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DEPUTY

**NEW HANOVER COUNTY,**

**MORGHAN GETTY COLLINS**

**REGISTER OF DEEDS**

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**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
OCEAN TIDES TOWNHOMES**

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

Submitted electronically by "Ned M. Barnes, Attorney"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the New Hanover County Register of Deeds.

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF OCEAN TIDES TOWNHOMES (“Declaration”) is made this 16<sup>th</sup> day of October, 2025 by TOO CONSTRUCTION COMPANY, INC., a North Carolina corporation (“Declarant”) for the purposes hereinafter stated.

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

WHEREAS, Declarant is the owner of certain real property located in the Town of Carolina Beach, New Hanover County, North Carolina, as shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 77, at Page 81, to which reference is hereby made for a more particular description (the “Property”); and

WHEREAS, Declarant desires to subject the Property to this Declaration under a general scheme of development for the mutual benefit of the Lot Owners, and to form an association of owners to provide for, among other things, the preservation of the property values and the desirability and attractiveness of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold, used and conveyed subject to selected provisions of the North Carolina Planned Community Act set forth in N.C. Gen. Stat. §§ 47F-1-101 et seq. (the “Act”) which are incorporated herein by reference where indicated, and to the following easements, restrictions, and covenants of this Declaration, all of which shall run with the real property subjected to this Declaration. The Declaration, including all restrictions and affirmative obligations set forth herein, shall be binding and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

## **Article 2 Description of the Planned Community**

Section 1. **Name.** The name of the Planned Community is Ocean Tides Townhomes sometimes referred to as “Planned community.”

Section 2. **Location.** The Planned Community is located in Carolina Beach, New Hanover County, North Carolina. The Planned Community or Property is that real property submitted to and governed by selected provisions of the North Carolina Planned Community Act, and the following easements, restrictions, and covenants of this Declaration, as shown on a plat entitled “Townhouse Plat of Unit 1 & Unit 2, Lot 18 Ocean Tides Townhomes” prepared by Danford & Associates Land Surveying, P.C. and recorded in Map Book 77, Page 81, New Hanover County Register of Deeds.

### Article 3 Definitions

In addition to other terms defined throughout the Declaration, the following capitalized terms shall have the following meanings:

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

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

Section 3. **“Association”** shall mean Ocean Tides Homeowners Association, Inc., a North Carolina nonprofit corporation, and its successors.

Section 4. **“Board”** or **“Board of Directors”** shall mean the Board of Directors of Ocean Tides Homeowners Association, Inc., which is the governing body on behalf of and for the Association. Director or Directors means a member or members of the Board.

Section 5. **“Bylaws”** shall mean the Bylaws of Ocean Tides Homeowners Association, Inc., as amended from time to time.

Section 6. **“Common Elements”** shall mean any and all real estate within the Planned Community owned or leased by the Association, other than a Lot, which is provided for the general use and enjoyment of the Members of the Association, including, but not limited to those areas so designated on any subdivision plats filed or which may be filed in connection with this Planned Community. In addition, all private streets, alleys, sidewalks, access easements or pedestrian easements, open space, amenities area and club area, if any, within the Planned Community which are intended for the common use and enjoyment of the Owners are hereby declared to be Common Elements. Without limiting the generality of the foregoing, the Common Elements shall specifically include any areas which the Declarant may designate from time to time for the common use and enjoyment of the Owners on a recorded subdivision plat or in any other instrument recorded by the Declarant relative to the Property. The term Common Elements is to be construed as being synonymous with the term “common areas”.

Section 7. **“Common Expenses”** shall mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. Which shall include:

- a. Expenses of administration, maintenance, repair, replacement or Capital Improvement of the Common Elements;

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

Section 8. **“Common Expense Liability”** shall mean the liability for Common Expenses allocated to each Lot as permitted by the Planned Community Act, the Declaration, Bylaws, or otherwise permitted by law.

Section 9. **“Declarant”** shall mean TOO Construction Company, Inc., a North Carolina corporation, its successors, and assigns.

