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 NEW HANOVER COUNTY, NC
 MORGHAN GETTY COLLINS
 REGISTER OF DEEDS

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Prepared by and return to:
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR BARCLAY TOWNES AT THE POINTE**

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 (“Declaration”) is made as of the 20th day of March, 2026, by **Pulte Home Company, LLC**, a Michigan limited liability company (“Declarant”). All capitalized terms shall have the meaning set forth in **Article I** or elsewhere in this Declaration.

BACKGROUND STATEMENT

The Declarant is the owner of the Property (defined in Article I) which is located in New Hanover County, North Carolina. Declarant desires to develop a residential community of Townhomes within The Pointe which shall be known as **Barclay Townes at The Pointe** (“Project”). Declarant further desires to provide for the maintenance of the Common Elements and of the Roadways and therefore desires to subject the Property and this Project to the covenants, restrictions, easements, charges, and liens described in this Declaration.

Declarant further deems it desirable to create a nonprofit, incorporated association which will be delegated the duties and assigned the powers needed to efficiently preserve, protect and enhance the values of the Lots, the Townhomes and amenities in the Project, to insure the residents’ enjoyment of the specific rights, privileges and easements in the Common Elements, to provide for the maintenance and upkeep of the Common Elements and the lawn and landscaping surrounding the Townhomes located on the Lots, as hereinafter set forth. In order to accomplish all of the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that (subject to certain rights of amendment as hereinafter described) the Property shall be held, transferred, sold, conveyed, occupied and used subject to the North Carolina Planned Community Act (N.C.G.S. Chapter 47F) and to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on,

and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and the heirs, successors and assigns of all of the foregoing parties.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

“Act” shall mean the North Carolina Planned Community Act, codified in Chapter 47F of the North Carolina General Statutes.

“Additional Land” shall mean and refer to any land that is located within one (1) mile of the perimeter of the Property, as the Property is expanded from time to time as provided in **Article II**. **The recordation of this Declaration does not subject any of the Additional Land to this Declaration. Portions of the Additional Land may only be subjected to this Declaration by the recordation of a Supplemental Declaration in accordance with Article II.**

“Association” shall mean and refer to **Barclay Townes at The Pointe Owners Association, Inc.**, a North Carolina non-profit corporation, organized pursuant to N.C.G.S. § 47F-3-101 and § 55A-2-02, and its successors and assigns.

“BCR Declaration” shall mean and refer to that certain **DECLARATION OF COVENANTS AND RESTRICTIONS** recorded in the County Register of Deeds office in Book RB 6783 at Page 547, as amended and/or supplemented of record.

“Board” or “Board of Directors” shall mean and refer to the executive board of the Association.

“Bylaws” shall mean the bylaws adopted by the Association pursuant to the North Carolina Non-Profit Corporation Act, as they may be amended from time to time.

“Certificate of Occupancy” shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Townhome on the Property.

“Common Elements” shall mean and refer to all real and personal property leased or owned by the Association and any easements granted to or reserved for the benefit of the Association for the common use and enjoyment of the Owners as defined in N.C.G.S. § 47F-1-103(4). Common Elements shall include any private Roadways that appear on the Plat, as well as any Public Use Areas that are conveyed to the Association as permitted under **Article III, Section 3.2**. In addition, Declarant reserves the right, from time to time and at any time, to designate portions of the Property being held by the Declarant as Common Elements for the benefit of the Association in a written instrument recorded in the County public registry. Upon the recordation of such designation, the portion of the Property identified therein will be considered Common Elements for the purposes of this Declaration.

“Community Wide Standard” or “CWS” shall mean and refer to the standard of conduct, condition, repair, upkeep, maintenance, or other activity which is made applicable to all Lots and is binding on all Owners as provided in **Article VIII**. The Community Wide Standard may be set, amended, or expanded by the Association’s Board of Directors from time to time without the consent or

approval of the Members as the Board of Directors, in its sole and absolute discretion, deems appropriate. During the Declarant Control Period, the Declarant must approve and consent to the Community Wide Standard and any amendments thereto or expansions thereof.

“Cost-Sharing Agreement” shall mean and refer to the DECLARATION OF STORMWATER EASEMENTS, RESTRICTIONS, AND COST-SHARING AGREEMENT recorded in the County Register of Deeds office in Book RB 5950 at Page 1125, as amended and/or supplemented of record, including, without limitation, in Book RB 6830 at Page 2490.

“County” shall mean and refer to New Hanover County, North Carolina.

