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**DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS  
FOR  
RIVERLIGHTS®**

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## DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS FOR RIVERLIGHTS

THIS DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS FOR RIVERLIGHTS ("**Covenant to Share Costs**") is made as of the date set forth on the signature page by NNP IV-Cape Fear River, LLC, a Delaware limited liability company ("**Declarant**"), with the joinder and consent of RiverLights Community Association, Inc. ("**Residential Association**") and RiverLights Commercial Association, Inc. ("**Commercial Association**").

### BACKGROUND STATEMENT

The Declarant is the developer of RiverLights, a mixed-use master planned community located in New Hanover County, North Carolina ("**RiverLights**"). The master plan for RiverLights approved by the City of Wilmington, North Carolina, as it may be amended ("**Master Plan**"), contemplates various land uses within RiverLights, including residential neighborhoods, commercial parcels, open space, environmentally sensitive sites, and recreational properties.

Certain residential properties within RiverLights have been or shall be made subject to that certain Residential Declaration of Covenants, Conditions and Restrictions for RiverLights, executed by the Declarant and recorded on June 1, 2016 in Deed Book 5974, Page 1123, *et seq.*, in the Office of the Register of Deeds of New Hanover County, North Carolina (as it may be amended and supplemented from time to time, the "**Residential Declaration**"). The Declarant has established the Residential Association as a mandatory membership owners association comprised of all owners of property subject to the Residential Declaration, to administer the Residential Declaration and to maintain, operate and insure various properties described in the Residential Declaration. The real property now and hereafter made subject to the Residential Declaration is referred to herein as the "**Residential Properties**." Each "Unit," as defined in the Residential Declaration, is referred to in this Covenant to Share Costs as a "**Residential Unit**" and each owner of a Residential Unit is referred to herein as a "**Residential Owner**."

Other properties described in or depicted on the Master Plan for RiverLights have been or will be made subject to that certain Commercial Declaration of Covenants, Conditions and Restrictions for RiverLights, executed by the Declarant and recorded on June 1, 2016, in Deed Book 5974, Page 1253, *et seq.*, in the Office of the Register of Deeds for New Hanover County, North Carolina (as it may be amended and supplemented from time to time, the "**Commercial Declaration**"). The Declarant has established the Commercial Association as a mandatory membership owners association comprised of all owners of property subject to the Commercial Declaration, to administer the Commercial Declaration and to maintain, operate and insure various properties described in the Commercial Declaration. The real property now and hereafter made subject to the Commercial Declaration is referred to herein as the "**Commercial Properties**." Each "Unit" as defined in the Commercial Declaration, is referred to in this

Covenant to Share Costs as a "**Commercial Unit**" and each owner of a Commercial Unit is referred to herein as a "**Commercial Owner**."

By this Covenant to Share Costs, the Declarant desires to provide for (i) the maintenance and operation of certain properties ("**Shared Areas**") and the provision of certain services ("**Shared Services**") by the Residential Association for the benefit of all or portions of the Residential Properties and/or all or portions of the Commercial Properties; (ii) an equitable allocation between the Residential Properties (or portions thereof) and the Commercial Properties (or portions thereof) of the costs incurred by the Residential Association with respect to maintenance and operation of such Shared Areas and Shared Services, and (iii) easements relating to maintenance and use of, and access to, such Shared Areas.

#### **DECLARATION OF INTENT AND BINDING EFFECT**

NOW, THEREFORE, the Declarant hereby declares that the real property described on Exhibit "A" together with any and all additional property now or hereafter made subject to the Residential Declaration and any and all additional property now or hereafter made subject to the Commercial Declaration (collectively, the "**Submitted Property**"), shall be held, sold, and conveyed subject to the covenants and conditions contained herein, which are made for the express benefit of the Declarant, the Residential Association and its members, and the Commercial Association and its members. This Covenant to Share Costs shall run with title to the Submitted Property and shall be binding upon the Residential Association, the Commercial Association, and all parties now or hereafter having any right, title, or interest in the Submitted Property, their heirs, successors, successors-in-title, and assigns.

#### **Article I**

#### **Shared Areas and Shared Services; Easements**

##### **1.1. Shared Areas.**

The "Shared Areas" shall consist of:

(a) the "**Stormwater BMPs**," which, except as otherwise provided in Section 2.1 hereof, shall include those pipes, lines, culverts, detention and retention ponds, and other structures and facilities now or hereafter constructed or installed within RiverLights which comprise the master drainage system serving the Submitted Property and which are designed to direct, divert, capture, store, pump, transport and distribute storm water runoff and surface waters from the Submitted Property.

(b) the "**River Road Median Landscaping**," which consists of all trees, shrubs, grasses and other landscaping located within the median(s) of that portion of River Road depicted on the master plan for RiverLights approved by the City of Wilmington, North Carolina, any irrigation systems and decorative features installed by the Declarant or its designees within such median(s), and replacements thereof; and

(c) the following property and improvements within that portion of the Submitted Property (as it may be expanded) lying between River Road (a 130' public right-of-way) and the

west bank of the Cape Fear River and being identified as a portion of Riverlights Marina Village on one or more subdivision plats executed and recorded by the Declarant (the "**Marina Village**"):

(i) the "**Marina Village Entry Improvements**," which consists of those entry features denoting the entrance to Marina Village located to the west of the right-of-way of River Road (a 130' public right-of-way) on either or both sides of Pier Master Point (a 63.5' private right-of-way), including all monumentation, landscaping, irrigation, and lighting associated with such entry features, but excluding any lettering, sign panels, or other media identifying specific businesses located within the Marina Village;