Section 10. **“Declaration”** shall mean this Declaration of Covenants and Restrictions for Ocean Tides Townhomes.

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

Section 12. **“Limited Common Elements”** shall mean a portion of the Common Elements allocated by the Declaration for the exclusive use of one or more, but fewer than all of the Lots, including, but not limited to those areas so designated, if any, on any subdivision plats filed or which may be filed in connection with this Planned Community.

Section 13. **“Lot” or “Townhome Lot”** shall mean the physical portion of the Planned Community designated for separate ownership or occupancy by a Lot Owner, which is separately identified on a map of all or a portion of the Planned Community. This term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon including but not limited to the Townhome or Townhome Unit.

Section 14. **“Lot Owner” or “Owner”** shall mean a person or legal entity who owns a Lot but does not include a person having an interest in a Lot solely as security for an obligation.

Section 15. **“Planned Community”** shall mean Ocean Tides Townhomes.

Section 16. **“Property” or “Properties”** shall mean the real property described herein that has been submitted to the provisions of this Declaration.

Section 17. **“Resident”** shall mean and include Owners, their immediate family members, tenants, and lessees.

Section 18. **“Townhome”, “Townhome Unit” or “Unit”** shall mean any Lot, together with any attached or semi-attached residential Townhome situated thereon and all improvements and appurtenances thereto, including but not limited to all front and rear decks, handrails, steps and roofs attached to such Townhome. The terms “Townhome” and “Townhome Unit” shall be synonymous with the terms “Townhouse” and “Townhouse Unit.”

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

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

Section 1. **Declarant Control Period.** The Special Declarant rights and powers set forth in this Article 4 shall be exercised by the Declarant during the Declarant Control Period which shall terminate no later than the earlier of the following dates:

- a. Five (5) years from the recording of this Declaration.
- b. The Declarant’s assignment of the Special Declarant Rights.
- c. Declarant may terminate the Declarant Control Period any time prior to the above date in its own discretion.

Section 2. **Development Rights of Declarant.** Declarant reserves the right to annex and subject to this Declaration any real property which is located within a one (1) mile radius of the initial Property described herein, in order to bring such additional property within the jurisdiction of the Association. Such annexation shall not require the consent of any party other than the Declarant and the owner of such property, if other than the Declarant. Any annexation by Declarant under this Section 2 shall be accomplished by filing a Supplemental Declaration in the land records of New Hanover County, North Carolina, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. The Declarant may subject any property annexed into this Declaration to additional covenants and easements, provided that the same do not alter the general or common scheme of development of the Property.

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

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

Section 4. **Declarant's Right of Entry.** The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, propane tanks and lines and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in the Common Elements. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations and tanks within the Common Elements. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 5. **Declarant Right to Appoint Board of Directors.** Notwithstanding anything in the Declaration or Bylaws to the contrary, the Declarant reserves the right to appoint the members of the Board of Directors of the Association.

Section 6. **Amendment of Declaration by the Declarant.** During the Declarant Control Period, the Declarant reserves the right to amend the Declaration in its sole discretion, without the consent of the owners.

Section 7. **Transfer of Declarant Rights.** During the Declarant Control Period the Declarant may transfer its rights to any other person or entity in accordance with the Planned Community Act.

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

## **Article 5**

### **Lots**

Section 1. **Lot Descriptions.** The Lots are designated on the map recorded in Map Book 77, Page 81, New Hanover County Register of Deeds. Any additional Lots added pursuant to the Declarant Rights referred to hereinabove in Article 4 will be designated on a map recorded in the New Hanover County Register of Deeds.

## **Article 6**

### **Common Elements**

Section 1. **Common Elements.** Common Elements include all parts of the Planned Community located outside the boundaries of the respective Lots and include any real estate, both improved and unimproved, within the Planned Community owned or leased by the Association. By way of illustration but not limitation, Common Elements include real property often called common areas, facilities and amenities.

