

Prepared by Aimee Harmelink (“Submitter”) as Secretary of and on behalf of the Heron Cove of Oak Island Home Owners Association, Inc. (“Heron Cove” or “HOA”) 7000 East Yacht Dr, B3, Oak Island, NC 28465

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERON COVE**

*Heron Cove*

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERON COVE (“**Declaration**”) is made as of the date of the last signature on this Declaration. Any and all prior declarations of covenants, conditions and/or restrictions related to Heron Cove and/or declarations related to the properties discussed herein are deleted in their entirety, are null and void and are replaced in their entirety by this Declaration:

**WITNESS TO**

WHEREAS, the members (“**Members**”) of Heron Cove are the owners of certain land located in Brunswick County, North Carolina, which is more particularly referenced in Exhibit "A" attached hereto and made a part hereof by reference (hereinafter sometimes referred to as the “**Townhouse Property**”). For the purposes of this Declaration, the defined term **Townhouse Property includes all Townhouse Lots and Townhouse Common Areas, but does not include the Townhouse structures built on such land (such land and such Townhouse structures being separately addressed, at times, within this Declaration);**

WHEREAS, Previously, an exclusive residential community of townhouses known as *Heron Cove of Oak Island Homeowners Association, Inc.* was created on the Townhouse Property;

WHEREAS, The HOA still desires to provide for enforcement of covenants and restrictions applicable to the Common Area, Townhouse Property and Townhouses (as defined below) (collectively, the “**Heron Cove Properties**”) and, to subject all of the Heron Cove Properties to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, The HOA was previously created (and continues to exist) as a non-profit organization to administer and enforce the covenants, conditions and restrictions applicable to the Heron Cove Properties as set forth herein;

NOW, THEREFORE, The HOA declares that the Heron Cove Properties are and hereafter shall be held, transferred, sold and conveyed subject to these Declaration of Covenants, Conditions and Restrictions recorded herein (“**Declaration**” or “**Declarations**”) as well as the *Driveway Easement and Shared Parking Agreement* recorded in Book 4151 at Page 201 of the Brunswick County Registry as the same may be amended and supplemented from time to time, which are for the purpose of enhancing the value of the Heron Cove Properties and which covenants shall run with the land and shall be binding upon all parties having any right, title or interest in the Heron Cove Properties hereinabove described and shall inure to the benefit of each owner thereof.

#### ARTICLE I CERTAIN OTHER DEFINITIONS

Section 1. “**Board of Directors**” or “**Board**” shall mean and refer to the Board of Directors of the HOA.

Section 2. “**Townhouse Lot**” or “**Lot**” shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision plat of the Townhouse Property with the exception of any Townhouse Common Area owned in fee simple by the HOA and any public street rights-of-way shown on such recorded plat. In the event that any Townhouse Lot is increased or decreased in size by recombination or resub-division through recordation of new plats, any newly platted Townhouse Lot shall thereafter constitute a Townhouse Lot. Each Townhouse shall also be a Lot as described in the Declaration.

Section 3. “**Townhouse**” means the structure(s) built on a Townhouse Lot.

Section 4. “**Townhouse Common Area**” or “**Common Area**” shall mean and refer to any and all real property, together with any improvements thereon conveyed to the HOA. Except as otherwise provided in this Declaration, the Townhouse Common Area shall be maintained by the HOA or its successors in interest unless dedicated to public use as set forth in the Declaration.

Section 5. “**Townhouse Owner**” or “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any **Townhouse** within a Townhouse Lot, including contract sellers, but excluding those having an interest in a Lot solely as security for the

performance of an obligation.

## **ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Existing Property. The Townhouse Property is and shall be held, transferred, sold, conveyed, used and occupied subject to the Declaration as of the date of recording hereof.

Section 2. Annexation of Additional Property. At any time while the HOA exists, additional land may be annexed by the HOA. No such annexation may occur unless there is a unanimous vote of the Townhouses (as described herein, each Townhouse shall have one vote regardless of how many owners there are of such Townhouse). Upon such annexation, such additional land shall become subject to this Declaration by the recording by the HOA of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Any property annexed pursuant to this Section may be annexed and subjected to this Declaration as one parcel or as several parcels at different times, as determined by unanimous Townhouse vote. The addition of such property pursuant to this Section may increase the cumulative number of Townhouses within the Townhouse Property and, therefore, may, but not necessarily, alter the relative maximum voting strength of each Townhouse.

