any portion thereof in violation of the rules and regulations contained in this Declaration or subsequently adopted by the Townhouse Association.

Without limiting the generality of the foregoing, no Owner or tenant, guest or invitee of an Owner shall, without the specific prior written consent of the Townhouse Association: (i) damage or waste the Townhouse Common Area or improvements thereon or remove any trees or vegetation therefrom; (ii) erect any gate, fence, structure or other improvement or thing on the Townhouse Common Area; (iii) place any garbage receptacle, trash or debris on Townhouse Common Area; (iv) fill or excavate any part of the Townhouse Common Area; (v) landscape or plant vegetation on Townhouse Common Area; or (vi) use the Townhouse Common Area or any part thereof in a manner inconsistent with or in any way interfering with the rights of other Owners.

(b) **Rights and Responsibilities of the Townhouse Lot Owners as to Townhouse Common Area Easements.** Each Owner of a Townhouse Lot upon which a Townhouse Common Area easement lies, shall pay all property taxes and other assessments levied against his Townhouse, including that portion of such tax or assessment as is attributable to such Townhouse Common Area easement.

(c) **Rights and Responsibilities of the Townhouse Association as to Common Area.** The Townhouse Association shall have the right and obligation to ensure that the Townhouse Common Area is preserved for the perpetual benefit of the Owners, and, to that end, shall: (i) maintain the Townhouse Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners, subject to the provisions of this Declaration; (ii) procure and maintain adequate liability insurance covering the Townhouse Association and its Members, Directors and Officers, against any loss or damage suffered by any person, including

the Owner of the Lot upon which Townhouse Common Area lies, resulting from use of the Townhouse Common Area, and adequate hazard insurance covering the real and personal property owned in fee by the Association; and (iii) pay all property taxes and other assessments levied against all Townhouse Common Area owned in fee by the Townhouse Association.

(d) Declarant's and Townhouse Association's Right of Entry. The Declarant and the Townhouse Association and the employees, agents, contractors and subcontractors of each, shall have a non-exclusive right and easement at all times to enter upon any portion of a Townhouse Lot reserved or designated as a Townhouse Common Area easement for the purposes of: (i) installing and maintaining subdivision entrance signs, features, fencing and landscaping; and (ii) making such improvements to the Townhouse Common Area; and (iii) maintaining the Townhouse Common Area easement in its natural or improved stated.

Section 5. General Maintenance Obligation of Townhouse Owner. Each Owner will have the responsibility and obligation to maintain or repair or replace, at the Owners expense, all items or improvements that service only the Owners unit or all items or improvements that under the Owners direct and exclusive control.

## ARTICLE VII PARTY WALLS

Townhouse units shall be separated from one another by walls, which are party walls and shall be subject to the following special provisions:

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhouses and placed on the dividing line between the Townhouse Lots shall constitute a party wall, and to the extent not inconsistent with provisions of this Paragraph, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Townhouse Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Townhouse Owner who has used the wall may restore it, and if the other Townhouse Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion of such use without prejudice, however, to the right of any such Townhouse Owners to call for larger contributions from the others under any rule of law regarding liability for negligence or willful acts of omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Paragraph, a Townhouse Owner, who by his negligence 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 element.

**Section 5. Right to Contribution Runs with Land.** The right of any Townhouse Owner to contribution from any other Townhouse owner under this Paragraph shall be appurtenant to the land and shall pass to such Townhouse Owner's successors in title.

**Section 6. Certification by Adjoining Property Owner That No Contribution Is Due.** If any Owner desires to sell his Townhouse, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Townhouse has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

**Section 7. Arbitration.** In the event of a dispute concerning a party wall or any provisions of this Article, such dispute shall be resolved pursuant to an arbitration.

#### ARTICLE VIII EASEMENTS

**Section 1. Access and Utility Easements.** Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded plat of the Townhouse Property. The Townhouse Association may reserve or grant easements over the Townhouse Common Area as provided in Article VI, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of thirty (30) years from the date hereof, Declarant reserves, for itself and its employees, agents, successors and assigns, an easement upon and a right of ingress, egress and regress on, over and under the Townhouse Property for the purposes of constructing and maintaining water, sewer, gas, storm water drainage and retention, telephone, cable television, and electric, and other utility facilities to the extent required by any applicable governmental entity or deemed by the Declarant to be necessary or convenient for the development, use and enjoyment of the Townhouse Property and the Townhouse Common Area and for the conduct of construction, sales and marketing activities. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and