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**DECLARATION OF PLANNED COMMUNITY FOR  
PORT CITY PRESERVE**

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

**Submitted electronically by Adams, Howell, Sizemore & Adams, P.A. in compliance with North Carolina statutes governing  
recordable documents and the terms of the submitter agreement with the New Hanover County Register of Deeds.**

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**Article 1**

**Creation and Establishment of the Planned Community**

The real property and improvements which comprise Port City Preserve, a Planned Community, are hereby submitted to the provisions of the North Carolina Planned Community Act (N.C. Gen. Stat. §§ 47F-1-101 *et seq.*) (referred to hereafter and in the Bylaws as the “Planned Community Act”) in accordance with the provisions of the Planned Community Act and for the purpose of creating and establishing a Planned Community.

**Article 2**

**Description of the Planned Community**

Section 2.1 **Name.** The name of the Planned Community is Port City Preserve (sometimes referred to as “Planned Community”).

Section 2.2 **Location.** The Planned Community is located in Wilmington, New Hanover County, North Carolina. The Planned Community, sometimes referred to herein as “Property,” is that real property hereby submitted to and to be controlled by the Planned Community Act, shown on a plat entitled Recombination Map Prepared for Redeeming Development Group LLC, prepared by Cape Fear Engineering, and recorded in Book 71, Page 331 in the New Hanover County Register of Deeds (the “Plat”) and which is depicted on Exhibit “A” attached hereto and made part hereof.

**Article 3**

**Definitions**

In accordance with Section 47F-1-103 of the Planned Community Act and unless specifically provided otherwise or in the context otherwise requires, the following terms as used in the Declaration and Bylaws for this Planned Community shall have the following meanings:

Section 3.1 **Allocated Interests** means the undivided interest in the Common Elements, the Common Expense liabilities and votes in the Association allocated to each Lot.

Section 3.2 **Intentionally Omitted.**

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

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

Section 3.5 **Board or Board of Directors** means the Board of Directors of Port City Preserve Homeowners Association, which is the governing body on behalf of and for the

Association designated the Executive Board in *N.C. Gen. Stat. § 47F-1-103(13)*; Director or Directors means a member or members of the Board.

Section 3.6 **Bylaws** means the Bylaws of Port City Preserve Homeowners Association.

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

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

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

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

Section 3.10 **Declarant** shall mean JDSH Port City Preserve, LLC, a North Carolina limited liability company, its successors and assigns.

Section 3.11 **Declaration** means this Declaration of Planned Community for Port City Preserve.

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

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

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

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

Section 3.16 **Majority of the Total Votes** in the Association means fifty percent (50%) of the Lot Owners entitled to vote, plus one vote.

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

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

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

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

Section 3.21 **Planned Community** means Port City Preserve, all phases.

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

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

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

Section 3.25 **Unit** means the single family townhome structure located on the Lot.

#### **Article 4 Special Declarant Rights**

Section 4.1 **Declarant Control Period.** The special Declarant rights and powers set forth in this Article 4 may be exercised by the Declarant at its sole discretion during the period referred to herein as the "Declarant Control Period," which shall terminate no later than the earlier of the following dates:

- (a) the sale and closing of all the Units in this Planned Community and expiration of the all warranty or maintenance periods;
- (b) December 31, 2032; or
- (c) Declarant may terminate the Declarant Control Period any time prior to the above dates in its sole discretion.

Section 4.2 **Declarant Developer Rights.** Declarant has the right to construct or have constructed up to sixteen (16) Units on the Property and related improvements, which may be configured and located at Declarant's sole discretion. Declarant shall also have the right to construct all streets, alleyways, driveways and any and all infrastructure and all utilities related to construction of the Units.

Section 4.3 **Model/Sales Office.** Declarant shall have the right to use one or more Units as a model and/or sales and management office. Declarant shall also have the right to erect and maintain signs for advertising and marketing of the Units.