“Declarant” shall mean and refer to **Pulte Home Company, LLC**, a Michigan limited liability company. It shall also include any person or entity who takes title to any portion of the Property and who is designated to be the Declarant in a recorded instrument as provided in N.C.G.S. § 47F-3-104. “Declarant” shall also include any person or entity who takes title to all or a portion of the Property by virtue of the foreclosure of the deed of trust given by the Declarant or any successor Declarant and which encumbers the Property.

“Declarant Affiliate” shall mean and refer to any owner, shareholder, predecessor, successor, subsidiary, officer, member, manager, director, employee, agent, or representative of Declarant.

“Declarant Control Period” shall mean and refer to the period defined in **Article IV, Section 4.4**.

“Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended, supplemented, or extended from time to time.

“Development Rights” shall mean and refer to the rights that are hereby reserved for the benefit of the Declarant to (a) add real estate to the Project as permitted under **Article II**; (b) the right of the Declarant to create, revise and/or define and delineate the boundaries or configuration of any portion of the Property (including, without limitation, the Lots, Common Elements or Limited Common Elements within the Project); (c) the right of the Declarant to subdivide or combine Lots or convert Lots into Common Elements; (d) the right of the Declarant to alter any site plan or master plan for the Project; and (e) the right of the Declarant to withdraw any portion of the Property from the Project and the planned community at any time, all of which rights may be exercised by the Declarant at any time within thirty (30) years after the recordation of this Declaration as the Declarant, in its sole discretion deems reasonable, appropriate or warranted, and without the consent or approval of the Association, or any other Owner or Mortgagee.

“Lot” shall mean and refer to any numbered plot of land appearing on any Plat of the Property which is the site for construction of a Townhome and includes the land and any and all improvements and fixtures thereon.

“Master Developer” shall mean and refer to the “Developer” under the Master Declaration, including, without limitation, **BCR Partners, LLC**, a North Carolina limited liability company, and its successors and assigns.

“Master Declaration” shall mean and refer to the DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE POINTE recorded in the County

Register of Deeds office in Book RB 5950 at Page 1146, as amended and/or supplemented of record, including, without limitation, in Book RB 6783 at Page 513.

“Member” shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee, or other legal entity that is a member of the Association as provided in **Article IV, Section 4.1**.

“Mortgage” shall mean and refer to a mortgage or deed of trust constituting a first lien on a Lot.

“Mortgagee” shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Lot. Upon request, each Owner shall provide the name and address of the then current holder of any Mortgage encumbering Owner’s Lot.

“Neighborhood” shall mean and refer to a group of Lots designated in this Declaration or a separately recorded Supplemental Declaration as a separate Neighborhood for purposes of receiving benefits or services from the Association which are different from (whether more or less extensive) those which are otherwise provided to Lots hereunder. The Lots contained within a Neighborhood may be subject to Neighborhood Assessments, as provided herein and elsewhere in the Project Documents, which are levied to defray the cost of any different benefit(s) and/or service(s) which are provided by the Association.

“Neighborhood Assessments” shall mean and refer to any assessments levied against Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Common Expenses. Neighborhood Assessments include “Neighborhood Annual Assessments” and “Neighborhood Special Assessments.”

“Neighborhood Common Expenses” shall mean and refer to the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include, without limitation, a reasonable reserve for repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in any Supplemental Declaration(s) applicable to such Neighborhood(s).

“Occupant” shall mean and refer to any person occupying all or any portion of a Lot or any portion of the Property for any period of time.

“Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Property but excluding Declarant and those parties who have such interest merely as security for the performance of an obligation.

“Plat” shall mean and refer to the one or more subdivision maps of the Property recorded in the County public registry from time to time, and any revisions thereof, as well as other subdivision plats of Additional Land subjected to this Declaration from time to time by Supplemental Declaration, and any revisions thereof.

“Project Documents” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property and the Community Wide Standard, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

“Property” shall mean and refer to the land described in **Exhibit A** and such other land as may be subjected to this Declaration as provided in **Article II** below.

“Public Use Areas” shall mean and refer to any land appearing on the Plat that is reserved for, designated for, or dedicated to public use, including, without limitation, road and street rights-of-way, public greenway tracts and public park tracts, whether or not that land is submitted or subjected to this Declaration.

“Rear Yard” shall mean and refer to the area within each Lot bounded by the plane established by the rear façade of the Townhome and the rear and side property lines established on the Plat.