(ii) the "**Marina Village Streets**," which shall consist of the private rights of way shown on recorded plats of any portion of the Marina Village excluding those lying south of the northern right-of-way line of Hobie Run (including Hobie Run), and any private right-of-way connecting Watercraft Ferry Avenue to the roundabout in River Road at the southern end of the Marina Village, together with streetlights within such private rights-of-way;

(iii) the "**Marina Village Amenities**," which consist of the riverfront boardwalk, parks, and village green, if any, located within the "**Marina Village**," but excluding any docks, boatslips, and related infrastructure unless and except to the extent that ownership or rights of use are specifically granted to the Residential Association and to the Commercial Association by separate written instrument executed by the owner thereof;

(iv) the "**Village Green Parking Areas**," consisting of those paved areas designated for vehicle parking, if any, (A) lying between Village Green Drive and River Road, (B) lying between the private right-of-way identified as Arcadian Row and the power transmission easement crossing the southern portion of the Marina Village, and (C) within the private rights of way shown on recorded plats of any portion of the Marina Village and lying south of the northern right-of-way line of Pier Master Point (including, without limitation, Pier Master Point, that private right-of-way identified as Arcadian Row, and those portions of the rights-of-way of Village Green Drive and Watercraft Ferry Avenue lying south of their intersections with Pier Master Point), , together with any landscaped islands and medians and lighting within such parking areas; and

(v) the "**Mixed Use Shared Parking Area**," consisting of those paved areas designated for vehicle parking within that portion of the Marina Village described on Exhibit "B" attached hereto as "COMMON AREA 1 - 25,690 SQ. FT. - 0.59 ACRES".

## **1.2. Shared Services.**

The "**Shared Services**" shall consist of any services that the Residential Association now or hereafter provides throughout the Submitted Property, which may include, but need not be limited to, courtesy patrols, mosquito abatement, snow removal, and similar services of a municipal nature, provided that the Residential Association shall not provide such services to the Commercial Properties without the prior approval of the board of directors of the Commercial Association.

**1.3. Easements.**

(a) Easement for Benefit of Marina Village Commercial Units.

(i) The Declarant hereby establishes and grants perpetual, non-exclusive easements appurtenant to each Commercial Unit located within the Marina Village over:

(A) the Marina Village Streets, for access, ingress, and egress;

(B) the Village Green Parking Areas, for vehicle parking; and

(C) the Marina Village Amenities, for pedestrian access, use and enjoyment for non-commercial purposes.

Such easements may be exercised by the owners and tenants of such Commercial Units and their invitees, subject to such reasonable rules as the Residential Association may adopt pursuant to the Residential Declaration which are also applicable to the Residential Association's members.

(ii) The Declarant hereby establishes and grants a perpetual, non-exclusive easement appurtenant to that parcel identified on Exhibit "B" as "Mixed Use Lot 7- 13,983 Sq. Ft. – 0. 32 Acres" over the Mixed Use Shared Parking Area, for pedestrian access and vehicle parking by the owners and occupants of the Mixed Use Parcel or any portion thereof while occupying the Mixed Use Parcel, and by their guests and invitees while visiting the owners and occupants of the Mixed Use Parcel.

The foregoing easements shall not permit any Person to engage in advertising or solicitation or other commercial activities on any portion of the Marina Village Amenities, Village Green Parking Areas, or Mixed Use Shared Parking Area without prior written approval of the Residential Association, and then subject to the conditions of any such approval, except that the Residential Association's approval shall not be required for any advertising placed or conducted on a Commercial Unit which may be visible from the Marina Village Amenities, Village Green Parking Areas, or Mixed Use Shared Parking Area, if otherwise permitted under the Commercial Declaration.

The rights and easements granted and reserved under this Section 1.3(a) shall be subject to all other easements and restrictions of record and subject to the Residential Association's right to temporarily close portions of the Shared Areas as reasonably necessary to perform maintenance and repairs; provided, the Residential Association shall use reasonable efforts to maintain access to Commercial Units during regular operating hours.

(b) Stormwater Easements.

(i) There are hereby established, for the benefit of each portion of the Submitted Property, a perpetual, nonexclusive easement over those areas depicted as drainage easements on recorded plats of any portion of the Submitted Property ("**Drainage Easements**"), for purposes of drainage of surface waters and storm water runoff from the Submitted Property

("Waters") and for capture and detention or retention of such Waters within facilities constructed for such purposes.

(ii) The Residential Association is hereby granted a perpetual, nonexclusive easement over the Drainage Easements, which easement may be exercised by the Residential Association's employees, agents, contractors, and designees, for purposes of:

(A) pumping and flow of Waters over and through the Drainage Facilities;  
and

(B) inspecting, maintaining, repairing, replacing, and operating the Drainage Facilities and otherwise fulfilling its responsibilities relating to the Drainage Facilities under Section 2.1.

In addition, the Residential Association is hereby granted a perpetual, nonexclusive easement for pedestrian and vehicular access to and over such Drainage Easements, and over all public and private roads, driveways and parking lots within the Submitted Property, as reasonably necessary or convenient to exercise the easements set forth above.

(c) Easements for Access, Inspection, Maintenance, Enforcement. The Declarant hereby reserves to itself and grants to the Residential Association, for the benefit of themselves, and their respective agents and assigns, a perpetual, non-exclusive easement over, under, and across those portions of the Submitted Property lying outside of any enclosed structures on a Residential Unit or Commercial Unit, for the purpose of access, ingress, egress, use, maintenance, and repair to the extent reasonably necessary for the Residential Association to perform its responsibilities hereunder with respect to the Shared Areas, to enforce its rules with respect to the Shared Areas, and to provide Shared Services within the Submitted Property authorized pursuant to Section 1.2.