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

Section 3. **Use of Common Elements.** Each Lot Owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Lot Owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate Rules and Regulations limiting the use of some or all of the Common Elements to Lot Owners and their guests and to promulgate Rules and Regulations to provide for the exclusive use of a part of the Common Elements by a Lot Owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any Lot Owner may delegate, in accordance with the provisions of this Declaration and the Bylaws and reasonable Rules and Regulations of the Board, the right to use the Common Elements to immediate family members living on the Lot, to a limited number of guests, or to tenants who reside on the Lot. Limited Common Elements are reserved for the exclusive use of the Lot to which they are appurtenant.

## **Article 7**

### **Limited Common Elements**

The Limited Common Elements consist of a portion of the Common Elements allocated by the Declaration for the exclusive use of one or more, but fewer than all of the Lots, including, but not limited to those areas so designated on any subdivision plats filed or which may be filed in connection with this Planned Community, including any areas designated as Limited Common Elements which are added in additional phases pursuant to the Declarant Rights in Article 4.

## **Article 8**

### **Use Restrictions**

Section 1. **Rules and Regulations.** The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations may provide for the imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and restrictions contained in this Declaration. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including attorney's fees.

Section 2. **Residential Use.** All of the Lots in the Planned Community shall be, and the same hereby are, restricted exclusively to single-family residential use. No Lot or any portion of the property shall be used for or as a "Residential Institution" except to the extent such are expressly protected and permitted by law. For purposes of this Declaration, a "Residential Institution" shall mean and refer to a nursing home, child care center, boarding house, assisted or dependent living facility, adult care center, adult care home, family child care home, group home, residential day care, house of detention, reform school, asylum, or institution of a kindred character.

Section 3. **Owners' Acknowledgement.** All Owners are subject to the Use Restrictions described herein and are given notice that: (a) their ability to use their privately owned property is limited thereby; and (b) the Board may adopt, delete, modify, create exceptions to, or amend the rules and regulations, as further defined herein.

Section 4. **Restrictions in General, Occupants Bound.** All Lot Owners, guests, invitees, and occupants of Lots shall comply with the Declaration, Bylaws, and Rules and Regulations. The acceptance of a deed or the exercise of any incident of Ownership or the entering into of a lease or the entering into occupancy of a Lot constitutes agreement (a) that the provisions of the Declaration, Bylaws, rules and regulations and use restrictions are accepted by, ratified by, and are binding on all Lot Owners, tenants, occupants, and the guests and invitees of the Lot Owners and occupants; and (b) that the use and enjoyment and marketability of his or her property can be affected by the provisions herein and that the Use Restrictions and rules and regulations may change from time to time. The Lot Owner shall be responsible for ensuring that the occupants, the guests, invitees, and licensees of the Lot Owner and occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations and use restrictions. Fines may be levied against Lot Owners or Occupants. If a fine is first levied against an occupant and is not timely paid, the fine may then be levied against the Lot Owner.

Section 5. **Business Activities.** No business or business activity shall be carried on, in or upon any Lot at any time except, however, private offices may be maintained in Townhomes so long as such use is incidental to the primary residential use of the Lot and does not require the coming and going of customers or clients of such business, and is approved in writing by the Board of Directors. However, the Board may, but shall not be obligated to, permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, is consistent with

the foregoing and does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board of Directors shall, in its sole discretion, determine what constitutes business activity, health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot or store or keep anything on a Lot which will increase the insurance rates for the Association or for other Lot Owners.

**Section 6. Alterations, Attachments, Construction and Planting by Lot Owner.**

No Lot Owner shall construct on, make structural alterations or modifications to any of the Common Elements, or Limited Common Elements, without the written approval of the Board of Directors.

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

No Lot may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred without the express written consent of Board of Directors.

**Section 7. Temporary Structures and Mobile Homes.** No mobile home, trailer, tent, or temporary house, temporary garage or other temporary outbuildings shall be placed or erected on any Lot, provided, however, that the Declarant may grant permission for temporary structures for storage of materials during construction.

