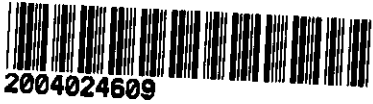


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FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
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INSTRUMENT # 2004024609

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM
AZALEA TRACE CONDOMINIUM
SECTIONS 2 and 3

EUREKA, INC., a North Carolina Corporation, hereinafter called "DECLARANT", being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act", and to that end does hereby publish and declare that all of the said property to be known as "AZALEA TRACE CONDOMINIUM, SECTION 1" is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following conditions, covenants, restrictions, uses, limitations and objections, all of which shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to Chapter 47F of the General Statutes of North Carolina known as the North Carolina Planned Community Act and subject to the following easements, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

Some of the following Covenants are intended to insure ongoing compliance with North Carolina State Stormwater Management Permit as issued by the Division of Water Quality under NCAN 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit. The covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

1. **DEFINITIONS.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

A. "Act" or "North Carolina Condominium Act" means the statutory provisions set forth in Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act, under which the condominium is established.

B. "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

C. "Association" means the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.

D. "Board of Directors" or "Board" means the Board of Directors of the Association, and "Director" means a member of the Board.

E. "By-Laws" means the By-Laws for the government of the condominium as they exist from time to time. A copy of the initial By-Laws are hereto attached as Exhibit "E" and made a part hereof by reference.

F. "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the property.

G. "Common Areas and Facilities" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in Paragraph 5.

H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

I. "Common Profits" means the balance of all revenue of the Association remaining after deduction of common expenses.

J. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

K. "Condominium Documents" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

L. "Declarant" means Eureka, Inc., their heirs, successors, and assigns.

M. "Declaration" means this instrument as it may be from time to time amended or supplemented.

N. "Development rights" means any right or combination of rights reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.

O. "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

P. "Limited Common Areas and Facilities" means and includes those common areas and facilities which are reserved for the use of a certain unit or units, to the exclusion of other units, as more specifically defined herein.

Q. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

R. "Plans" shall mean and refer to the plans and specifications of the condominium prepared by Hanover Designs, Inc. Registered Land Surveyor, recorded under the name of the condominiums in the Unit Ownership file in the Office of the Register of Deeds of New Hanover

County, in Condominium Plat Book 13 at Pages 149 through 151 and attached hereto as Exhibit "B", sheets 1 through 3 and incorporated herein by reference.

S. "Property" means and includes the land described in Article 2 of this Declaration together with any buildings and improvements located thereon.

T. "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration (Section 47C-2-109); to exercise any development right (Section 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (Section 47C-2-115); to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116); to make the condominium part of a larger condominium (Section 47C-2-121); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (Section 47C-3-103(d)).

U. "Unit" or "Condominium Unit" means a part of the property which is to be subject to private ownership, as designated on the Exhibits attached to this Declaration and as further defined in the Act.

V. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, who owns a unit.

2. **DESCRIPTION OF PROPERTY.** All of that certain tract or parcel of land with the building and improvement thereon erected, or to be erected, situate, lying and being in the City of Wilmington, New Hanover County, State of North Carolina, and being more particularly described in Exhibit "A" attached hereto and incorporated by reference hereby as though fully incorporated herein.

Declarant submits only that portion of the land described in Exhibit "A" attached hereto upon which Section 2 and 3 of Azalea Trace Condominiums are to be constructed. Section 2 and 3 contain Buildings numbered Two and Three. The property hereby submitted is more particularly described by that Condominium Plat recorded in the New Hanover County Registry in Condominium Plat Book 13 at Pages 149 through 151. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "F" to the coverage of this Declaration. If Declarant chooses to expand the property dedicated to Condominium ownership, the expansion will contain a maximum of one hundred (100) units in addition to those in Section 1. The Developer retains the right to add contiguous, or nearly contiguous, tracts to the project at its sole discretion.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary condominium plats as required by law. Each amendment to the Declaration shall be called a "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

Further terms, conditions, liabilities, and rights concerning expansion into further phases of development, are to be found in Paragraph 34, Expansion of Condominium, of this Declaration.

3. **DESCRIPTION OF BUILDING.** the Declarant has constructed, or will construct, upon the property described in Exhibit "A" attached hereto, two (2) multi-unit buildings to be used for residential purposes as herein provided. Section 1 contains Buildings numbered Two and Three. A plat or survey of the property showing the location of said building is attached hereto and made a part hereof as Exhibit "B". The building is more particularly described in the plans

thereof, a copy of which plans are attached hereto as Exhibit "B" and made a part of hereof, showing all particulars of the building as required by law.