All work associated with the exercise of this easement shall be performed in such a manner as to avoid or, if not reasonably avoidable, to minimize, interference with the use of and access to Commercial Units and Residential Units. Upon completion of the work, the person exercising the easement shall, to the extent reasonably possible, restore any portion of the Submitted Property which has been disturbed by the exercise of this easement to its condition prior to the commencement of the work.

**Article II**  
**Obligation to Maintain and Insure**

**2.1. Residential Association Responsibility.**

The Residential Association shall maintain and operate the Shared Areas (regardless of ownership), and all landscaping and improvements thereon and related thereto, in good condition and repair, in a manner consistent with its obligation to maintain and operate "Common Areas" under the Residential Declaration, and in accordance with the Community-Wide Standard established pursuant to the Residential Declaration or the Community-Wide Standard established

pursuant to the Commercial Declaration, whichever is the higher standard (hereafter, the "**Higher Community Standard**"). The Residential Association shall also insure any insurable improvements on the Shared Areas, in the same manner and to the same extent that the Residential Association is responsible for insuring improvements to its "Common Area" under the Residential Declaration; provided, in the event that the Residential Declaration is amended to reduce the Residential Association's obligations to maintain insurance thereunder, the insurance provisions in effect immediately prior to such amendment shall continue to apply to the Residential Association's obligations hereunder unless the Commercial Association consents in writing to such amendment.

Maintenance, as referred to in this Covenant to Share Costs, shall include responsibility for repair and replacement as necessary to maintain the Shared Areas to a level consistent with the Higher Community Standard, except that the Residential Association shall not be responsible for repair or replacement of improvements necessitated by damage or destruction of such improvements resulting from causes other than normal wear and tear, except to the extent that it is responsible for insuring such improvements pursuant to the Residential Declaration.

Notwithstanding the above, the Residential Association shall have no responsibility for maintenance of any Stormwater BMPs constructed by any person other than the Declarant until such time as the Residential Association:

(a) has received written notice, accompanied by the certification of a North Carolina licensed engineer that construction or installation thereof is complete; and

(b) has been given at least 30 days after receipt of such notice within which to conduct such inspections of such Stormwater BMPs as its board of directors deems appropriate to verify that they are complete and free from material defects; and

(c) has accepted maintenance responsibility for such item in writing or failed to notify the Owner of the underlying land in writing within such 30-day period of its rejection of such item and the reasons for such rejection, in which case it shall be deemed to have accepted the item. If the Residential Association notifies the Owner of its rejection of any portion of the Stormwater BMPs within such 30-day period, that portion shall be deemed incomplete and the process shall be repeated until such portion is accepted or deemed accepted hereunder. The Residential Association shall not reject an item unless it determines, in good faith, that there are material defects in the construction or installation of the item or that it has not been completed in all material respects in accordance with the plans approved pursuant to the Residential Declaration or Commercial Declaration, as applicable.

In conducting inspections hereunder, the Residential Association shall be acting solely to protect its own interests and such right of inspection shall not create any duty to any other Person, including any purchaser or subsequent Owner of the underlying land, and no such purchaser or Owner have any right to rely upon the Residential Association's inspection for any purpose. Any dispute between the Residential Association and any Owner relating to the status of completion or acceptance shall be subject to the dispute resolution procedures set forth in the Residential Declaration.

## 2.2. Dispute Procedures.

(a) In the event that the Commercial Association or any Commercial Owner believes that the Residential Association is not maintaining the Shared Areas, or any portion thereof, to the Higher Community Standard, such Commercial Owner ("**Complaining Party**") shall provide written notice ("**Notice**") to the Residential Association, which Notice shall state plainly and concisely:

(i) the nature of the deficiency, including any specific problems with the level, quality, or frequency of maintenance being performed, and examples of where maintenance of a similar nature, if any, is being performed within RiverLights to the Higher Community Standard; and

(ii) what the Complaining Party wants the Residential Association to do to resolve or cure the maintenance deficiency.

(b) The Residential Association shall have 10 business days after receipt of the Notice to (i) respond to the Complaining Party by stating its opinion that the Higher Community Standard is satisfied; (ii) cure the alleged deficiency; or (iii) if the deficiency is not capable of being cured within such period, provide the Complaining Party with a written explanation of the steps being taken to cure the deficiency, a good faith estimate of a reasonable date by which such deficiency shall be cured, and any other pertinent information.

(c) If the Residential Association contests any alleged deficiency or acknowledges the deficiency but fails to cure the deficiency within 10 business days after receipt of the Notice or such reasonable cure date as the Residential Association has specified in its response under subsection (b)(iii), the Complaining Party may file a "**Claim**" as provided in, and subject to the limitations on Claims set forth in, the alternative dispute resolution provisions in the Residential Declaration. In such case, the Complaining Party and the Residential Association shall be deemed "**Bound Parties**" and shall comply with the dispute resolution procedures set forth in the Residential Declaration, to the extent that the Claim would not be exempt thereunder, prior to filing any suit.

## 2.3. Limitation of Liability.

Notwithstanding anything contained herein to the contrary, the Residential Association shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own, unless and only to the extent that, it has been grossly negligent in the performance of its maintenance responsibilities.

## Article III Obligation to Share Costs

### 3.1. Obligation for Assessments.

In consideration of the benefits derived from the Residential Association's performance of its responsibilities under this Covenant to Share Costs and provision of Shared Services, if

any, each Commercial Unit shall be subject to assessment by the Residential Association for a share of the Residential Association's expenses associated with managing, maintaining, operating, and insuring the Shared Areas and providing Shared Services, including such amounts, if any, as the Residential Association's board of directors ("**Residential Board**") determines, in its discretion, should be placed in a reserve fund for capital repairs and replacements to the Shared Areas (collectively, the "**Shared Expenses**"), as more specifically provided in Section 3.2, such assessments to be collected and paid by the Commercial Association to the Residential Association on behalf of the owner of each Commercial Unit liable for assessments hereunder; provided, if the Commercial Association fails to pay any amount due to the Residential Association hereunder, the Residential Association may collect directly from each Commercial Owner as provided in this Article.