Section 3. Conveyance of Common Area in Annexed Property. Promptly upon request of the HOA, the owner of the annexed property shall convey any or all Common Area located within the newly annexed property to the HOA.

Section 4. Merger. Additional property may also be made subject to this Declaration by merger or consolidation of the HOA with another *non-profit* corporation formed for the same or similar purposes upon unanimous vote of the Townhouses. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Townhouse Property and the covenants and restrictions established upon property owned by the other association as one scheme. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 5. Effect of Addition of Property. Except by amendment of this Declaration as provided herein, no addition of property, whether by annexation, merger or consolidation, shall revoke or modify any provision of this Declaration as to the Heron Cove Property already subject hereto or diminish the rights of the Townhouse Owners, except for the possible dilution of voting strength that may, but not necessarily, occur as a result of inclusion of additional Townhouses in the HOA.

Section 6. Good Faith Lender's Clause. Any violation of this Declaration shall not affect any lien or deed of trust of record held in good faith, upon any applicable part of the Heron Cove Property, which liens may be enforced in due course, subject to the terms of this Declaration.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Each Owner is also a Member of the HOA. Membership shall be appurtenant to and may not be separated from ownership of any Townhouse which is subject to assessment.

Section 2. Voting Rights.

(a) Each Townhouse shall have one vote, regardless of the number of owners of such Townhouse. When more than one person owns an interest (other than a leasehold or security interest) in any Townhouse, all such persons shall be Members and the voting rights appurtenant to their Townhouse shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed. For the avoidance of doubt, in no event shall more than one vote be cast or counted with respect to any Townhouse.

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

**ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the HOA annual assessments and special assessments, such assessments to be established and collected as provided herein. All assessments which are unpaid when due, together with interest and late charges set forth in this Declaration and all costs of collection, including reasonable attorney's fees, shall be a charge against and, a continuing lien upon the Townhouse and Townhouse Lot against which such assessment is made subject to § 47F-3-116 of the Act, as amended. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, subject to notice provided in accordance with § 47C-3-116(e1) of the Act, shall also be the personal, corporate or entity obligation of the person(s), corporation(s) and any other entity owning such Townhouse and Townhouse Lot at the time when the assessment fell due, but shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon such Townhouse and Townhouse Lot against which the assessment or charge was made.

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

Section 2. Purposes of Assessments. The assessments levied by the HOA shall be used to (i) fix, (ii) maintain, (iii) improve, (iv) promote the recreation, health, safety and welfare of the Owners, and/or (v) to maintain or enhance the value of the Heron Cove Properties.

Section 3. Insurance Assessment. The Board shall obtain insurance regarding (i) the Townhouse Property, (ii) the Townhouse Common Area, (iii) the exterior of each Townhouse, and (iv) such other items as agreed by unanimous Townhouse vote. The Board shall assess the Owners, in advance, for each Townhouse's prorated share of insurance premiums ("**Insurance Assessment**"). The Owners shall have thirty (30) days following receipt of the invoice for the Insurance Assessment to pay the assessment or the assessment shall become a lien against that Owner's Townhouse and Townhouse Lot.

Section 4. Annual Assessments.

(a) Annual Assessments: Once per year, the Board shall draft a budget to (i) fix, (ii) maintain, (iii) improve, (iv) promote the recreation, health, safety and welfare of the Owners, and/or (v) to maintain or enhance the value of the Heron Cove Properties. The Board shall send a copy of the proposed budget to all Members or their representatives. Such budget will be deemed ratified, without meeting, upon a majority vote of the Townhouses in favor of such budget. However, any Member may call for a meeting to discuss such budget and such budget will be deemed **not** ratified until such meeting is held. No more than two meetings with respect to any proposed budget may be called in total. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% above the assessment imposed for the immediately preceding year, such budget shall be deemed ratified unless at least 80% of the Townhouses vote to reject the budget. If the proposed budget is rejected, the budget last ratified shall be continued until such time as a majority of Townhouses vote to ratify a subsequent budget proposed by the Board.

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

Section 5. Special Assessments. In addition to the annual assessments authorized above, the HOA may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent as provided in Section 4 of this Article.

Section 6. Assessment Rate: Collection Period. Except as otherwise provided in this Declaration, the annual and special assessments shall be fixed at a uniform rate for all Townhouses and may be collected on a yearly, semi-annually, quarterly or monthly basis, as determined by the Board.