“Roadways” shall mean and refer to the roads, streets, and cul-de-sacs in the Project as shown on the Plat and shall be public or private as designated on the Plat. Private Roadways shall be maintained by the Association. Public Roadways, if any, shall be maintained by the Association until a governmental entity or agency elects, in its discretion, to assume responsibility for Roadway maintenance.

“Special Declarant Rights” shall mean rights reserved for the benefit of the Declarant, including, but not limited to, all rights and powers reserved or granted to the Declarant in this Declaration, all rights referenced in North Carolina General Statutes Chapter 47F-1-103(28) (the “North Carolina Planned Community Act”) and the right to complete improvements on the Property, which rights may be exercised by the Declarant at any time as the Declarant, in its sole discretion deems reasonable, appropriate or warranted. Special Declarant Rights may be transferred by any Declarant as provided in N.C.G.S. § 47F-3-104.

“Townhome” shall mean and refer to the attached residential dwelling improvement constructed upon a Lot, which improvement is owned by the Owner of the Lot on which it is constructed and is subject to the terms and provisions of the Project Documents.

ARTICLE II EXPANSION OF PROJECT

Section 2.1 Additions by Declarant. Declarant reserves an option, until the thirtieth (30th) anniversary of the date of recording of this Declaration, to subject portions of the Additional Land to this Declaration in accordance with provisions of this **Article II**. Declarant may exercise this right within the thirty (30) year period specified above, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner provided in **Section 2.2** below; provided that, Additional Land that is not owned by the Declarant at the time it is annexed may be subjected to this Declaration only with the consent and approval of all of the owners of that Additional Land.

Section 2.2 Supplemental Declaration. To exercise the right to subject portions of the Additional Land to this Declaration, Declarant shall execute and record a supplement to this Declaration (“Supplemental Declaration”). Any Supplemental Declaration that annexes Additional Land that is not owned by the Declarant shall also be executed by all the owners of that Additional Land. For purposes of this Article, “Supplemental Declaration” shall mean and refer to an instrument recorded in the public registry that annexes land into the Project as provided in **Section 2.1** above and subjects that land to the covenants, terms, provisions contained in this Declaration, and which may impose additional or different restrictions and obligations (including assessments) on that land. Declarant may, in Declarant’s sole

discretion, expressly provide that all or any portion of the property which is subject to any Supplemental Declaration is part of an existing or new Neighborhood, as defined herein. Any Supplemental Declaration executed and recorded by Declarant shall contain a sufficient legal description of the tract or parcel to be added to the Property and subjected to the Declaration.

ARTICLE III COMMON ELEMENTS

Section 3.1 Owners' Easements of Enjoyment. Every Owner shall have a perpetual right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this Section 3.1. The foregoing rights shall include, without limitation, a non-exclusive easement over all Roadways for the purpose of vehicular and pedestrian access, ingress, and egress to each Lot. All rights and easements created by this Section 3.1 shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, household members, guests, invitees, and agents, and are granted subject to the provisions of this Declaration including, without limitation, the following conditions, and reservations:

- (a) The right of the Association, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred as permitted under the Act;
- (b) The right of the Association to take any steps that are reasonably necessary to protect the Common Elements against foreclosure;
- (c) The rights of the Association, as provided in the Project Documents and the Act, including without limitation, to impose fines and to suspend voting rights, services provided or privileges enjoyed by any Member for any period during which any assessment remains unpaid, or as a result of any infraction or violation of the Project Documents;
- (d) The right of the Association, in accordance with the provisions of N.C.G.S. § 47F-3-112, to dedicate or transfer all or any part of the Common Elements; provided, however, that any dedication or transfer during the Declarant Control Period shall require the written consent of the Declarant;
- (e) The easements described in Article X;
- (f) The right of the Association to establish reasonable rules and regulations for the use of the Property by Members or their tenants, household members, guests, invitees, and agents, as provided in Article XI;
- (g) Any and all other provisions of this Declaration and the Project Documents; and
- (h) The right of the Declarant to exercise Special Declarant Rights and Development Rights.

The rights and privileges of household members, tenants, contract purchasers and guests to use the Common Elements are subject to the following additional conditions and reservations:

- (x) **Household.** The rights and easement of enjoyment granted to every Owner in **Section 3.1** of this Article may be exercised by members of the Owner's household who occupy the Townhome of the Owner within the Property as their principal residence.
- (y) **Tenants or Contract Purchasers.** The right and easement of enjoyment granted to every Owner in **Section 3.1** of this Article may be delegated from the Owner to tenants or contract purchasers who occupy a Townhome within the Property as their principal residence; provided, however, in the event of any such delegation by lease, contract or otherwise, the Owner shall not assert any right or exercise any easement of enjoyment delegated as allowed herein unless and until that delegation terminates.
- (z) **Guests.** The Common Elements may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Association as may be established by the Board from time to time, including, without limitation, rules limiting the number of guests.