The obligation of the Commercial Association and the owner of each Commercial Unit ("**Commercial Owner**") and the obligation of the owner of each Residential Unit ("**Residential Owner**") to pay assessments pursuant to this Covenant to Share Costs shall be mandatory and shall be a separate and independent covenant on the part of each of them. No diminution or abatement of assessments or setoff shall be claimed or allowed by reason of any alleged failure of the Residential Association to perform its responsibilities hereunder, the sole remedy for failure of the Residential Association to perform its responsibilities being to invoke the dispute procedures provided for in this Covenant to Share Costs.

The obligation to pay assessments hereunder shall commence as to each Commercial Unit and each Residential Unit at the time it becomes subject to assessment under the Commercial Declaration or Residential Declaration, respectively. However, no assessment shall be due prior to the time that the Residential Board first determines a budget and levies assessments on its members.

Notwithstanding the above, any property dedicated or conveyed to and accepted by any governmental authority or public or private utility and any property that is subject to, but exempt from the payment of assessments under, the Residential Declaration or Commercial Declaration, respectively, shall be exempt from payment of assessments hereunder. In addition, the Declarant and/or the Residential Association may grant exemptions from payment of assessments hereunder to entities qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code, so long as the Commercial Unit owned by such entity is used for exempt purposes listed in Section 501(c).

### **3.2. Computation of Assessment.**

Annually, at least 90 days before the beginning of its fiscal year, the Residential Board shall prepare an estimated budget of the Shared Expenses for the upcoming year. The budget shall be adjusted to reflect any excess or deficiency in each line item of the budget for the immediately preceding year as compared to actual expenses and contributions to reserves for that period, and any unreimbursed costs the Residential Association incurred during the previous fiscal year to collect amounts due hereunder. A copy of the estimated budget shall be provided to the Commercial Association at least 60 days prior to the beginning of the Residential Association's fiscal year. The Commercial Association's board of directors shall have 30 days

after receipt of the proposed budget to provide the Residential Association with input on such budget, which shall be considered by the Residential Board before its adoption of the final budget.

The estimated Shared Expenses set forth in such budget shall be allocated between the Residential Properties or portions thereof, as applicable, and the Commercial Properties or portions thereof, as applicable, in the manner set forth in Exhibit "C".

Within 30 days following the Residential Board's adoption of any new or revised budget, the Residential Board shall send a summary of the budget, together with notice of the amount of the assessment to be levied pursuant to such budget, to each Residential Owner and Commercial Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Residential Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

The budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Residential Units and 75% of the total number of Commercial Units subject to assessment under the Residential Declaration and the Commercial Declaration, respectively. If any proposed budget is rejected or the Residential Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Residential Board may revise the budget and adjust the assessments from time to time during the year, subject to the notice and ratification requirements set forth above.

### **3.3. Payment of Assessments.**

Within 10 days after receipt of a written request from the Residential Association, the Commercial Association shall provide to the Residential Association a current list of the Commercial Owners, their mailing addresses as shown on the Commercial Association's records, and the percentage share of the Commercial Association's common expenses allocated to each Commercial Unit under the Commercial Declaration. The Residential Association shall send written notice of the assessments due hereunder for each Commercial Unit to the Commercial Association at least 30 days prior to the due date thereof. The Commercial Association shall give notice of and collect such assessment from each Commercial Owner in full and pay it to the Residential Association on or before the due date set forth in such notice, unless the Residential Association permits such assessments to be paid in quarterly or other installments, in which event each quarterly installment shall be collected and paid to the Residential Association on or before the due date of such installment.

The Commercial Association shall be personally obligated to pay to the Residential Association any amounts received from Commercial Owners in payment of their respective shares of the Commercial Assessment and shall provide an accounting to the Residential Association for each payment received on behalf of a Commercial Unit. Any assessment or

portion thereof which remains due more than 30 days after the due date shall incur late charges (as determined by the Residential Association) and interest at a rate of 18% per annum (or, if lower, the highest rate allowed by North Carolina law) on the principal amount due until paid, and the Residential Association shall be entitled to collect from any delinquent Commercial Owner(s) (or the Commercial Association, if it fails to pay amounts collected to the Residential Association) all costs of collection (including attorneys' fees), and any other amounts provided or permitted by law. All payments shall be applied first to costs and attorneys' fees, then to interest, and then to delinquent assessments on the account for which it is to be credited.

Subject to North Carolina law, as it may be amended, if any assessment or installment thereof remains unpaid 30 days or more after the due date, the Residential Association shall, upon filing a claim of lien in the office of the clerk of the Superior Court of New Hanover County, North Carolina conforming to the requirements of Section 47F-3-116 of the North Carolina Planned Community Act, N.C.G.S. § 47F-1-101, *et seq.* (as it may be amended, the "Act"), have a lien against each Commercial Unit in favor of the Residential Association to secure payment of such Commercial Unit's share of any assessments and other fees and charges due to the Association hereunder, or as the result of any arbitrator's, mediator's or judicial decision, and as otherwise authorized by the Commercial Declaration, or North Carolina law, as well as interest, late charges, and costs of collection (including attorneys' fees and court costs. Subject to the limitations of North Carolina law, the Residential Association's lien shall be superior to all other liens, except (i) the liens of all real estate taxes, governmental and other assessments and charges which by law would be superior, and (ii) the lien or charge of any recorded first priority deed of trust made in good faith and for value and recorded prior to the filing of the claim of lien) on such Commercial Unit.