Section 7. Meetings, Notice and Quorum. Written notice of any meeting called for the purpose of

taking any action authorized pursuant to this Declaration shall be sent to all Members or their representatives not less than ten (10) days nor more than sixty (60) days prior to the meeting.

At a meeting requiring Townhouse votes (as opposed to Member votes), the presence of Members entitled to a simple majority of Townhouse votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and if called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the Townhouse votes.

At a meeting requiring Member votes (as opposed to Townhouse votes), the presence of Members entitled to cast sixty (60) percent of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and if called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

#### Section 8. Certificate of Payment of Assessment(s).

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

Section 9. Effect of Nonpayment of Assessment(s): Remedies. An assessment not paid within thirty (30) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within forty-five (45) days after the due date, the Board, in its reasonable discretion, may impose interest from the due date at the rate of not more than six percent (6%) per annum. The HOA may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Townhouse and Townhouse Lot for which such assessment is due. Interest, late payment charges, reasonable attorneys' fees, and the costs of such action or foreclosure may, at the Board's reasonable discretion, be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Townhouse Common Area or by non-use or abandonment of such Owner's Townhouse or Townhouse Lot.

Section 10. Subordination of the Lien to Mortgages. Sale or transfer of a Townhouse and Townhouse Lot shall not affect any assessment lien.

However, the sale or transfer of a Townhouse and Townhouse Lot pursuant to foreclosure of a first mortgage, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessment which became due prior to the date of such conveyance. No such sale or transfer,

however, shall relieve such Townhouse or Townhouse Lot from liability for any assessment thereafter becoming due or from the lien thereof. However, the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

Section 11. Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V

### RIGHTS AND RESPONSIBILITIES OF THE HOA

Section 1. Responsibilities. The HOA, subject to the rights of the Owner(s) set forth in this Declaration, shall be responsible for the exclusive management and control of the Townhouse Common Area and the exterior of each Townhouse (as set forth herein) and shall keep such, including the roadways, parking areas, greenery, plants, trees, and exterior air conditioning and heating units, in good, clean and proper condition, order and repair. Such maintenance shall include, but is not limited to, mowing, edging, fertilizing, weeding, applying pine straw and pruning of trees and shrubs; maintaining the irrigation system for the Townhouse Common Area; and repairing and replacing (but not improving) paved areas within the Townhouse Common Area, as determined by the Board in its reasonable discretion. In the event that the need for maintenance, repair or replacement of any of the Townhouse Common Area or exterior of a Townhouse is caused by the willful or overtly negligent act of an Owner, the Owner's family, or the Owner's invitees or renters, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Owner's Townhouse is subject, and solely that Owner's Townhouse assessment.

In addition to the above paragraph, the HOA shall provide maintenance, repair and replacement of the exterior of each Townhouse, which is subject to the HOA assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces (such as siding), decks, stairways, walks, driveways and other exterior items. Such exterior maintenance, repair and replacement shall not include glass surfaces or improvements made by an Owner (as opposed to the HOA) to such exterior areas. In the event that the need for maintenance, repair or replacement of the Townhouse is caused by the willful or overtly negligent act or omission of a Townhouse Owner, the Owner's family, or the Owner's invitees or renters, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Owner's Townhouse is subject, and solely that Owner's Townhouse assessment.

The HOA shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, maintenance, administration and management of the Townhouse

Common Area and the exterior of the Townhouses (as set forth herein) and the performance of its other obligations hereunder. The HOA shall operate and maintain areas designated as Townhouse Common Areas by a simple majority vote of the Townhouses, whether or not title to such areas has been formally conveyed to the HOA.

The Board shall be responsible for taking any necessary action to enforce the covenants, rights and restrictions contained in this Declaration.

Section 2. Manager. The Board may employ the services of a person or entity (the "Manager"), to assist the HOA and the Board in managing their affairs and carrying out their responsibilities hereunder and such other persons or entities (including, but not limited to, attorneys, property management companies and accountants) as the Board deems reasonably necessary or advisable, whether such persons or entities are engaged, furnished or employed by the Manager or directly by the Board. The Board in the name of and on behalf of the HOA may enter into agreements for such services upon such terms as the Board may deem appropriate.

