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NEW HANOVER COUNTY,

MORGHAN GETTY COLLINS

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR SEAGATE PLACE**

**Prepared by and return to:
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submitted electronically by "Price & williams, 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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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR SEAGATE PLACE**

THIS DECLARATION is made on the date hereinafter set forth by ER OF WILMINGTON, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of certain Property described hereinafter located in New Hanover County, State of North Carolina; and

WHEREAS, the Property is development approved by the appropriate governmental authorities of New Hanover County, North Carolina, now known as SEAGATE PLACE; and

WHEREAS, in accordance with such approved Townhome development, Declarant contemplates developing SEAGATE PLACE as a residential development; and

WHEREAS, Declarant desires to impose certain additional easements, covenants, conditions and restrictions upon all of the Property; and

WHEREAS, Declarant has caused to be incorporated under North Carolina law Preservation Point POA, as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, among others, and which shall be in good standing prior to the sale of any Townhome; and

NOW, THEREFORE, Declarant hereby declares that all of the Property described hereinafter shall be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
MUTUALITY OF BENEFIT AND OBLIGATION**

Section 1.1 Mutuality. The covenants, restrictions, and agreements set forth in this Declaration are made for the mutual and reciprocal benefit of every Lot within the Subdivision and the Property and are intended to create reciprocal rights among the Owners.

Section 1.2 Benefits and Burdens. Every Owner when taking title to a Lot within the Property agrees to all the terms and provisions of the Subdivision Declaration and of this Declaration and shall be entitled to its benefits and subject to its obligations and burdens of both.

**ARTICLE II
DEFINITIONS**

Section 2.1 Association. Association shall mean and refer to SEAGATE PLACE TOWNHOME OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns. This is the Association of the Subdivision, including this Property. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association make reference. The Association shall be formed prior to the date the first Lot is sold.

Section 2.2 Board of Directors. Board of Directors shall mean the elected body governing the Association as provided by North Carolina corporate law.

Section 2.3 Bylaws. Bylaws shall mean the duly adopted bylaws of the Association, as may be amended from time to time.

Section 2.4 Common Areas. Common Areas shall mean those certain portions of the Property (including any improvements thereto) owned by the Townhome Association for the common use and enjoyment of the Owners, including any landscaping, stormwater areas, entry features and retaining walls. The Common Areas shall include any easement rights granted to the Townhome Association.

Section 2.5 Declarant. Declarant shall mean and refer to ER OF WILMINGTON, LLC, a North Carolina limited liability company, its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose in the transfer thereof.

Section 2.6 Declarant Development Period. Declarant Development Period shall mean and refer to that period of time during which: (i) the Declarant is the owner of any portion of the Property, including a Lot; (ii) Declarant is in any way involved in the maintenance of the streets, Common Areas or Entry Features; or (iii) Declarant is in any way involved in the marketing of the Property through advertisements, signs, listings or providing an on-site real estate agent.

Section 2.7 Entry Features. Entry Features shall mean those portions of the Common Areas upon which permanent identification signs or monuments shall be initially installed and erected by Declarant at the various entrances of SEAGATE PLACE, and upon conveyance of easement rights to such portions of the Common Areas to the Association, the Entry Features shall be maintained by the Association in accordance with this Declaration.

Section 2.8 Lot. Lot shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the Property which is intended for residential purposes.

Section 2.9 Lot in Use. Lot in Use shall mean and refer to any Lot on which a residential structure has been fully constructed and is being or to be occupied as a residence.

Section 2.10 Member. Member shall mean and refer to every person or entity who holds membership in the Association.

Section 2.11 Owner. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.12 Property. Property shall mean and refer to that certain real property, together with all improvements, described in that deed recorded in Book 6589, Page 1539 of the New Hanover County Registry.

Section 2.13 Subdivision. Subdivision shall refer to the Seagate Place Subdivision as shown on a map recorded in Map Book 76, Page 92 of the New Hanover County Registry.