If any assessment or portion thereof on a Commercial Unit remains unpaid 60 or more days after the due date, the Residential Association may institute suit to obtain a money judgment for all amounts secured by the Residential Association's lien hereunder. If any such assessment or portion thereof remains unpaid 90 or more days after the due date and the Residential Board votes to foreclose the Residential Association's lien, it may do so through judicial or non-judicial foreclosure proceedings in accordance with North Carolina law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

The Residential Association may bid for the Commercial Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Commercial Unit. While a Commercial Unit is owned by the Residential Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Commercial Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Commercial Unit had it not been acquired by the Residential Association. The Residential Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

Sale or transfer of any Commercial Unit shall not affect the assessment lien or relieve such Commercial Unit from the lien for any subsequent assessments. However, the sale or

transfer of any Commercial Unit pursuant to foreclosure of any first mortgage shall extinguish the lien as to any installments of such assessments due prior to such foreclosure. The subsequent Commercial Owner of the foreclosed Commercial Unit shall not be personally liable for assessments on such Unit that were due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Commercial Owners of all Commercial Units subject to assessment under Section 3.1, including such acquirer, its successors and assigns. Any Commercial Owner shall be entitled to a release of such lien against its Commercial Unit upon presentation of evidence satisfactory to the Residential Board of its payment of the amount assessed against its Commercial Unit.

Disputes over the payment of assessments shall not be subject to the dispute resolution procedures set forth in Section 2.2 hereof, if applicable, or in the Residential Declaration.

#### **3.4. Recordkeeping.**

The Residential Association shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities hereunder and shall retain copies of such books of account for a minimum period of seven years. The Residential Association shall make books, records, and related financial statements available for inspection and copying during normal business hours by an authorized representative of the Commercial Association or any Commercial Owner. The person requesting copies shall pay copying charges when requesting copies. If the Commercial Association or any Commercial Owner desires to have the records audited, it may do so at its expense, and the Residential Association shall cooperate by making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question.

If the amount of actual expenses for the year is disputed after the audit, the parties shall cause a second audit to be performed by a mutually acceptable auditor, and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by 5% or more, the Residential Association shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by less than 3%, the party requesting the audit shall pay the entire cost of the second auditor. Otherwise, the parties shall share equally the cost of the second auditor. Variances shall be taken into account in the following year's budget as provided in Section 3.2.

### **Article IV** **General**

#### **4.1. Notice.**

Any notice provided for in this Covenant to Share Costs shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Residential Association at its principal office or such other address as it designates in writing to the Commercial Association, and to the president or secretary of the Commercial Association at the address of its principal office or such other address as it designates in writing to the Residential

Association. Notices to Commercial Owners shall be mailed to the address of their respective Commercial Units, or to such other address as it designates in writing to the other parties. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party at the address specified above or (b) on the third day after mailing when mailed by registered, certified, or first class mail, postage prepaid, and properly addressed.

#### **4.2. Enforcement.**

The obligations created hereunder shall inure to the benefit of, and shall be enforceable by, the Declarant, the Residential Association, the Commercial Association, and each Commercial Owner; provided, any action to enforce the Residential Association's obligations under Section 2.1 shall be subject to the procedures outlined in Section 2.2.

#### **4.3. Amendment.**

Until expiration of the Development and Sale Period under both the Residential Declaration and the Commercial Declaration ("**Development and Sale Period**"), the Declarant may amend this Covenant to Share Costs unilaterally for any purpose, except that the Declarant shall not amend in a manner which increases the allocation of liability for assessments to be levied on any Commercial Unit in a manner other than as specifically contemplated by Exhibit "C" hereof without the written consent of the Commercial Owner of such Commercial Unit.

Alternatively, this Covenant to Share Costs may be amended upon the written consent of the Residential Board and either (a) the written consent of the Commercial Association's board of directors; or (b) the affirmative vote or written consent of Commercial Owners responsible for payment of at least a majority of the total liability for assessments charged to the Commercial Units in accordance with Exhibit "C." During the Development and Sale Period, any amendment to this Covenant to Share Costs also shall require the Declarant's written consent.

Amendments to this Covenant to Share Costs shall become effective upon recordation in the Office of the Register of Deeds for New Hanover County, North Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Covenant to Share Costs. If an individual or entity consents to any amendment to this Covenant to Share Costs, it will be conclusively presumed that such individual or entity has the authority to so consent, and no contrary provision in any mortgage or contract between such individual or entity and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the Declarant's written consent or that of the assignee of such right or privilege.

#### **4.4. Duration.**

Unless limited by North Carolina law, this Covenant to Share Costs shall run with and bind the Submitted Property for a period of 30 years and thereafter shall automatically be

extended for successive periods of 10 years each, subject to the right to amend pursuant to Section 4.3. If North Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant to Share Costs shall run with title to and bind the Submitted Property for the maximum period permitted under North Carolina law.

**4.5. Interpretation.**

This Covenant to Share Costs shall be governed by and construed under North Carolina law.

**4.6. Waiver.**

No failure of any party to exercise any power under this Covenant to Share Costs or insist upon strict compliance with this Covenant to Share Costs and no custom or practice at variance with the terms of this Covenant to Share Costs shall constitute a waiver of the right to demand exact compliance with the terms of this Covenant to Share Costs.

**4.7. Severability.**

Invalidation of any provision of this Covenant to Share Costs, in whole or in part, or any application of a provision of this Covenant to Share Costs by judgment or court order shall in no way affect other provisions or applications.

**4.8. Captions.**

The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

[continued on next page]



**JOINDER AND CONSENT OF RESIDENTIAL ASSOCIATION**

By execution below, RiverLights Community Association, Inc. does hereby acknowledge and consent to the foregoing Declaration of Easements and Covenant to Share Costs for RiverLights and agree to assume and fulfill its obligations thereunder.