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

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

Section 5. Change in Townhouse Common Area. In exercising any of the rights provided or granted under this Declaration, the HOA may not revoke, modify or amend this Declaration in a manner that reduces the size of the Townhouse Common Area to less than the area required by the appropriate governmental authority as of the date of this Declaration.

Section 6. Payment for items Pursuant to this Declaration. Except as otherwise stated herein, the HOA shall pay for the items as set forth herein, which shall be part of the annual assessment or a special assessment.

## **ARTICLE VI**

### **RIGHTS OF THE BOARD OF DIRECTORS**

In addition to the other rights and permitted actions that the Board has and may take as stated in herein, the By-laws and/or the Articles of Incorporation, either the Board's President, Treasurer



or Secretary may take any such actions on behalf of and in the name of and at the expense of the HOA as are reasonable to carry out the Board's rights, duties or obligations set forth in these Declarations, the By-laws and/or the Articles of Incorporation. This includes, but is not limited to, incurring expenses; making purchases; opening credit card accounts; opening lines of credit; opening bank accounts; making deposits; writing checks; wiring money; entering into and signing contracts; filing documents with the appropriate governmental agencies and authorities; opening post office boxes; employing attorneys, accountants, managers, contractors, vendors, agents etc. The President, Treasurer or Secretary may delegate, in writing, any of such rights to another Board member.

## ARTICLE VII

### RULES REGARDING CHANGES TO PROPERTY

The HOA desires to maintain the general aesthetic of the Heron Cove Properties and keep the aesthetic in a generally consistent manner. To that end, if an Owner would like to make improvements on, additions to or any other change to the exterior of their Townhouse, their Townhouse Lot or a Townhouse Common area near their Townhouse or Townhouse Lot that is different than what already exists with respect to the exterior of that Townhouse, Townhouse Lot or Townhouse Common Area ("**Alteration**"), then the Owner must make a written request to the Board asking the Board to approve such Alteration and provide the Board with reasonable detail with respect to such Alteration. Upon reasonable request, the Owner shall provide additional information and detail to the Board regarding the Alteration. If the Board reasonably determines that such Alteration is consistent with the desired general aesthetic of the Heron Cove Properties, then the Board may approve such Alteration by a simple majority vote of the Board members (each Board member having one vote). Such Alteration will be made at the sole expense of that Owner. If the Board reasonably determines that such Alteration is **not** consistent with the desired general aesthetic of the Heron Cove Properties as set forth in this Article, then the Board may reject such Alteration by a simple majority vote of the Board members but shall send out such requested Alteration to the Members for a vote. Notwithstanding the forgoing, if a simple majority of the Townhouses vote to overrule the Board's determination, then such vote of the Townhouses shall control. All fees and costs associated with an Owner's Alteration request shall be at the Owner's sole expense.

## ARTICLE VIII

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by this Declaration or by the rules and regulations adopted by the Board, every Owner and their families, tenants, renters and guests shall have a right and easement of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Townhouse and Townhouse Lot, subject to:

- (a) the right of the HOA to charge reasonable admission and other fees for the use of any

recreational facilities situated or constructed on the Townhouse Common Area and to limit the use of such facilities to Owners and to their families, tenants, renters and guests, as provided in Section 2 of this Article.

(b) the right of the HOA, by a simple majority of a Townhouse vote, to suspend the voting rights of an Owner subject to a hearing on opportunity to present evidence in accordance with § 47F-3-107.1 of the Act for any period during which any assessment against the Owner's Townhouse or Townhouse Lot is unpaid.

c) the right of the HOA, by a unanimous vote of the Townhouses, to dedicate, sell or transfer all or any part of the Townhouse Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be unanimously agreed upon by the Townhouses. Nothing herein shall be deemed to prohibit the Board, without any other consent, from granting easements over and across the Common Area to any contractor, vendor, public agency, authority or utility for the installation and maintenance of sewage, utility (including cable television) or drainage facilities or maintenance of the Common Area when, in the opinion of the Board, such easements are reasonably necessary. Notwithstanding anything herein to the contrary, the Common Area shall be preserved for the perpetual benefit of the Owners and shall not be conveyed except by unanimous vote of the Townhouses.

(e) the right of the HOA, by unanimous vote of the Townhouses, to exchange all or part of the Townhouse Common Area for other property.

(f) by unanimous vote of the Townhouses, the right of the HOA to expand or add to the Townhouse Common Area.