Section 2.13 Supplemental Declaration. Supplemental Declaration shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

Section 2.14 Townhome. Townhome shall mean one unit of a multi-unit single family attached residence, as located on a Lot as shown on the Plat.

Section 2.15 Townhome Association. Townhome Association shall mean and refer to SEAGATE PLACE TOWNHOME OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns. This is the Association of the Property. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association make reference. The Association shall be formed prior to the date the first Lot is sold.

ARTICLE III PROPERTY

The Property is hereby made subject to this Declaration and Subdivision Declarations. The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

The Declarant hereby reserves the right to subject other real property to this Declaration and to bring such "Additional Property" within the jurisdiction of the Association without the consent of the other Members. All Additional Property must be contiguous (which terms includes on the opposite side of a street right of way) to some portion of the property already subject to this Declaration.

Each Supplemental Declaration shall be effective upon recordation in the New Hanover County, North Carolina Registry, and shall incorporate the provisions of this Declaration either by reference hereto or by fully setting out the provisions hereof. Such Supplemental Declaration need not be in any specific form (for example, it may be contained in a deed from Declarant conveying the real property being subjected to this Declaration) but shall clearly indicate the intention to subject Additional Property to this Declaration. A Supplemental Declaration may contain such other terms and conditions, not inconsistent herewith, as the parties subjecting the Additional Property to this Declaration may agree upon. Nothing contained herein shall prohibit the owner of any Additional Property made subject to this Declaration by Supplemental Declaration from subjecting such Additional Property to other covenants, conditions, and restrictions not inconsistent with the terms of this Declaration. In addition, as to any Supplemental Declaration which adds property to this Declaration, Declarant or the Association may include such additional or different covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, rights, terms and provisions as Declarant or the Association, in its sole discretion, may determine.

ARTICLE IV COMMON AREA RIGHTS

Section 4.1 Title to the Common Areas. The Declarant hereby agrees that it will convey fee simple title or, as applicable, easement rights for the Common Areas to the Townhome Association, free and clear of all encumbrances and liens, except public streets, private roads or drives, maintenance easements, utility easements and any use restrictions of record, and other matters of record, including this Declaration and the Subdivision Declaration, no later than on or before ninety (90) days following

the conveyance of the last Lot owned by the Declarant to any party. Upon the recording of any deed or deeds conveying Common Area to the Townhome Association, the Townhome Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds.

Section 4.2 Owners' Easement of Enjoyment. Except for Limited Common Areas, every Owner shall have a right and easement of enjoyment in and to and right of ingress and egress over the Common Areas for its intended purpose, which rights shall be appurtenant to and shall pass with the title to every Townhome, subject to the following provisions:

- (a) The right of the Association as provided in the Declaration for the Subdivision;
- (b) the right of the Townhome Association to permit the charge of reasonable fees for the enjoyment of any portion of the Common Areas;
- (c) the right of the Townhome Association to suspend the voting rights during which any assessment against an Owner's Lot remains unpaid;
- (d) the right of the Townhome Association or Declarant to formulate, publish, impose and enforce rules and regulations governing the use and enjoyment of the Common Areas;
- (e) all provisions of this Declaration and the Declaration for the Subdivision;
- (f) all governmental restrictions; and
- (g) easements, restrictions, agreements and other matters of record.

Section 4.3 Owners' Easement of Enjoyment - Limited Common Areas. If Common Areas are designated as Limited Common Areas, only the Owners of Lots benefited by the Limited Common Areas will have the right and easement of enjoyment and use in and to said Limited Common Areas, which such right and easement Owners shall exercise in accordance with and subject to the limitations set forth in Section 4.2.

Section 4.4 Delegation of Use. Subject to Sections 4.2 and 4.3 above, any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment in and to the Common Areas, to the members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot and to his household guests. Such Member shall notify the Secretary of the Townhome Association in writing of the name of the delegate. The rights and privileges of such delegates are subject to suspension to the same extent as those of the Members for violations of these covenants, conditions, and restrictions.