**RESIDENTIAL ASSOCIATION: RIVERLIGHTS COMMUNITY ASSOCIATION, INC.,** a North Carolina nonprofit corporation

By: *[Signature]*  
Name: Doug Brown  
Its: President

Attest: *[Signature]*  
Name: Megan Lighthall  
Its: Secretary - Treasurer

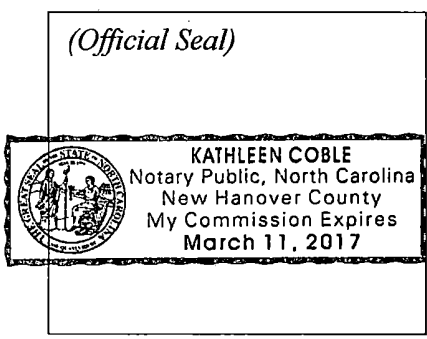
STATE OF NORTH CAROLINA )  
  )  
COUNTY OF NEW HANOVER )

I, Kathleen Coble, a Notary Public in and for New Hanover County, North Carolina, certify that Doug Brown personally came before me this day and acknowledged that she is President of RIVERLIGHTS COMMUNITY ASSOCIATION, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of said corporation, he executed the foregoing instrument on behalf of said corporation.

Witness my hand and official stamp or seal, this 9<sup>th</sup> day of June, 2016.

*[Signature]*  
Kathleen Coble, Notary Public

My Commission Expires: March 11, 2017



**JOINDER AND CONSENT OF COMMERCIAL ASSOCIATION**

By execution below, RiverLights Commercial Association, Inc. does hereby acknowledge and consent to the foregoing Declaration of Easements and Covenant to Share Costs for RiverLights and agree to assume and fulfill its obligations thereunder.

**COMMERCIAL ASSOCIATION: RIVERLIGHTS COMMERCIAL ASSOCIATION, INC.,** a North Carolina nonprofit corporation

By: [Signature]  
Name: DOUG BROWN  
Its: President

Attest: [Signature]  
Name: Megan Lighthall  
Its: Secretary - Treasurer

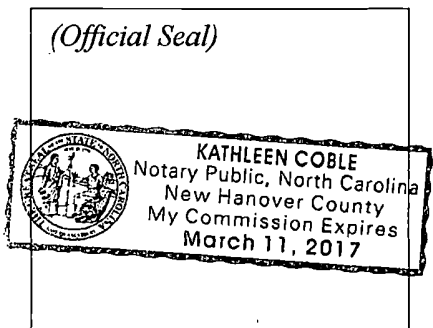
STATE OF NORTH CAROLINA )  
  ) NEW HANOVER  
COUNTY OF ~~CHATHAM~~ )

I, Kathleen Coble, a Notary Public in and for New Hanover County, North Carolina, certify that Doug Brown personally came before me this day and acknowledged that she is President of RIVERLIGHTS COMMERCIAL ASSOCIATION, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of said corporation, she executed the foregoing instrument on behalf of said corporation.

Witness my hand and official stamp or seal, this 9<sup>th</sup> day of June, 2016.

[Signature]  
Kathleen Coble, Notary Public

My Commission Expires: March 11, 2017



**EXHIBIT "A"****Initial Submitted Property**

That certain parcel of land being in the City of Wilmington, New Hanover County, North Carolina, said parcel being a portion of the property described in Deed Book 5038 Page 368 of the New Hanover County Register of Deeds, said parcel being shown on a map titled "Riverlights Marina Village PH1 Section 1" dated March 31, 2016 recorded in Map Book 61 at Page 327 in the office of the Register of Deeds for New Hanover County, North Carolina and being more fully described as follows:

Commencing at a point, said point being the northwestern corner of the intersection of the proposed northern right of way of Pier Master Point (63.5' Private R/W) and the proposed western right of way of Village Green Drive (50' Private R/W), said point also being North 02°02'30" East a distance of 586.88 feet from a rebar and cap said rebar and cap having NC Grid NAD 83(1986) coordinates of North 148244.58 feet and East 2320026.05 feet, said rebar and cap also being North 21°16'03" West a distance of 917.04 feet from a rebar and cap with NC Grid NAD 83(1986) coordinates of North 147389.99 feet and East 2320358.68 feet; thence South 26°53'42" East a distance of 32.45 feet to a point, said point being a control corner having NC Grid NAD 83(1986) coordinates of North 148802.15 and East 2320061.63; thence North 73°59'49" West a distance of 80.72 feet to a point, said point being the intersection of the centerline of the proposed right of way of Pier Master Point (63.5' Private R/W) with the western right of way of River Road (130' Public R/W) and the **True Point of Beginning**;

Thence from the **True Point of Beginning**, running along the western right of way of River Road North 15°01'37" East a distance of 30.00 feet to a point; thence along the northern right of way of Pier Master Point North 73°59'49" West a distance of 51.59 feet to a point, said point being the proposed intersection of the northern right of way line of Pier Master Point (63.5' Private R/W) and the eastern right of way line of Village Green Drive (50' Private R/W); thence along the eastern right of way of Village Green Drive North 20°48'19" East a distance of 271.06 feet to a point; thence North 69°11'41" West 1.50 feet to a point; thence North 20°48'19" East 28.34 feet to a point on the proposed northern right of way of Hobie Run (52' Private R/W); thence continuing along the northern right of way of Hobie Run North 74°23'35" West a distance of 346.84 feet to a point on the proposed western right of way of Watercraft Ferry Avenue (52' Private R/W); thence along the western right of way of Watercraft Ferry Avenue South 07°40'49" West a distance of 29.66 feet to a point; thence North 82°19'11" West 1.50 feet to a point; thence South 07°40'49" West 102.27 feet to a point, said point being the beginning of a curve to the right having a radius of 474.00 feet, a central angle of 11°20'35", and a chord bearing and distance of South 13°21'07" West and 93.69 feet; thence along the arc of said curve 93.84 feet to a point; thence South 19°01'24" West a distance of 103.13 feet to a point; thence South 70°58'36" East a distance of 2.00 feet to a point; thence South 19°01'24" West a distance of 241.63 feet to a point, said point being the beginning of a curve to left having a radius of 124.00 feet, a central angle of 29°01'24", and a chord bearing and distance of South 04°30'42" West and 62.14 feet; thence along the arc of said curve 62.81 feet to a point; thence South 10°00'00" East 61.47 feet to a point, said point being the beginning of a curve to the left having a radius of 124.00 feet, a central angle of 15°37'51", and a chord bearing and distance of South 17°48'56" East and 33.72 feet; thence along the arc of said curve a distance of 33.83 feet; thence South 25°37'51" East a distance of 57.75 feet to a point; thence South 64°22'09" West a distance of