(g) by unanimous vote of the Townhouses, the right of the HOA to adopt, promulgate and enforce rules and regulations concerning the use of the Common Area.

(h) the right of the Board to otherwise deal with the Common Area as provided herein, the Articles of Incorporation and/or Bylaws of the Association.

#### Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by this Declaration may be exercised by members of the Owner's family who occupy the Owner's Townhouse.

(b) Tenants: Contract Purchasers. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be assigned by such Owner to his/her guests tenants, renters or contract purchasers of such Owner's Townhouse, or a portion of said Townhouse. So as not to overburden the use of the Heron Cove Properties, if an Owner assigns said right and easement of enjoyment and access as set forth herein, then so long as such

assignment is in effect, if a simple majority of the Townhouses vote to agree then the Owner shall terminate such assignment.

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

Without limiting the generality of the foregoing, but subject to Article VII (which such Article VII shall control over this Article VIII), no Owner or tenant, renter, guest or invitee of an Owner shall, without the specific prior written unanimous vote of the Townhouses: (i) damage or waste the Townhouse Common Area or improvements thereon or remove any trees or vegetation therefrom; (ii) erect any gate, fence, structure or other improvement or thing on the Townhouse Common Area; (iii) place any garbage receptacle, trash or debris on Townhouse Common Area (except in the designated location for such); (iv) fill or excavate any part of the Townhouse Common Area; (v) landscape or plant vegetation on Townhouse Common Area; or (vi) use the Townhouse Common Area or any part thereof in a manner inconsistent with or in any way interfering with the rights of Owners.

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

(c) Rights and Responsibilities of the HOA as to Common Area. The HOA shall have the right and obligation, which may be delegated to the Board, to ensure that the Common Area is preserved for the perpetual benefit of the Owners, and, to that end, shall: (i) maintain the Townhouse Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners, (ii) maintain adequate liability insurance covering the HOA and its Members, Board Members, Directors and Officers, against any loss or damage suffered by any person with respect to Common Areas or the exterior of any and all Townhouses, (iii) adequate hazard insurance covering the real and personal property owned in fee by the HOA; and (iv) pay all property taxes and other assessments levied against all Common Areas owned in fee by the HOA.

## ARTICLE IX

### PARTY WALLS

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

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original

construction of the townhouses and placed on the dividing line between the Townhouse Properties shall constitute a party wall, and to the extent not inconsistent with provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

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

Section 4. Weatherproofing. Notwithstanding anything inconsistent or to the contrary, Owner(s), who by his/her/their/its overt negligence or willful act or omission causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

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

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

## **ARTICLE X EASEMENTS**

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities and for other utility installations are reserved as shown on the recorded plats of the Townhouse Properties. The HOA may reserve or grant easements over the Townhouse Common Area as provided in this Declaration. Within any such easement herein provided, no structure (excluding Townhouses), planting or other material shall

be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements, unless the Townhouses unanimously vote otherwise.

For a period of thirty (30) years from the date hereof, Arbutina Properties, LLC, a North Carolina limited liability company (“**Arbutina**”) has, for itself and its employees, agents, successors and assigns, an easement upon and a right of ingress, egress and regress on, over and under the Townhouse Properties for the purposes of constructing and maintaining water, sewer, gas, storm water drainage and retention, telephone, cable television, and electric, and other utility facilities to the extent required by any applicable governmental entity or deemed by the Board that Arbutina is required to perform. The Board shall give reasonable notice of its intent for Arbutina to take such action to each Owner whose Townhouse Lot is affected.

Section 2. Easements for Governmental Access. An easement is hereby established over the Townhouse Common Area and Townhouse Properties for the benefit of applicable governmental agencies for installing, removing, and reading water meters, maintaining and replacing water and sewer facilities, and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any Townhouse or other structure is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Townhouse Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such Owner's Townhouse or other structure. Such work shall be done expeditiously, and, upon completion of the work, such Owner shall, at such Owner's sole expense, restore the adjoining Townhouse Lot to as nearly the same condition as that which existed prior to the commencement of the work as is reasonably practicable. No fence shall be erected within such area adjoining a Townhouse, unless, by unanimous Townhouse vote, the Townhouses agree otherwise.

Section 4. Association's Easement and Right of Entry. The HOA, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over each Townhouse Lot to the extent reasonably necessary to perform its duties and responsibilities as set forth herein.