Section 4.5 Easement for Maintenance Purposes. The Declarant hereby grants to the Townhome Association and its successors, assigns, agents, and contractors a perpetual, non-exclusive blanket easement in, on, over and upon the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Surface Water or Storm Water Management System, or other portions of the Property to be maintained by the Townhome Association, in accordance with this Declaration, including in, on, over, and upon each Lot, provided that such easement shall be released with respect to any portion of a Lot on which a residence is constructed and located. The easement granted hereby shall not be exercised by any party in a manner which materially and unreasonably interferes with the use, occupancy or enjoyment of any improved portion of the Property or Common Areas, or easement which is prohibited by law. In addition, if any portion of the Property shall be damaged as a result of the exercise of the easement rights hereby granted, such portions of the Property shall be promptly restored to the condition that existed prior to such damage by the party exercising such rights. Each Lot shall be subject to a perpetual easement in favor of the Association and its contractors and agents for the maintenance of the Lots as provided for in this Declaration.

Section 4.6 Maintenance of Common Areas. The Townhome Association shall maintain in good repair, operate, insure and replace as necessary the Common Area and any improvements, except improvements owned by others such as utilities to the Property, located on the Common Area, if any. All maintenance obligations of the Townhome Association shall be performed as directed by the Board and all maintenance obligations shall be a common expense of the Townhome Association to be collected and paid in the manner prescribed in this Declaration.

Section 4.7 Taxes and Governmental Assessments. The Townhome Association shall pay when due and before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees and other charges imposed by any governmental authority in connection with the Townhome Association's ownership and/or operation of the Common Areas. The Townhome Association may institute appropriate legal proceedings for the purpose of contesting or objecting to the amount or validity of any such tax, assessment or fee charged by the governmental authority. If the Townhome Association fails to pay any governmental charge when due, then each Owner of a Lot shall become personally obligated to pay the governmental authority imposing such charge in an amount determined by multiplying the total charge by a fraction, the denominator of which is the total number of Lots and the numerator of which is the number of Lots owned by Owner ("Owner's Share"). If the Owner does not pay the Owner's Share, then the Owner's Share shall become a continuing lien on the Lot owned by the Owner and the governmental authority may bring an action at law against the Owner to obtain payment or may foreclose the lien against the Lot of the Owner.

ARTICLE V ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Membership. Every Owner of a Lot which is subject to an assessment shall be a Member of both the Association and the Townhome Association, provided that any such person or entity which holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 5.2 Classes and Voting. The Townhome Association shall have the following two classes of voting membership:

a) **Class A.** Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any such Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote or a fractional vote be cast with respect to any one Lot.

b) **Class B.** The Class B Member shall be the Declarant. During the existence of the Class B Membership, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Townhome Association. The Class B Member shall be entitled to ten (10) votes for each Lot subject to this Declaration. The Class B membership shall cease and be converted to a Class A membership upon each of the following conditions being met: (i) the Declarant is no longer the owner of any portion of the Property, including a Lot or Common Areas; (ii) Declarant is no longer in any way involved in the maintenance of the streets, Common Areas or Entry Features; (iii) Declarant is no longer in any way involved in the marketing of the Property through advertisements, signs, listings or providing an on-site real estate agent; and (iv) Declarant is no longer providing funds to the Townhome Association.

**ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 6.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, jointly and severally covenants and agrees to pay to the Townhome Association the following: (1) base assessments or charges; (2) any special assessments, and/or (3) any specific assessments against any particular Lot which are established pursuant to the terms of this Declaration including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments to be established and collected as hereinafter provided. The base, special and specific assessments, together with interest, late charges, 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, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was the Owner of such Lot at the time the assessment became due. Each Owner shall be personally liable for the portion of the assessment coming due while the Owner of a Lot, and each Grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance.