**EXHIBIT "A"****Initial Submitted Property**  
(continued)

2.00 feet to a point; thence South 25°37'51" East 157.62 feet to a point; thence North 64°22'09" East a distance of 52.00 feet to a point on the proposed eastern right of way of Watercraft Ferry Avenue; thence along said eastern right of way of Watercraft Ferry Avenue North 25°37'51" West a distance of 133.62 feet to a point, said point being the point of intersection of the eastern right of way of Watercraft Ferry Avenue and the proposed southern right of way of Arcadian Row (63.5' Private R/W); thence along said southern right of way of Arcadian Row North 64°22'09" East a distance of 80.45 feet to a point, said point being the beginning of a curve to the right having a radius of 176.00 feet, a central angle of 26°43'08", and a chord bearing and distance of North 77°43'43" East and 81.33 feet; thence along the arc of said curve a distance of 82.07 feet to a point; thence South 88°54'43" East 61.68 feet to a point on the proposed eastern right of way of Village Green Drive (63.5' Private R/W), said point being the beginning of a curve to the right having a radius of 601.00 feet, a central angle of 16°36'19", and a chord bearing and distance of North 07°06'08" East and 173.57 feet; thence along the arc of said curve a distance of 174.18 feet to a point; thence North 15°24'18" East a distance of 105.39 feet to a point, said point being the point of intersection of the proposed eastern right of way of Village Green Drive (63.5' Private R/W) and the proposed southern right of way of Pier Master Point (63.5' Private R/W); thence along the said southern right of way of Pier Master Point South 73°59'49" East a distance of 56.91 feet to a point on the western right of way of River Road (130' Public R/W); thence along the western right of way of River Road North 15°01'37" East a distance of 30.00 feet to the True Point of Beginning.

**THE SUBMITTED PROPERTY SHALL ALSO INCLUDE:**

Such additional property as is now or hereafter made subject to that certain Commercial Declaration of Covenants, Conditions and Restrictions for RiverLights executed by the Declarant and recorded on June 1, 2016, in Deed Book 5974, Page 1253, *et seq.*, in the Office of the Register of Deeds for New Hanover County, North Carolina, as it may be amended and supplemented from time to time; and

Such additional property as is now or hereafter made subject to that certain Residential Declaration of Covenants, Conditions and Restrictions for RiverLights executed by the Declarant and recorded on June 1, 2016, in Book 5974, Page 1123, *et seq.*, in the Office of the Register of Deeds for New Hanover County, North Carolina, as it may be amended and supplemented from time to time.



**EXHIBIT "C"****Allocation of Expenses Related to Shared Areas and Shared Services****Expenses Associated with Shared Areas:**

(a) **Stormwater BMPs.** The Shared Expenses related to Stormwater BMPs shall initially be allocated between the Commercial Properties and the Residential Properties in proportion to the relative impervious surface area constructed or under construction within each, as approved pursuant to the Commercial Declaration or the Residential Declaration, respectively. That portion of such Shared Expenses allocated to the Commercial Properties shall be a "Common Expense" of the Commercial Association pursuant to the Commercial Declaration, to be further allocated among the Commercial Units in accordance with their relative liability for General Assessments thereunder. That portion of such Shared Expenses allocated to the Residential Properties shall be a "Common Expense" of the Residential Association pursuant to the Residential Declaration, to be further allocated among the Residential Units in accordance with their relative liability for General Assessments thereunder.

(b) **River Road Median Landscaping.** The Shared Expenses related to River Road Median Landscaping shall initially be allocated between the Commercial Properties and the Residential Properties in proportion to the relative acreage comprising Commercial Units and Residential Units, respectively. That portion of such Shared Expenses allocated to the Commercial Properties shall be a "Common Expense" of the Commercial Association pursuant to the Commercial Declaration, to be further allocated among the Commercial Units in accordance with their relative liability for General Assessments thereunder. That portion of such Shared Expenses allocated to the Residential Properties shall be a "Common Expense" of the Residential Association pursuant to the Residential Declaration, to be further allocated among the Residential Units in accordance with their relative liability for General Assessments thereunder.

(c) **Marina Village Entry Improvements.** One hundred percent (100%) of the Shared Expenses related to the Marina Village Entry Improvements shall be allocated among the Commercial Units within the Marina Village in accordance with their relative liability for Common Expenses under the Commercial Declaration.