Section 4.4 **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, utility lines and for other utility installations over or across the Property. 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 choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, to run any conduits over or underground or take any similar action reasonably necessary to provide economical utility installation and services and to maintain the overall function and appearance of the Development. Certain easements reserved by the Declarant and the Association are shown on the Plat or on the Exhibits attached hereto. Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant and the Association shall have the continuing right (but not the obligation) and easement to maintain sewer and water lines located

on the Lots, including the right to go into Units 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 Unit shall be maintained, repaired and replaced by the Lot Owner.

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

**Section 4.6 Declarant's Right of Entry.** The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains 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 utility or service. The Declarant also reserves on behalf of itself and its agents and contractors an easement on over across and under the Property for accessing and performing any maintenance, repair or warranty work on the Property or the Units, in Dec.

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

**Section 4.8 Declarant Right to Appoint Board of Directors.** Notwithstanding anything in the Declaration or Bylaws to the contrary, the Declarant reserves the right to appoint the members of the Board of Directors of the Association. The right to appoint the members of the Board of Directors shall terminate on the sale and closing of all sixteen (16) Lots.

**Section 4.9 Declarant Rights Regarding Amendment of Declaration.** The Declarant reserves the right to amend the Declaration in its sole discretion. Additionally, during the Declarant Control Period, the Declarant has the authority to approve, to disapprove, to revise, to veto or to revoke any amendment made by the Owners in accordance with Article 15.

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

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

Section 4.12 **Restrictions.** Declarant shall not be subject to the restrictions set forth in Article 8 nor any other provisions of this Declaration which obstruct or frustrate Declarant's development, construction, marketing, repair or maintenance of the Planned Community.

## **Article 5 Lots**

Section 5.1 **Lots.** There may be up to sixteen (16) separate Lots in the Planned Community.

Section 5.2 **Lot Descriptions.** The Lots are designated on the Plat. The Declarant may construct or has constructed up to sixteen (16) Units on the Lots.

Section 5.3 **Allocated Interests.** The Declarant has determined that the Common Expense liability and the Allocated Interests of each Lot shall be equal, regardless of the size or upgrades of the Unit constructed thereon. Common Expenses shall be shared by the Owners on the basis of the Allocated Interest of each Lot. Each Lot shall have one (1) vote on every matter for which a vote of the membership of the Association is required by the Documents.

## **Article 6 Common Elements**

Section 6.1 **Common Elements.** Common Elements include all parts of the Planned Community located outside the boundaries of the Lots and include any real estate, both improved and unimproved, within the Planned Community owned or leased by the Association and as shown on the Plat or the Exhibits attached to this Declaration. By way of illustration but not limitation, Common Elements include real property and improvements often referred to as common areas, facilities and amenities.

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

Section 6.3 **Use of Common Elements.** Each Lot Owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Lot Owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate Rules and Regulations limiting the use of some or all of the Common Elements to Lot Owners and their guests and to promulgate Rules and Regulations to provide for the exclusive use of a part of the Common Elements by a Lot Owner and his or her guests for special occasions, which exclusive use may be conditioned upon,

among other things, payment of a fee.

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

#### **Article 7 Limited Common Elements**

There are no planned Limited Common Elements in the Planned Community.

#### **Article 8 Use Restrictions and Purpose**

**Section 8.1 Residential.** Each of the Lots in the Planned Community shall be and the same hereby are, restricted exclusively to single-family residential use. No business activities shall be conducted on any portion of the Planned Community, provided, however, private, non-public offices for personal use may be maintained in Units so long as such use is incidental to the primary residential use of the Lot and is approved in writing by the Board of Directors. The Lot and Common Elements shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes business activity, unpermitted health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot or store or keep anything on a Lot which will increase the insurance rates for the Association or for other Lot Owners.

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

**Section 8.4 Alterations, Attachments, Construction and Planting by Lot Owner.** No Lot Owner shall construct on, make structural alterations or modifications to any of the Common Elements, or Limited Common Elements, without the written approval of the Board of Directors. The Board of Directors shall not approve of any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety or overall appearance of the Planned Community.