Section 6.2 Purpose of Assessments.

a) The assessments levied by the Townhome Association shall be used to promote the welfare of the residents of the Property and for the improvement, maintenance and operation of the Common Areas, maintenance of entry features and retaining walls, operating expenses of the Townhome Association, payment of improvements and betterments, and the establishment of reserve funds for the addition and/or replacement of capital improvements, street maintenance, repairs and replacement, non-recurring expenses, deferred maintenance and Surface Water or Storm Water Management System.

b) In addition to the maintenance of the Common Areas, the Townhome Association shall provide exterior maintenance upon each Townhome, which is subject to assessments hereunder as follows: paint, repair, replace and care for roof shingles and sheathing, gutters and downspouts, exterior building surfaces, trees, shrubs, grass, walkways, front porch, mailbox kiosk and other exterior improvements and betterments; provided that the Townhome Association shall not be responsible for providing exterior maintenance for any improvements and betterments made and installed by Owners. Such exterior maintenance by the Townhome Association shall not include windows, screens, glass surfaces; doors/storm doors/screen doors, exterior doors, garage doors; fireplaces, chimney and flue; exterior water faucets, heat pump - HVAC systems; mailbox locks and keys; rear porches/patios and decks, exterior light fixtures and bulbs; wastewater clogs from the unit, crawlspace repairs; gas, water, electricity and other utilities; correction of original deficiencies and driveways. In the event that the need for maintenance or repair by the Townhome Association is caused through the willful or negligent act of any Owner, his or her family, guests, invitees or delegates, the cost of such maintenance and repair shall be assessed against the Owner(s) of such Lot(s) as a Specific Assessment pursuant to Section 6.5 below and may be collected by the Townhome Association as provided in Section 6.10 below and as otherwise provided for in this Declaration.

c) The base assessments for each Lot may include, without limitation, the following: operating expenses of the Townhome Association including sums for property taxes, governmental fees,

insurance premiums, legal and accounting fees, management fees, charges for utilities for common areas, services provided by the Townhome Association, janitorial and cleaning fees, landscape maintenance, expenses related to the operation and maintenance of the storm water management system and storm water detention pond, expenses related to the operation and maintenance of the recreation and other facilities, and expenses related to the indemnification of officers and directors as provided in the Bylaws.

Section 6.3 Base Assessments. Base Assessments shall be established by the Board of Directors based upon an annual budget. The budget shall include any contributions to be made to a reserve fund for the repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots as authorized in Article VI.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the base assessment may not be increased by the Townhome Association each year by more than twenty percent (20%) above the base assessment for the previous year without a vote by the Members.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the base assessment may be increased above twenty percent (20%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) Owners shall not be assessed until a Certificate of Occupancy or similar document has been issued by the appropriate municipality and the Lot has been conveyed to the Owner. The initial base assessment per year for each Lot shall be the sum of Three Thousand, Four Hundred Eighty and 00/100 Dollars (\$3,480.00) billed monthly at Two-Hundred Ninety and 00/100 Dollars (\$290.00) per month.

(d) At the conveyance of any Lot with a completed residential dwelling thereon, the Grantee of such conveyance shall pay the Association the sum of Five Hundred and 00/100 Dollars (\$500.00) for each Lot as a contribution to the capital of the Townhome Association (the "Capital Contribution"). The Townhome Association may use the Capital Contribution or any part thereof for any purposes authorized by this Declaration. Amounts paid into such fund shall be in addition to and shall not be considered as an advance payment of any portion of the base, special or specific assessments. This amount shall be due at the time of closing and payable to the Townhome Association. Failure to make said payment could result in a lien against the lot.

Section 6.4 Special Assessments. In addition to the base assessments authorized above, the Townhome Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of covering unbudgeted expenses or under-budgeted expenses or defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided, however, any such assessment shall require the written consent of the majority of the Board of Directors and the consent of the Declarant during the

Declarant Control Period. The funds collected pursuant to the special assessment shall be used solely for the purpose(s) identified by the Board of Directors at the time the special assessment is levied.