NOTWITHSTANDING AND WITHOUT LIMITING THE FOREGOING, EVERY OWNER SHALL BE RESPONSIBLE AND LEGALLY LIABLE TO THE ASSOCIATION AND TO EVERY OTHER OWNER FOR THE ACTS AND OMISSIONS OF ANY PERSON OR ENTITY WHO IS PRESENT ON THE PROPERTY AT THE REQUEST OF, WITH THE PERMISSION OF OR WITH THE KNOWLEDGE OR CONSENT OF THE OWNER OR OWNER'S TENANT.

Section 3.2 Transfers of Property to the Association as Common Elements.

(a) The Declarant may at any time assign, transfer or convey to the Association, or cause to be assigned, transferred and/or conveyed to the Association, any interest in real or personal property within or for the benefit of the Property, the general public, local governmental entities, or districts or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association or that the Declarant causes to be assigned, transferred and/or conveyed to the Association shall be deemed accepted by the Association upon its assignment, transfer or conveyance without consent or action by the Association, and shall be considered Common Elements without regard to whether such real or personal property is designated by the Declarant as Common Elements. If requested, by the Declarant, the Association will execute a written instrument, in any form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written acceptance by the Association shall in no event be a precondition to acceptance by the Association.

(b) The assignment, transfer, and/or conveyance of real or personal property to the Association shall be by non-warranty deed or bill of sale; shall be subject to the rights, restrictions, and easements set forth in this Declaration, including the easements referenced in **Article X**, as well as other public and private access, utility and drainage easements, easements, and rights-of-way of record; may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property; and may include such other provisions, including restrictions on use, deemed reasonable and appropriate by the Declarant or the transferor, in the Declarant's or the transferor's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

(c) During the Declarant Control Period, the Declarant may require the Association and the Board to reconvey any portion of the Common Elements previously conveyed to the Association to the Declarant or Declarant's designee at any time and for any purpose, including, without limitation, in connection with Declarant's exercise of Development Rights or Special Declarant Rights or in connection with changes made by the Declarant pursuant to **Section 12.3** herein or to allow for changes, modifications and adjustments to the development plan for the Project.

(d) All real and personal property transferred or conveyed to the Association will be deemed conveyed in its then "as-is" condition, with all faults, and without warranty of any kind, express or implied, except to the extent Declarant or the transferor provides an express, written warranty in the deed or other document making such transfer or conveyance. To the fullest extent permitted by law, all warranties pertaining to Common Elements, including but not limited to statutory and implied warranties (including but not limited to any warranty of habitability, merchantability, workmanlike construction, or fitness for a particular purpose) are hereby disclaimed by Declarant and by any other transferor and are waived by the Association and each Owner.

Section 3.3 Maintenance. Common Elements shall be maintained by the Association as more particularly detailed in **Section 8.1**. Maintenance of the Common Elements shall include maintenance, repair, and reconstruction, when necessary, of all improvements located thereon. Common Elements that are conveyed to the Association in an unimproved and natural state may be maintained in the same state after it is conveyed to the Association.

Private Roadways shall be owned and maintained by the Association. Public Roadways, if any, shall be maintained by the Association until a governmental entity or agency elects, in its discretion, to assume responsibility for Roadway maintenance. Maintenance of the Roadways shall conform, at a minimum, to the standard of maintenance (if one is ascertainable) which would be required by the governmental entity or agency having authority over the Roadway.

The Association shall not be responsible for the maintenance of any Townhome, Lot or any portion of any Lot or the improvements within the boundaries thereof except as specifically provided in **Section 8.1**. The Owners of such Lots shall be solely responsible for same.

Section 3.4 Reserve Fund(s). The Association may establish and maintain reserve fund(s) for the periodic maintenance, repair and replacement of all or a portion of the Common Elements and/or Roadways to fund unanticipated expenses of the Association and/or to acquire equipment or services as may from time to time be deemed reasonable, necessary, or desirable by the Board of Directors. Such reserve fund(s) shall be collected and maintained out of the assessments, as hereinafter provided in **Article V**. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

ARTICLE IV THE ASSOCIATION

Section 4.1 Automatic Membership. The Declarant and all Owners shall automatically be Members of the Association and shall enjoy the privileges and be bound by the obligations contained in the Project Documents. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be

separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

Section 4.2 Voting and Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots and may not be separated from ownership of any Lot. Members shall be entitled to vote only on the issues, questions, actions, and matters which this Declaration, the Bylaws, or North Carolina law require be decided by a vote of the Members.