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

No Lot Owner shall plant or cultivate flowers, bushes, shrubs, trees or any kind of plant

or do any landscaping on the Common Elements or on the Limited Common Elements without the express written permission of the Board of Directors or in accordance with such plantings as may be allowed by Rules and Regulations and specifications promulgated by the Board of Directors.

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

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

**Section 8.6 Signs.** No sign, (including but not limited to, "for sale", "for rent", or "political signs" as defined in N.C. General Statute §47F-3-121) advertisement, notice, or other lettering shall be exhibited, displayed, inscribed, painted or affixed by any Owner on any portion of the Unit or Lot or on any portion of the Common Elements without written permission from the Board of Directors. In its sole discretion, the Board may have signs erected on the Common Elements for identification or for such other purposes as the Board finds necessary.

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

**Section 8.8 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 placed at the discretion of the Board, nor shall they be used in any way for the drying or airing of clothing, rugs, or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activities shall be carried on nor condition maintained by any Lot Owner either on his/her Lot or upon the Common Elements, if such activities should

despoil, or tend to despoil, the appearance of the Planned Community. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Owners in the Planned Community and is necessary for the protection of the Lot Owners and is enforceable by the Board of Directors.

**Section 8.9 Animals.** No animal shall be kept on the Planned Community, except household pets ordinarily kept in homes. A Lot Owner is limited to a maximum of two (2) dogs and two (2) cats per Unit. All cats must live and reside inside the Unit at all times. Lot Owners may also keep a reasonable number of caged animals (limited to guinea pigs, hamsters, gerbils, birds and ferrets) and fish in aquariums inside the Unit. EXCEPT FOR THE ANIMALS DESCRIBED ABOVE, NO OTHER ANIMAL OF ANY SPECIES SHALL BE ALLOWED IN THE PLANNED COMMUNITY WITHOUT THE SPECIFIC WRITTEN PERMISSION OF THE BOARD OF DIRECTORS IN EACH INSTANCE. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, or other nuisance. All pets shall be properly registered, vaccinated and display at all times proof of same as required by law. All dogs allowed upon the Common Elements must wear a collar with a tag identifying the Owner. All pets kept on the Planned Community must be owned by the Lot Owner. No pets may be permitted to run loose upon the Common Elements and any Lot Owner who causes or permits any animal to be brought or kept upon the Planned Community shall indemnify and hold the Association harmless for and from any loss, damage, or liability which it sustains as a result of the presence of such animal on the Planned Community, regardless of whether the Association or the Board of Directors has given its permission therefor. Whenever a dog is allowed outside the Lot, then the dog must be on a leash and any animal droppings which occur during such time as the dog is outside the Lot must be immediately collected by the Owner and disposed of as required by law. The Board may adopt further Rules and Regulations regarding pets, including, but not limited to, behavior standards.

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

**Section 8.11 Nuisances.** No nuisances shall be allowed upon the Planned Community and no person shall engage in any use, practice, or activity upon such property which is noxious, offensive, illegal, dangerous or a source of annoyance to Lot Owners or which reasonably interferes with the peaceful possession and proper use of the Planned Community by any Lot Owner. The Board of Directors, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the Planned Community shall be kept in a clean and sanitary condition. No rubbish, refuse, or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any Lot Owner (or his/her family, tenants, guests or agents) who shall dump or place any trash or debris upon any portion of the

Planned Community shall be liable to the Association for the actual cost of removal thereof and the same shall be added to and become a part of the assessment next coming due to which the Lot Owner is subject; or alternatively, the Association may impose a fine against the Lot Owner for violation of this section.

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

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

**Section 8.14 Restriction on Transfer of Common Elements.** The Association shall not seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, without the written approval of Owners of Lots totaling eighty percent (80%) of the members of the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph.

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

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

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

All Lot Owners, tenants, mortgagees and occupants of Lots shall comply with the Declaration, Bylaws and Rules and Regulations. The acceptance of a deed or the exercise of any incident of Ownership or the entering into of a lease or the entering into occupancy of a Lot constitutes automatic acceptance and agreement that the provisions of the Planned Community