Section 5. Easement Over Townhouse Common Area. A perpetual, non-exclusive easement over the Townhouse Common Area is hereby granted to each Owner and such Owner's family members, guests, invitees, renters and tenants of such Owner except as otherwise expressly provided herein.

## **ARTICLE XI INSURANCE**

Section 1. Bonds. The HOA shall procure and maintain adequate liability insurance covering the HOA and shall procure and maintain officers', directors' and employees' liability insurance, and such other insurance as it deems necessary or advisable. The HOA may cause any or all persons responsible for collecting and disbursing monies of the HOA to be bonded.

Section 2. Casualty Insurance. The HOA shall maintain casualty insurance regarding the Townhouse Property, the Townhouse Common Area and the exterior of each Townhouse in the name of, and the proceeds thereof shall be payable to the HOA as Trustee for all Owners and Security Holders as their interest may appear. Such insurance shall be in an amount equal to, but not less than the full insurable value of the Townhouse Property, the Townhouse Common Area and the exterior of each Townhouse on a replacement cost basis and shall insure against such risk and contain such provisions as the Board from time to time shall determine. Such insurance shall include replacement costs associated with replacing the exterior structure of each Townhouse inward to the unpainted sheetrock within the property at the time of conveyance to the Owner. The Owner(s) are responsible for maintaining insurance covering the replacement cost of all fixtures included within the Owner(s)' Townhouse at the time of conveyance to such Owner(s), including, but not limited to, appliances, floor coverings, wall coverings, window accessories and light fixtures.

Section 3. Deductible. Any insurance, purchased by the HOA may be subject to a deductible so that the total amount of insurance, after application of the deductible, shall not be less than 90% of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies. In the event of a loss or damage to any part of a Townhouse which a Townhouse Owner is obligated to maintain, repair or replace which may be covered by insurance maintained by the HOA, the deductible shall be paid by the Owners affected. Whenever such loss or damage occurs which may be covered by the insurance maintained by the HOA, the deductible shall be paid on pro rata basis based on the amount of covered loss or damage received by the respective Townhouse Owner(s).

Section 4. Unavailability of Insurance. Should for any reasons the insurance required by carried in accordance with this Article not be reasonably available, which shall include availability at a reasonable cost, as determined by the Board, the Board shall promptly send written notice of that fact. Upon sending such notification, the HOA shall be relieved of its obligations to carry such insurance until and only until such time as such insurance can be reasonably procured.

Section 5. Subrogation. All policies of physical damage insurance shall contain waivers of

subrogation and of any reduction of pro-rata liability of the insurer as the result of any insurance carried by any individual Owner or of the invalidity arising from any acts or omissions of the insured or any Owners.

Section 6. Insurance. The Board, acting on behalf of the HOA, shall receive any insurance proceeds payable to the HOA, as Insurance Trustee, and shall maintain such funds in such capacity, for the benefit of the HOA and Townhouse Owners to be benefited thereby. No Townhouse Owner, nor any party claiming through any Owner shall have any claim against the HOA, the Board, or the officers, managers, employees or agents of the HOA, relating to the collection and disposition of any insurance proceeds, as long as such collection and disposition was made by such persons in good faith. Any such collection or disbursement made following receipt of an opinion from an attorney licensed to practice law in the State of North Carolina, engaged independently by the HOA, shall be conclusively deemed a collection or disbursement made in good faith to the extent made in reliance thereon. To the extent there are any expenses incurred by the Board acting as Insurance Trustee, such expenses shall be deemed a common expense, and may be deducted by the Board and with respect to the Board from any insurance proceeds received prior to disbursement or may be collected in the nature of an Assessment.

Section 7. Individual Policy for Townhouse Owners. Each Townhouse Owner may obtain insurance, at such Owner's own expense, affording personal property, additional living expense, personal liability and any other coverage obtainable, to the extent and in the amount such Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers and shall provide that it is without contribution as against the insurance purchased by the HOA. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the HOA due to the pro-ration of the insurance purchased by an Owner under this Section, such Owner shall be liable to the HOA to the extent of such reduction and shall pay the amount of such reduction to the HOA upon demand, and assign the proceeds of such Owner's insurance, to the extent of such reduction, to the HOA.