There shall be two (2) classes of Members with respect to voting rights:

Class A Members. Class A Members shall be all Owners (and, following termination of the Class B Membership, the Declarant). Class A Members shall be entitled to cast one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. However, the vote for such Lot shall be cast as the Owners thereof among themselves determine, but only one vote may be cast, and that vote shall not be split.

Class B Member. The Declarant shall be the Class B Member and shall be entitled to cast one (1) vote for each Lot owned by Declarant and four (4) votes for each Lot owned by a Class A Member at the time any vote is cast. The Class B Membership shall cease, and the Declarant shall become a Class A Member on the happening of any of the following events, whichever occurs first:

- (a) When the Declarant executes and records a written instrument in the County public registry terminating the Class B Membership; or
- (b) When the Declarant Control Period terminates as provided in **Section 4.4** below; or
- (c) The expiration of thirty (30) years from the date of this Declaration is recorded.

Section 4.3 Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be suspended, automatically and without requirement of notice or hearing, during any period that the Lot or the Owner thereof is delinquent in the payment of assessments or is in violation of the Project Documents.

Section 4.4 Control by Declarant. Notwithstanding any other language or provision to the contrary herein, Declarant shall be entitled to appoint and remove any or all members of the Board of Directors of the Association, any officer or officers of the Association and any managing agent for the Association during the Declarant Control Period, all as more particularly provided in the Bylaws. **The Declarant Control Period shall commence on the date this Declaration is recorded and shall continue until (i) Declarant no longer owns (or holds an option or contractual right to acquire) any portion of the Property or the Additional Land, or (ii) the date the Declarant executes and records a written instrument in the County public registry terminating the Declarant Control Period, whichever occurs first.** Upon the expiration or termination of the Declarant Control Period (or upon Declarant's voluntary relinquishment of Declarant's right to appoint and remove directors and officers of the Association, as provided in the Bylaws), a special meeting of the Association shall be called to elect a new Board of Directors which shall undertake the responsibilities of running the Association. Once the new Board is elected, Declarant shall deliver to the Board or the Association's managing agent, any books, accounts, and records of the Association in the Declarant's possession as well as any

agreements or contracts in the Declarant's possession executed by or on behalf of the Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors, officers and managing agents of the Association as provided in this section.

Section 4.5 Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements as required by N.C.G.S. § 47F-3-118(a) and the North Carolina Non-Profit Corporation Act.

Section 4.6 Management and Other Agreements. The Association may be professionally managed and may enter into such agreements for the management, operation, and administration of the Project, with the individual, firm, or entity that the Association deems appropriate and in the best interest of the Project from time to time. Should the Association enter into a management agreement for the Property as permitted herein, the manager (hereinafter referred to as "Independent Manager") shall obtain and at all times maintain Fidelity Insurance as provided in **Section 7.1(c)** of this Declaration.

Section 4.7 Liability Limitations. Neither Declarant, nor any Member, nor the Board, nor any officers, directors, agents, or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portions thereof or for failure to repair or maintain the same. Neither the Declarant, the Association nor any other person, firm or association making repairs or providing maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements, or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action resulting from the performance by the Board of its duties and obligations, excepting for any loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be otherwise indemnified.

Section 4.8 Equal Treatment. During the Declarant Control Period, the Association shall not, without the prior written consent of the Declarant, take any action or adopt any policy, rule, or procedure that:

- (a) Limits, hinders, or impedes the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Property;
- (b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Elements in marketing or promotional materials;
- (c) Limits or prevents purchasers of residential housing constructed by the Declarant or its successors, assigns and/or affiliates from becoming members of the Association or from enjoying full use of the Common Elements, subject to the provisions of this Declaration and the Bylaws;
- (d) Impacts the ability of Declarant or its successors, assigns and/or affiliates, to carry out to completion its development plans and construction activities;

- (e) Affects or limits easements established for the benefit of the Declarant or affects or limits the establishment by the Declarant of easements necessary to complete the Project;
- (f) Impacts the ability of the Declarant or its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner; or
- (g) Interferes with any of the rights of the Declarant set forth in this Declaration.