Section 6.5 Specific Assessments. The Board shall have the authorization to levy Specific Assessments against a particular Townhome Lot, (1) to cover the costs, including administrative costs, of providing services to the Townhome Lots at the request of the Owner; and (2) to cover costs incurred in bringing the Townhome Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Townhome Lot, their agents, contractors, employees, licensees, invitees, or guests or costs incurred for bringing suit against an Owner for failure to pay assessments owed of any nature, provided the Board shall give the Townhome Lot Owner prior written notice before levying any Specific Assessment.

Section 6.6 Notice and Quorum for any Action Authorized Under Sections 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.3 and 6.4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each appropriate and affected class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.7 Uniform Rate of Assessment. Both base and special assessments must be fixed at a uniform rate per Lot and base assessments may be collected on an annual, monthly or quarterly basis. Specific assessments may be to the contrary and the Townhome Association shall have the power, right and authority to issue a specific assessment against any Lot and its Owner if such Owner shall fail to reimburse the Townhome Association, as the case may be, pursuant to the provisions of this Article, Section 6.5 and Section 6.10, and Article X, Section 10.1 and Section 10.2, of this Declaration and as otherwise provided for in this Declaration.

Section 6.8 Declarant Assessments. Notwithstanding any provision to the contrary, during the Declarant Development Period, the Lots and other portions of the Property owned by the Declarant on any Lot shall not be subject to any base, special, or specific assessments levied by the Association or to any lien for such assessments.

Section 6.9 Date of Commencement of Assessments: Due Dates. The base assessments provided for herein shall commence and shall be due and payable as to all Lots on the first day of the month following the platting of record of such Lot and shall continue on the first day of each calendar year thereafter. Base assessments shall be collected in advance on a periodic basis established by the Board of Directors from time to time, which periodic basis shall not be less frequent than annually. Unless the Board provides otherwise, the base assessment shall be due and payable in advance on the first day of each month. The first base assessment applicable to a Lot shall be adjusted according to the number of months remaining in the calendar year. Dues shall become first due only upon the issuance of a Certificate of Occupancy and following the Closing by the occupant of the home.

The Board of Directors shall fix the amount of the base assessment against each Lot at least sixty (60) days in advance of each annual assessment period. Written notice of the base assessment shall be sent to every Owner subject thereto. The due date shall be as previously set forth herein, unless otherwise established by the Board of Directors. The Townhome Association shall, upon demand, and for a

reasonable charge, furnish a certificate signed by an officer of the Townhome Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Townhome Association as to the status of assessments on a Lot is binding upon the Townhome Association as of the date of its issuance.

Section 6.10 Effect of Nonpayment of Assessments; Remedies of the Townhome Association.

Any assessment (base, special or specific) or other charges not paid within ten (10) days after the due date shall bear interest from the due date until date paid, at a rate not to exceed the lesser of the maximum rate permitted by law or Eighteen percent (18%) per annum on the principal amount due and shall be subject to a late charge not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or 10% of the amount unpaid.

The base, special, and specific assessments, together with interest, late charges, costs, including without limitation and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in favor of the Townhome Association. The Townhome Association shall be entitled to file a document evidencing such lien in the land records of New Hanover County.

Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Townhome Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest, late charges, costs and reasonable attorneys' fees of any such action, or foreclose the lien against the Lot. For purposes of this Section 6.10, the amount of delinquent assessment, plus accrued interest and late charges shall be considered evidenced by this Section 6.10 and, therefore, evidence of indebtedness shall exist hereby. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Townhome Association to take some action or perform some function required to be taken or performed by the Townhome Association or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Townhome Association or from any action taken by the Townhome Association to comply with any law, ordinance or directive of any governmental or municipal authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to attorneys' fees, then to late charges, then to interest and then to delinquent assessment.

