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2 Article 2.

3 Creation, Alteration, and Termination of Planned Communities.

4 **§ 47F-2-101. Creation of the planned community.**

5 A declaration creating a planned community shall be executed in the same manner as a
6 deed, shall be recorded in every county in which any portion of the planned community is
7 located, and shall be indexed in the Grantee index in the name of the planned community and
8 the association and in the Grantor index in the name of each person executing the declaration.
9 (1998-199, s. 1.)

10
11 **§ 47F-2-102. Reserved for future codification purposes.**

12
13 **§ 47F-2-103. Construction and validity of declaration and bylaws.**

14 (a) All provisions of the declaration and bylaws are severable.

15 (b) The rule against perpetuities may not be applied to defeat any provision of the
16 declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47F-3-102(1).

17 (c) In the event of a conflict between the provisions of the declaration and the bylaws,
18 the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

19 (d) Title to a lot and common elements is not rendered unmarketable or otherwise
20 affected by reason of an insubstantial failure of the declaration to comply with this Chapter.
21 Whether a substantial failure to comply with this Chapter impairs marketability shall be
22 determined by the law of this State relating to marketability. (1998-199, s. 1.)

23
24 **§§ 47F-2-104 through 47F-2-116. Reserved for future codification purposes.**

25
26 **§ 47F-2-117. Amendment of declaration.**

27 (a) Except in cases of amendments that may be executed by a declarant under the terms
28 of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be
29 amended only by affirmative vote or written agreement signed by lot owners of lots to which at
30 least sixty-seven percent (67%) of the votes in the association are allocated, or any larger
31 majority the declaration specifies or by the declarant if necessary for the exercise of any
32 development right. The declaration may specify a smaller number only if all of the lots are
33 restricted exclusively to nonresidential use.

34 (b) No action to challenge the validity of an amendment adopted pursuant to this
35 section may be brought more than one year after the amendment is recorded.

36 (c) Every amendment to the declaration shall be recorded in every county in which any
37 portion of the planned community is located and is effective only upon recordation. An
38 amendment shall be indexed in the Grantee index in the name of the planned community and
39 the association and in the Grantor index in the name of each person executing the amendment.

40 (d) Reserved.

41 (e) Amendments to the declaration required by this Chapter to be recorded by the
42 association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.
43 (1998-199, s. 1.)

44
45 **§ 47F-2-118. Termination of planned community.**

46 (a) Except in the case of taking of all the lots by eminent domain (G.S. 47F-1-107), a
47 planned community may be terminated only by agreement of lot owners of lots to which at
48 least eighty percent (80%) of the votes in the association are allocated, or any larger percentage
49 the declaration specifies. The declaration may specify a smaller percentage only if all of the lots
50 in the planned community are restricted exclusively to nonresidential uses.

1 (b) An agreement to terminate shall be evidenced by the execution of a termination
2 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of lot
3 owners. The termination agreement shall specify a date after which the agreement will be void
4 unless it is recorded before that date. A termination agreement and all ratifications thereof shall
5 be recorded in every county in which a portion of the planned community is situated and is
6 effective only upon recordation.

7 (c) A termination agreement may provide for sale of the common elements, but may not
8 require that the lots be sold following termination, unless the declaration as originally recorded
9 provided otherwise or unless all the lot owners consent to the sale. If, pursuant to the
10 agreement, any real estate in the planned community is to be sold following termination, the
11 termination agreement shall set forth the minimum terms of the sale.

12 (d) The association, on behalf of the lot owners, may contract for the sale of real estate
13 in the planned community, but the contract is not binding until approved pursuant to
14 subsections (a) and (b) of this section. Until the sale has been concluded and the proceeds
15 thereof distributed, the association continues in existence with all powers it had before
16 termination. Proceeds of the sale shall be distributed to lot owners and lienholders as their
17 interests may appear, as provided in the termination agreement.

18 (e) If the real estate constituting the planned community is not to be sold following
19 termination, title to the common elements vests in the lot owners upon termination as tenants in
20 common in proportion to their respective interests as provided in the termination agreement.

21 (f) Following termination of the planned community, the proceeds of any sale of real
22 estate, together with the assets of the association, are held by the association as trustee for lot
23 owners and holders of liens on the lots as their interests may appear. All other creditors of the
24 association are to be treated as if they had perfected liens on the common elements immediately
25 before termination.

26 (g) If the termination agreement does not provide for the distribution of sales proceeds
27 pursuant to subsection (d) of this section or the vesting of title pursuant to subsection (e) of this
28 section, sales proceeds shall be distributed and title shall vest in accordance with each lot
29 owner's allocated share of common expense liability.

30 (h) Except as provided in subsection (i) of this section, foreclosure or enforcement of a
31 lien or encumbrance against the common elements does not of itself terminate the planned
32 community, and foreclosure or enforcement of a lien or encumbrance against a portion of the
33 common elements other than withdrawable real estate does not withdraw that portion from the
34 planned community. Foreclosure or enforcement of a lien or encumbrance against
35 withdrawable real estate does not of itself withdraw that real estate from the planned
36 community, but the person taking title thereto has the right to require from the association,
37 upon request, an amendment excluding the real estate from the planned community.

38 (i) If a lien or encumbrance against a portion of the real estate comprising the planned
39 community has priority over the declaration and the lien or encumbrance has not been partially
40 released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an
41 instrument excluding the real estate subject to that lien or encumbrance from the planned
42 community. (1998-199, s. 1.)

43
44 **§ 47F-2-119. Reserved for future codification purposes.**

45
46 **§ 47F-2-120. Master associations.**

47 If the declaration for a planned community provides that any of the powers described in
48 G.S. 47F-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation
49 which exercises those or other powers on behalf of one or more other planned communities or
50 for the benefit of the lot owners of one or more other planned communities, all provisions of
51 this act applicable to lot owners' associations apply to any such corporation. (1998-199, s. 1.)

1
2 **§ 47F-2-121. Merger or consolidation of planned communities.**

3 (a) Any two or more planned communities, by agreement of the lot owners as provided
4 in subsection (b) of this section, may be merged or consolidated into a single planned
5 community. In the event of a merger or consolidation, unless the agreement otherwise provides,
6 the resultant planned community is, for all purposes, the legal successor of all of the preexisting
7 planned communities, and the operations and activities of all associations of the preexisting
8 planned communities shall be merged or consolidated into a single association which shall hold
9 all powers, rights, obligations, assets, and liabilities of all preexisting associations.

10 (b) An agreement of two or more planned communities to merge or consolidate
11 pursuant to subsection (a) of this section shall be evidenced by an agreement prepared,
12 executed, recorded, and certified by the president of the association of each of the preexisting
13 planned communities following approval by owners of lots to which are allocated the
14 percentage of votes in each planned community required to terminate that planned community.
15 Any such agreement shall be recorded in every county in which a portion of the planned
16 community is located and is not effective until recorded.

17 (c) Every merger or consolidation agreement shall provide for the reallocation of the
18 allocated interests in the new association among the lots of the resultant planned community
19 either (i) by stating the reallocations or the formulas upon which they are based or (ii) by
20 stating the percentage of overall common expense liabilities and votes in the new association
21 which are allocated to all of the lots comprising each of the preexisting planned communities,
22 and providing that the portion of the percentages allocated to each lot formerly comprising a
23 part of the preexisting planned community shall be equal to the percentages of common
24 expense liabilities and votes in the association allocated to that lot by the declaration of the
25 preexisting planned community. (1998-199, s. 1.)