Section 4.9. Association Acceptance of Responsibility for Contracts, Permits, Leases, Infrastructure, Improvements and Facilities; Declarant Power of Attorney. The Association and the Board shall accept (a) assignment of any contracts and/or leases entered into by the Declarant with respect to the Property (including, without limitation, any Bulk Service Contract(s) under Article VI hereof), (b) responsibility for the operation, repair, maintenance and replacement of infrastructure, improvements and/or facilities constructed and/or installed on the Property, including, without limitation, stormwater management facilities and infrastructure, and (c) the transfer of any permits issued with respect to any such infrastructure, improvements or facilities when and to the extent the transfer of any permit is requested, required or permitted by the Declarant or by any local, state or federal office, agency, department or authority. Infrastructure, improvements, and facilities shall include, without limitation, BMPs, retaining walls, amenities, structures, pools, walls, monuments, trails, streets and roads, landscaping, utilities, and drainage/storm water control systems. The officers of the Association shall immediately execute any documents which are requested or required by the Declarant or by any government authority or agency or which are necessary to facilitate and memorialize (a) the assignment of contracts and leases entered into by the Declarant with respect to the Property to the Association, (b) the Association's acceptance of repair, maintenance and replacement responsibilities and/or (c) the transfer of permits to the Association as provided for herein. **THE ASSOCIATION SHALL BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR DAMAGES INCURRED OR SUSTAINED BY THE DECLARANT AS A RESULT OF ANY DELAY OR FAILURE BY THE ASSOCIATION OR ITS OFFICERS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION 4.9, INCLUDING, WITHOUT LIMITATION, ANY ATTORNEYS' FEES INCURRED BY THE DECLARANT AS A RESULT OF ANY SUCH DELAY OR FAILURE.**

Without limiting the rights of the Declarant or the obligations of the Association under this section, the **DECLARANT SHALL HAVE THE POWER AND AUTHORITY TO EXECUTE ANY SUCH DOCUMENTS IN THE NAME OF THE ASSOCIATION AND AS ITS AGENT AND ATTORNEY-IN-FACT SHOULD THE ASSOCIATION OR ITS OFFICERS AND DIRECTORS FAIL OR REFUSE TO DO SO.** The Declarant may also request and require that the officers and directors of the Association (including those appointed by the Declarant during the Declarant Control Period) execute, deliver and/or record powers-of-attorney or other written authorizations confirming the authority of the Declarant to act as the agent and attorney-in-fact of the Association as provided herein. The rights, powers and authority granted to the Declarant under this section may be exercised by the Declarant at any time and shall not be limited to the Declarant Control Period.

Section 4.10 No Representations or Warranties Regarding Lakes, Creeks or Drainage Areas. Any lakes, creeks, or drainage areas located within or adjacent to the Property (the "Drainage Areas") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with specific aesthetic qualities. **Declarant makes no representations or warranties regarding the drainage areas and hereby disclaims any and all representations and warranties regarding the drainage areas, including, without limitation, any implied warranties, and any**

warranty of fitness for a particular purpose. The Association and each Owner accepts the drainage areas in their "as-is" condition.

Section 4.11 No Representations or Warranties Regarding Natural Areas. Certain Common Elements or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, water detention facilities and open spaces, may be intended to be unimproved open space to be left or maintained in a natural or semi-natural condition ("Natural Areas") and are not necessarily intended to be a recreational feature or an amenity with specific aesthetic qualities. Neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Natural Area. **Declarant makes no representations or warranties regarding the Natural Areas and hereby disclaims any and all representations and warranties regarding the Natural Areas, including, without limitation, any implied warranties, and any warranty of fitness for a particular purpose. The association and each owner accept the Natural Areas in their "as-is" condition.**

Section 4.12. Indemnification of Declarant and Declarant Affiliates for Association Operations. The Association shall indemnify, defend and hold harmless the Declarant and all Declarant Affiliates from and against all claims, causes of action, damages, costs and expenses, including, without limitation, attorneys' fees and costs, in connection with any threatened, initiated or filed claim, suit, arbitration or other proceeding (including the settlement of any claim, suit, arbitration or other proceeding) asserted against Declarant or any Declarant Affiliate or to which any of them may become a party arising out of or related to the management or operation of the Association, including without limitation, the enforcement of the Project Documents, the collection of assessments, and the operation, maintenance and repair (or failure to operate, maintain or repair) the Common Elements.