Section 6.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof

**ARTICLE VII
INSURANCE**

Section 7.1 Ownership of Policies. Contracts of insurance upon the Common Areas shall be purchased by the Townhome Association for the benefit of the Townhome Association. The Townhome Association may reevaluate its coverage from time to time and may provide, subject to Section 7.2 of this Article, for such insurance coverage as it deems appropriate. The policies may contain a reasonable deductible.

Section 7.2 Coverage. All improvements and personal property included in the Common Areas shall be insured in an amount equal to full replacement value as determined annually by the Townhome Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto.

The Townhome Association shall also purchase a general and public liability policy covering the Association and its members for damages caused by the negligence of the Townhome Association or any of its members or agents, as well as directors' and officers' liability insurance. The policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). The Townhome Association may purchase such other insurance necessary to satisfy applicable laws and regulations or which are deemed necessary in the sole discretion of the Board.

Section 7.3 Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Townhome Association, shall first be bonded by a fidelity insurer to indemnify the Townhome Association for any loss or default in the performance of their duties in an amount equal to at least one-half (1/2) the annual assessment plus accumulated reserves.

Section 7.4 Premiums. Premiums for contracts of insurance purchased by the Townhome Association shall be common expenses of the Association and paid by the Townhome Association.

Section 7.5 Proceeds. All contracts of insurance purchased by the Townhome Association shall be for the benefit of the Townhome Association and its mortgagees, if any, as their interests may appear, and the Owners as Members of the Townhome Association, and shall provide that all proceeds thereof shall be payable to the Townhome Association as insurance trustee under this Declaration. The sole duty of the Townhome Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 7.6 Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Townhome Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

- (a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.
- (b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

Section 7.7 Insurance on Townhomes. The Townhome Association shall obtain and thereafter maintain, as a common expense, a master insurance policy providing casualty insurance for all Townhomes, as originally constructed, exclusive of any betterments or improvements made following conveyance from the Declarant and any personal property of the Owner or occupants. Each Townhome Owner shall obtain and maintain, at each Owner's individual expense, an H06 insurance policy, inclusive of wind and hail coverage, providing insurance coverage for their Townhome, its contents, loss of use, and any other coverage that may be obtainable and desired by Owner, to the extent and in the amounts such Owner deems necessary to protect his or her own interests, and providing that it is without contribution as against the insurance purchased

by the Town home Association. An Owner shall provide to the Board, upon request, evidence of such insurance required under this Section.

ARTICLE VIII ARCHITECTURAL AND APPEARANCE CONTROL

Section 8.1 General. Anything contained in this Declaration which may be construed to the contrary notwithstanding, no tree removal, site preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in hedges, walls and other structures, or construction of any Improvements, shall be commenced, erected or maintained on any Lot until the architectural control committee appointed as hereinafter provided (the "Architectural Control Committee" or "ACC"), has approved the plans and specifications therefor and the location of such Improvements. In such cases where the proposed plans or specifications require the approval of the Town of New Hanover or the County of New Hanover Planning Boards, the owner of the property must obtain, at their own expense, the requisite governmental approvals. In no case is it the responsibility of the Board or the Architectural Control Committee to determine whether or not the aforementioned governmental approval of the proposed plans is required. Approval by the Townhome Association shall not indemnify a property owner for failure to obtain the necessary governmental approval.

Section 8.2 Composition. For so long as Declarant own one or more Lots, then Declarant, shall annually appoint the members of the ACC, which will be composed of up to three (3) individuals at the discretion of the Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within SEAGATE POINT. In the event of the death or resignation of any member of the Architectural Control Committee or Declarant as determined above, for so long as it has the authority to appoint the members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Upon final termination of Declarant's membership in the Townhome Association, the Board of Directors of the Townhome Association shall appoint three (3) members of the Architectural Control Committee on an annual basis. At any time, Declarant as they may own any Lots on the Property, may elect not to appoint the members of the Architectural Control Committee and may assign this right to the Board of Directors of the Townhome Association.

Section 8.3 Procedure. No Improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets.
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement; and