**Section 8. Prohibitions on Use of Common Elements.** Except when specifically approved in writing by the Board of Directors, the Common Elements, including Limited Common Elements, shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind, except in common trash receptacles, nor shall they be used in any way for the drying or airing of clothing, rugs, or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activities shall be carried on nor condition maintained by any Lot Owner either on his/her Lot or upon the Common Elements, if such activities should despoil, or tend to despoil, the appearance of the Planned Community. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Owners in the Planned Community and is necessary for the protection of Lot Owners and is enforceable by the Board of directors.

**Section 9. Animals.** No animal shall be kept or maintained on the Planned Community, except household pets ordinarily kept in homes. The rules and regulations may regulate, permit, or prohibit the kind and number of domestic household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from becoming obnoxious or offensive on account of noise, odor, aggression, unsanitary conditions, or other nuisance. All pets shall be properly registered, vaccinated and display at all times proof of same as required by law. All pets kept on the Planned Community must be owned by the Lot Owner, his/her tenant, guest or invitee. No pets are permitted to run

loose upon the Common Elements, and any Lot Owner who causes or permits any animal to be brought or kept upon the Planned Community shall indemnify and hold the Association harmless for and from any loss, damage, or liability which it sustains as a result of the presence of such animal on the Planned Community, regardless of whether the Association or the Board of Directors has given its permission therefor. Whenever a dog is allowed outside the Lot, the dog must be on a leash and any animal droppings which occur during such time as the dog is outside the Lot must be immediately collected by the Owner and disposed of as required by law.

Section 10. **Access to Lot.** The Association or its agent shall have access to each Lot from time to time during reasonable working hours, as may be necessary for the maintenance, repair, or replacement responsibilities in Article 17. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to Common Elements, to another Lot, or to the Lot itself.

Section 11. **Nuisances.** No unlawful, noxious or offensive trade or activity shall be conducted or permitted upon any Lot, or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner, or increase vehicular and/or foot traffic as determined in the sole discretion of the Board of Directors. Noxious, destructive or offensive activity shall not be carried on within any portion of the Property. No Owner or Occupant of a Lot may use or allow the use of the Lot at any time, in any way or for any purpose that may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, no Owner or Occupant of a Lot may use or allow the use of a Lot in any manner that creates disturbing noises, vibrations, odors, vapors, or smoke, including without limitation, the use of sound systems or lights that will in the sole discretion of the Board of Directors interfere with the rights, comfort or convenience of the other Owners or Occupants. The Board of Directors, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the Planned Community shall be kept in a clean and sanitary condition. No rubbish, refuse, or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any Lot Owner (or their family, tenants, guests or agents) who shall dump or place any trash or debris upon any portion of the Planned Community shall be liable to the Association for the actual cost of removal thereof and the same shall be added to and become a part of the Assessment next coming due to which the Lot Owner is subject; or alternatively, the Association may impose a fine against the Lot Owner for violation of this section.

Section 12. **Lawful Use.** No immoral, improper, or unlawful use shall be made of the Planned Community nor any part thereof. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

Section 13. **Restriction on Transfer of Common Elements.** The Association shall not seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, without the written approval of the Board of Directors. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph.

Section 14. **Prohibition of Time-Sharing.** Time-sharing and time shares as defined in the North Carolina Time Share Act (*N.C. Gen. Stat, § 93A-39 et. seq.*) of any Lot in the Planned Community is prohibited.

## **Article 9 Insurance**

Section 1. **Required Coverage – Owners.** Each Owner shall obtain and keep his Unit insured against loss and damage by fire, tornado, wind storm or other hazards normally insured against at one hundred percent (100%) of replacement cost, and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Property. Each Owner agrees to provide the Board with satisfactory proof of said insurance upon request of the Board. If an Owner fails to comply with the insurance requirements set forth above, the Association shall have the right to purchase insurance on the Unit, and shall assess the non-complying Owner for all costs associated therewith in accordance with Article 12 herein.