ARTICLE V OPERATION OF THE PROPERTY AND ASSESSMENTS

Section 5.1 Adoption of Budget; Creation of Lien and Personal Obligation for Assessments. The Board shall, from time to time and at least annually, prepare and adopt a proposed budget for the Project, determine the amount of expenditures payable by the Owners to meet the proposed budget ("Common Expenses") and allocate and assess Common Expenses among the Owners, as provided in this Article V. The Common Expenses shall include such amounts as the Board deems necessary for the operation and maintenance of the Property and shall include, without limitation, amounts for purposes set forth in Section 5.2, amounts for permitted reserves and such amounts as may be necessary to make up any deficit for outstanding Common Expenses for any previous year. **During the Declarant Control Period, each budget and budget amendment shall be approved by the Declarant before presentation for ratification as provided herein.**

No proposed budget shall be effective until ratified as provided in N.C.G.S. § 47F-3-103(c). **During the Declarant Control Period, the budget shall be ratified unless at the meeting called and held for its ratification, the Declarant and one hundred percent (100%) of all of the Lot Owners in the Association reject the budget.** After the termination of the Declarant Control Period, the budget shall be ratified unless rejected by a majority of the Lot Owners as provided in N.C.G.S. § 47F-3-103(c).

As permitted by N.C.G.S. § 47F-3-114, any surplus funds remaining after payment of or provision for Common Expenses shall be retained by the Association and held as reserves for the payment of future Common Expenses as the Board of Directors, in its sole discretion, deems appropriate.

Each Owner of any Lot or portion of the Property (but not Declarant), by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges of the Association, (2) Supplemental Annual Assessments, (3) Special Assessments, and (4) Special Individual Assessments, and (5) as to the Lots within any Neighborhood (if any), (5)(a) Neighborhood Annual Assessments and (5)(b) Neighborhood Special Assessments (collectively, "Assessments"), such Assessments to be established and collected as hereinafter provided. Each Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them. **DECLARANT SHALL BE EXEMPT FROM ALL ASSESSMENTS RELATING TO ANY PORTION OF THE PROPERTY OWNED BY DECLARANT.**

Section 5.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property to the fullest extent authority or responsibility is granted to the Association hereunder including, and without limiting the generality of the foregoing, for: (i) the leasing, improvement, maintenance and operation of the Common Elements including, without limitation, that specified in **Section 3.3** and **Section 8.1**; (ii) maintenance on the Lots surrounding the Townhomes (including, but not limited to the cost of repairs, replacements, additions, labor, equipment, materials, management, and supervision) **as specifically provided in Section 8.1**; (iii) provision of services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, including but not limited to maintenance and landscaping; (iv) payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents; (v) payment in connection with the street lights (if any) or other utilities serving the Property; (vi) payment of management fees to a property manager in accordance with **Section 4.6**; (vii) the employment of attorneys, architects, accountants and other professionals to represent or assist the Association deemed necessary or appropriate by the Board; (viii) the cost of utilities and fuel used in operating facilities in the Common Elements; (ix) the maintenance and upkeep of all Roadways in the Property until they are accepted by a governmental entity or agency, if ever; (x) the payment of costs incurred to provide private garbage and solid waste collection service to each Lot (if not provided by a governmental entity); (xi) the payment of costs incurred to obtain water and sewage disposal for the Common Elements and Townhomes, if needed and not charged directly to the Owners by a public or private utility; (xii) the payment of charges and fees due and owing under any Bulk Service Contract(s) entered pursuant to **Section 6.4**; (xiii) for reserves as permitted in **Section 3.4**; (xiv) for the payment of costs incurred by the Association pursuant to the BCR Declaration, the Cost-Sharing Agreement, and/or the Master Declaration; and (xv) to carry out all other purposes and duties of the Association and/or the Board as provided in the Project Documents.

Section 5.3 Payment of Annual Assessments; Due Dates and Maximums. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

(a) Annual Assessments provided for herein shall commence as to any Lot as of the date of the conveyance by Declarant to an Owner of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. The Annual Assessment amount for each and every year shall be an amount set by the Board of Directors, in accordance with the terms of this **Article V**. Annual Assessments shall be due and payable either in full and in advance or in installments

as determined by the Board. The Board shall fix the amount of the Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount and due date of each installment of such Annual Assessment to each Owner at least thirty (30) days prior to the due date for payment of the assessment or the first installment thereof; provided, however, the failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of the obligation to pay Annual Assessments.