Section 8. Other Insurance. The Board on behalf of the HOA may procure such other insurance, as it may from time to time deem appropriate, to protect the HOA, the Board members or the Owners, including owners and directors' errors and omissions coverage. By unanimous Townhouse vote, such procurement may be rejected and, therefore, not permitted to be purchased.

## **ARTICLE XII GENERAL PROVISIONS**

Section 1. Enforcement. The Board or any Townhouse Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of Declaration. Failure by the Board or an

Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Further, the Board shall have the right to record in the appropriate land records a notice of violation of this Declaration or the Bylaws of the Association, or any rules, regulations, use restrictions, or design guidelines promulgated by the HOA and to assess the cost of recording and removing such notice against the Owner in violation of the Declaration.

Section 2. Severability. If any term, restriction, covenant, condition or provision of this Declaration is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the term, restriction, covenant, condition and provision shall remain in full force and effect and in no way shall be affected, impaired or invalidated.

Section 3. Amendment of this Declaration. This Declaration may be amended solely by a unanimous vote of the Townhouses. Any such amendment shall be effective upon recording of same in the applicable public registry for Brunswick County, North Carolina. No amendment shall be binding upon any Townhouse or Townhouse Owner until fifteen (15) days after a copy of such amendment has been provided to such Owner.

The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Heron Cove Properties and the Owners thereof for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a unanimous vote of the Townhouses.

Section 4. Interpretation. Headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing any provision hereof. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa: the use of one gender shall include all genders; and the use of the word "including" shall mean "including, but not limited to". This Declaration and the provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina.

Section 5. Subdivision of Lots. No Townhouse or Townhouse Lot may be subdivided by sale or otherwise so as to reduce the total Townhouse area or Townhouse Lot shown on the recorded plat, except by the unanimous vote of the Townhouses and, if required, by the appropriate governmental authority.

Section 6. Enforcement. The HOA shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board determines that the HOA's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or



to estop the HOA from enforcing any other covenant, restriction or rule.

Section 7. Notices and Meetings. Any and all meetings (including, but not limited to, HOA Board meetings) may be attended by phone, virtually (such as by Zoom, facetime, Webex etc.), or by written proxy at that Member's sole discretion and such Member will be deemed "present" at that meeting. In-person meetings shall never be required.

For the avoidance of doubt, any and all communications, votes, notices and other documents or information may be communicated by email unless expressly stated otherwise herein.

[SIGNATURES ON FOLLOWING PAGE]

[Remainder of page intentionally left blank]

In Witness Whereof, the undersigned being the Declarant herein, has hereunto set its hand and seal this day of November, 2022. AH

25<sup>th</sup> day of January 2023

**DECLARANT:**

Heron Cove of Oak Island Home Owners Association, Inc. a North Carolina non-profit corporation

Aimee Harmelink

By: Aimee Harmelink

Title: As Secretary of the Board of the Heron Cove of Oak Island Home Owners Association, Inc., and not in any personal capacity.

Date Executed: 01/25/2023

STATE OF North Carolina  
COUNTY OF Wake

I, a Notary Public in and for the State and County aforesaid certify that the following personally appeared before me this day and being authorized to do so, acknowledged to me that she signed the foregoing document for and in behalf of **Heron Cove of Oak Island Home Owners Association, Inc.** for the purpose stated therein and in the capacity indicated and I either have personal knowledge of the identity of the person or I have seen satisfactory evidence of identity by current state or federal identification with the person's photograph:

Aimee Harmelink – as Secretary of and on behalf of the Board of Directors of Heron Cove of Oak Island Home Owners Association, Inc., and not in her personal capacity.

Date: January 25<sup>th</sup>, 2023

Tanner Burrell

NOTARY PUBLIC

My Commission Expires: 12/2/2026

(Stamp/Seal)

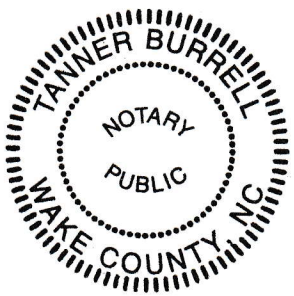


EXHIBIT "A"

Townhouse Property

Being all of the Heron Cove Townhouses, Building 7000A and Building 7000B, containing six (6) residential Units numbered 1 through 3 (Building 7000A) and 1 through 3 (Building 7000B) inclusive, as the same appears on a plat thereof recorded in Map Cabinet 124 at Page 65 of the Brunswick County Registry, reference to which plats is hereby made for a more particular description.