(d) **Marina Village Amenities, Marina Village Streets, and Village Green Parking Areas.** The Shared Expenses related to the Marina Village Amenities shall be allocated 80% to the Commercial Units within the Marina Village and 20% to the Residential Properties. That portion of such Shared Expenses allocated to the Commercial Units within the Marina Village shall be a "Service Area Expense" of such Commercial Units pursuant to the Commercial Declaration, to be further allocated among the Commercial Units within the Marina Village in accordance with the formula for determining Service Area Assessments set forth on Exhibit "D" of the Commercial Declaration. That portion of such Shared Expenses allocated to the Residential Properties shall be a "Common Expense" of the Residential Association pursuant

**EXHIBIT "C"**

**Allocation of Expenses Related to Shared Areas and Shared Services**

(continued)

to the Residential Declaration, to be further allocated among the Residential Units in accordance with their relative liability for General Assessments thereunder.

(e) **Mixed Use Shared Parking Area.** The Shared Expenses related to the Mixed Use Shared Parking Area shall be allocated as follows: 70% shall be allocated to the Mixed Use Parcel and 30% shall be allocated to the Service Area established pursuant to the Residential Declaration comprised of the Residential Units identified as Townhome Lots 8 through 17 as shown on Exhibit "B" ("**Marina Village Townhome Blocks 1, 2 and 3**"). That portion of such Shared Expenses allocated to the Mixed Use Parcel shall be assessed against the Mixed Use Parcel as a "Service Area Assessment" pursuant to the Commercial Declaration. That portion of such Shared Expenses allocated to Marina Village Townhome Blocks 1, 2, and 3 shall be further allocated equally among the Residential Units within Marina Village Townhome Blocks 1, 2 and 3 and shall be assessed against each such Residential Unit as a "Service Area Assessment" pursuant to the Residential Declaration.

**Expenses Associated With Shared Services:**

Expenses associated with any Shared Services shall be allocated between the Residential Properties and the Commercial Properties by agreement of the Residential Association and the Commercial Association at such time as the Commercial Association agrees to have the Residential Association provide such services pursuant to Section 1.2.

TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County

## Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401  
Telephone 910-798-4530 • Fax 910-798-7751



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State of North Carolina, County of NEW HANOVER  
Filed For Registration: 06/10/2016 01:47:30 PM  
Book: RB 5976 Page: 2830-2853  
24 PGS \$58.00  
Real Property \$58.00  
Recorder: STEPHANIE PEREZ  
Document No: 2016017766

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11-15-2016  
11:19:18 AM  
BY: CAROL HUGHLEY  
DEPUTY



2016037257  
NEW HANOVER COUNTY, NC  
TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS

NC FEE \$26.00

Prepared by / Upon recording,  
please return to:

Jo Anne P. Stubblefield  
Hyatt & Stubblefield, P.C.  
Peachtree Center, Harris Tower  
233 Peachtree Street, N.E., Suite 1200  
Atlanta, GA 30303

NOTE TO CLERK: Please Cross-Reference to:

Residential Declaration at Book 5974  
Page 1123  
Declaration of Easements at Book 5976  
Page 2830

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**FIRST AMENDMENT TO  
DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS  
FOR  
RIVERLIGHTS®**

This First Amendment to the Declaration of Easements and Covenant to Share Costs ("Amendment") is made by NNP IV-Cape Fear River, LLC, a Delaware limited liability company authorized to do business in North Carolina (the "Declarant").

**Background Statement**

The Declarant is the developer of the planned community located in the City of Wilmington, New Hanover County, North Carolina known as RiverLights. The Declarant executed and filed that certain Residential Declaration of Covenants, Conditions, and Restrictions for RiverLights recorded June 1, 2016 in Book 5974, Page 1123, *et seq.*, in the Office of the Register of Deeds of New Hanover County, North Carolina (as it may be amended and supplemented, the "Declaration"). The Declarant also executed and filed that certain Declaration of Easements and Covenant to Share Costs recorded on June 10, 2016 in Book 5976, Page 2830,

*et seq.*, in the Office of the Register of Deeds of New Hanover County, North Carolina (as it may be amended and supplemented, the "Covenant to Share Costs").

Pursuant to Sections 4.3 of the Covenant to Share Costs, the Declarant reserved the right to amend the Covenant to Share Costs unilaterally for any reason during the Development and Sale Period, except that the Declarant may not amend in a manner which increases the allocation of liability for assessments on any Commercial Unit in a manner other than as specifically contemplated by Exhibit "C" thereof without the written consent of the owner of such Commercial Unit;

The Declarant desires to amend the Covenant to Share Costs as set forth herein. Such amendment does not increase the allocation of liability for assessments on any Commercial Unit.

NOW, THEREFORE, the Declarant hereby amends the Covenant to Share Costs as follows:

1.

Exhibit "C" to the Covenant to Share Costs is amended by deleting paragraph (e) thereof and replacing it with the following:

(e) **Mixed Use Shared Parking Area.** The Shared Expenses related to the Mixed Use Shared Parking Area shall be allocated as follows: 70% shall be allocated to the Mixed Use Parcel and 30% shall be allocated to the Service Area established pursuant to the Residential Declaration which includes the Residential Units identified as Townhome Lots 8 through 17 as shown on Exhibit "B" and such additional townhomes as the Declarant may hereafter assign to such Service Area (referred to herein as the "**Marina Village Townhome Service Area**"). That portion of such Shared Expenses allocated to the Mixed Use Parcel shall be assessed against the Mixed Use Parcel as a "Service Area Assessment" pursuant to the Commercial Declaration. That portion of such Shared Expenses allocated to the Marina Village Townhome Service Area shall be further allocated equally among the Residential Units within the Marina Village Townhome Service Area and shall be assessed against each such Residential Unit as a "Service Area Assessment" pursuant to the Residential Declaration.

[continued on next page]



TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401  
Telephone 910-798-4530 • Fax 910-798-7751



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State of North Carolina, County of NEW HANOVER  
Filed For Registration: 11/15/2016 11:19:18 AM  
Book: RB 6017 Page: 1322-1325  
4 PGS \$26.00  
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Document No: 2016037257

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