The Annual Assessment shall be charged equally to all Lots which are subject to assessment, and shall be used to defray the cost of Common Expenses other than Neighborhood Common Expenses, if any, which shall be paid for using Neighborhood Assessments, as more particularly provided herein or elsewhere in the Project Documents.

The Declarant shall not be obligated to pay Annual Assessments in any year except with Declarant's prior written approval. Notwithstanding the foregoing, for calendar years beginning during the Declarant Control Period, Declarant may (but shall not be required to) fund all, some, or none of the Annual Expense Shortfall (defined below) with direct payments to the Association, loans to the Association or any combination of direct payments and loans that the Declarant, in its sole discretion, deems appropriate. Declarant may enforce, collect, and recover any loans made to the Association by filing a civil action against the Association during or at any time within five (5) years after the Declarant Control Period ends. For purposes of this Section, "Annual Expense Shortfall" shall mean the amount by which the annual expenses of the Association (excluding any reserves) exceed the total amount of the Annual Assessments paid by Owners other than the Declarant.

(b) For calendar years beginning during the Declarant Control Period, the Annual Assessment amount for each year shall be the amount set by the Board of Directors, in its sole discretion. **Annual Assessments shall not be subject to any maximum, nor shall they require the consent or approval of any Owner or Member other than the Declarant.**

(c) For calendar years beginning upon or after the termination of the Declarant Control Period, Maximum Annual Assessment and Annual Assessment amounts shall be set as follows:

(i) The Maximum Annual Assessment for the first calendar year beginning on or after the termination of the Declarant Control Period shall be equal to the amount of the actual Annual Assessment set and established by the Board as provided in Subsection (a) above for the preceding year plus twenty percent (20%). In each subsequent calendar year, the Maximum Annual Assessment may be increased by the Board (without any vote of or approval from the Members) by an amount equal to the previous year's Maximum Annual Assessment times twenty percent (20%).

(ii) The Maximum Annual Assessment applicable to each Lot may be increased above the amount set forth in Subparagraph (i) of this Section 5.3(c) by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

(iii) The Board may fix the Annual Assessment applicable to each Lot in any amount which does not exceed the Maximum Annual Assessment established as provided in and modified pursuant to Subparagraphs (i) and (ii) of this Section 5.3(c). If the Board levies an Annual Assessment which is less than the Maximum Annual Assessment for any calendar year and later determines during that calendar year that any of the responsibilities, duties or functions of the Association cannot be funded by such lesser assessment, the Board may levy a Supplemental Annual Assessment, provided that the

sum of the Annual and Supplemental Annual Assessments for any year do not exceed the applicable Maximum Annual Assessment for such year unless approved as specified in Subparagraph (c).

(d) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(e) During the Declarant Control Period, and notwithstanding anything else to the contrary, all Annual Assessments levied and any changes to the Maximum Annual Assessment must be approved by the Declarant.

Section 5.4 Special Assessments and Neighborhood Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Elements improvements which are not originally constructed by Declarant or (ii) the reconstruction, repair or replacement of the Common Elements, including any improvements located thereon or improvements on Lots which the Association is expressly required to repair and maintain under **Section 8.1**, if any, provided that:

(a) **Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant.**

(b) During the Declarant Control Period, and notwithstanding anything else to the contrary, Special Assessments need only be approved by the Declarant.

(c) After the termination of the Declarant Control Period, all Special Assessments must be approved by Members holding at least sixty-seven percent (67%) of the votes appurtenant to the Lots which are then subject to this Declaration.

(d) **Neighborhood Special Assessments:** In addition to the Neighborhood Annual Assessments, the Association may levy a special assessment against the Lots within any Neighborhood (a "Neighborhood Special Assessment") for the purpose of defraying, in whole or in part, the cost of any unbudgeted or unexpected Neighborhood Common Expenses, subject to the following approval standards: (1) During the Declarant Control Period, and notwithstanding anything else to the contrary, Neighborhood Special Assessments need only be approved by the Declarant, and (2) After the termination of the Declarant Control Period, all Neighborhood Special Assessments must be approved by Members holding at least sixty-seven percent (67%) of the votes appurtenant to the Lots within the Neighborhood against which the Neighborhood Special Assessment is proposed to be levied. **Declarant shall not be obligated to pay any Neighborhood Special Assessments.**

Section 5.5 Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board shall have the power to levy a special assessment applicable to any particular Owner(s) ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Elements, including any improvements located thereon, which is occasioned by any act or omission of such Owner(s), members of such Owner's household or such Owner's agents, guests,