Section 2. **Required Coverage – Association.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as are reasonably available:

(a) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Elements in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(b) Commercial general liability insurance on the Common Elements, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and umbrella coverage) shall have a limit of at least One Million Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage; provided, if additional coverage and higher limits are available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits; and

(c) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, including without limitation, directors and officers liability insurance, fidelity insurance, performance bonds, payment on labor and material bonds, and maintenance bonds.

Section 3. **Premiums.** Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and

charged as a Common Expense of the Association. In the event any Owner fails or refuses to pay assessments needed to pay insurance premiums or deductibles when due, the Association may pay said premium or deductible and levy against the non-paying Owner an assessment for all costs associated therewith in accordance with Article 12 herein. The amount of the said assessment may include not only the actual cost of the premiums, any late payment fees, and the cost of the deductibles, but also an administrative charge payable to the Association, interest, and any and all attorney's fees incurred in connection with the collection of such assessments, penalties and fees.

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

Section 1. **Duty to Repair.** In the event that all or any part of the Common Elements of the Planned Community shall be damaged or destroyed, such Common Elements shall be repaired or replaced and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47F-3-113 of the Planned Community Act.

Section 2. **Repair and Reconstruction.** The Board of Directors or its duly authorized agents shall arrange for and supervise the prompt repair and restoration of the damage in accordance with the original plats and plans or reconstruction compatible with such plats and plans.

The procedure for repair and construction shall be as follows:

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

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

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

(d) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Associations from Assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

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

## Article 11 Easements and Additional Rights

Section 1. **Owners' Easement of Enjoyment.** Every Owner shall have a right and easement of enjoyment in, to and over the Common Elements (but not the Limited Common Elements), and the easement granted herein shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

Section 2. **Easements of Association.** There shall exist the following easements from each Lot Owner to the Association for the benefit of the Association and each other Lot Owner (as the case may be):

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

Section 3. **Utility Easements.** There is hereby created a blanket easement upon, across, over and under all of the Planned Community for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, storm drainage, gas, telephones, and electricity and a master television antenna system. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the Common Elements in the performance of their duties. Further, an easement is hereby granted to the Association, its respective officers, agents and employees, and to any management company

selected by the Association to enter in or to cross over the Common Elements provided for herein. The easements provided for in this article shall in no way affect any other recorded easement on the Planned Community.

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

Section 5. **Unintentional Encroachments.** In the event that any Lot shall encroach upon any Common Elements or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Elements onto any such Lot for so long as such encroachment shall naturally exist.

Section 6. **Party Walls.**

(a) General Rules of Law Apply. Each wall which is built as part of the original construction of the Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rule of law in North Carolina regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If any portion of the original structures constructed on each Lot, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Elements, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Elements, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by the Declarant. The provisions of this Section 6 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

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

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

(f) Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 7. **Additional Easements.** Each Lot shall be subject to a private utility easement (in addition to the utility easements described in Article 11, Section 3, and Article 4, Section 3) and a pedestrian access easement, which easements are more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference. The pedestrian access easement is intended for the common use and enjoyment of the Owners, and shall be used solely for the purpose of providing the Owners with pedestrian access to the Common Elements and any amenities or facilities located thereon. No motor vehicles, ATVs, golf carts, or similar items shall be used, parked, or stored within the pedestrian access easement. No structure, planting or other material shall be placed or permitted to remain on any Lot which may damage or interfere with the installation and maintenance of utilities in the easements or which impedes, obstructs, or restricts the use of the pedestrian access easement.

## Article 12

### Assessment and Collection of Common Expenses

Section 1. **Creation of Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association annual and special assessments for those purposes outlined below, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot when each assessment was made, and such assessment shall not pass to his successors in title unless expressly assumed by them. All assessments relating to the Common Elements shall be shared equally by the Owners of Lots within the Planned Community, except as otherwise provided herein. Notwithstanding anything herein to the contrary, the Declarant shall be exempt from paying annual or special assessments for any unoccupied Lot owned by them.

Section 2. **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the