In general, the building have three stories built on concrete foundation and constructed primarily of wood frame with brick and vinyl siding exterior. The building will contain six units each with three bedrooms having approximately 1428 total square feet of enclosed area. Each unit will contain three (3) bedrooms, two (2) bathrooms, a kitchen, a dining room, a living room, and six (6) closets.

In addition, the buildings will have 2.75 parking spaces per unit, walkways, stairs, landscape areas, and other appurtenances and facilities. All parking shall be only in parking spaces, and not in other parts of the streets and common areas.

4. UNIT DESIGNATION AND DESCRIPTION.

A. DESIGNATION. The unit designation of each unit, its location and dimensions, is set forth in Exhibit "B" hereto attached and made a part hereof. Each unit is identified by a section number and a numeric designation (Ex.: 2-101, 2-102, 2-201, 2-202, 2-301, and 2-302).

B. DESCRIPTION. The legal description of each unit shall consist of the Section number, and a unit number which identifies such unit as shown on the plats hereto attached as Exhibit "B". Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, subject to such encroachments as are contained in the buildings, whether the same now exist or may be caused or created by construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided interest in the common areas and facilities. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be as set forth in Exhibit "C" attached hereto and made a part hereof. The percentage of undivided interest in the common areas and facilities that is appurtenant to each unit has been determined by a ratio formulated upon the approximate relation that the square footage of each unit at the date of the Declaration bears to the then square footage of all the units having an interest in the common areas and facilities. The square footage of each unit and the square footage of all of the units has been determined by the Declarant, and its determination shall be binding upon all units and unit owners. Except as provided in Paragraphs 27 and 34, below, the percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

5. COMMON AREAS AND FACILITIES.

A. The common areas and facilities generally shall mean and refer to all of the real property, described in Paragraph 2, and all of the improvements and facilities thereon which are not units, as defined hereinabove and in NCGS Chapter 47C, and which are not items of personal property owned, held and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

(1) All of the real property more particularly described in Paragraph 2 of this Declaration.

(2) All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except non-load bearing partition walls wholly within a unit) of the buildings.

(3) All stairways, stairwells and stairs and their components, if any, which give access to more than one unit.

(4) All yard and garden areas, parking and drive areas, sidewalks, and any other amenities.

(5) All installations of and facilities, apparatus, conduits, and equipment for the provisions of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, and cable TV, if any, supplied for the common use and convenience of the unit owners, and which are not defined as part of the units, hereinbelow.

(6) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.

(7) All handrailings, including those on balconies serving only one Unit.

B. (1) The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

(2) A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

C. The undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit "C" and is attached hereto and made a part hereof.

6. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are defined in NCGS Chapter 47C, and as follows:

A. Decks accessible only from a particular unit, and outside unit entries at ground level.

B. All non-load bearing walls located entirely within the unit.

C. All materials, including but not limited to, studs, sheet-rock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on the inside surfaces of perimeter walls, floors and ceilings of the unit.

D. All doors, windows, glass in doors and windows, screens, ventilation fans and vents located entirely within the unit or extending into the unit from the perimeter walls, floors or ceilings thereof.

E. All ducts and related components and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

F. The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

7. MEMBERSHIP and VOTING RIGHTS

A. Every Owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Unit which is subject to assessment.

B. The Association shall have two classes of voting memberships

1. Class "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in the Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

2. Class "B". The Class B member shall be the Declarant and shall be entitled to three (3) votes for each unit constructed. The Class B membership shall automatically terminate upon the happening of either of the two following events, which ever occurs earliest:

(a) Upon the closing of the sale of 75% of all units in all sections, on both a by section basis and an overall basis in the development, or

(1) ten years after the sale of the first unit, or December 1, 2013.

C. Notice and Quorum for Action. There shall be written notice of any meeting called for the purpose of taking any action authorized by this Declaration, which notice shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Notwithstanding anything to the contrary, after control of the Association has been transferred from the Declarant to the Unit Owners the approval of at least 2/3rds of all Unit Owners is required to amend the Covenants or Mortgage, convey or encumber the Common Area.

8. USE.

A. Residential Use

The buildings and each of the units shall be used for residential and lodging accommodation purposes, which shall include the rental of any units by the owner(s) thereof for residential pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings by persons owning or occupying such units. Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her unit and such right shall be appurtenant to and run with his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The uses contemplated by this paragraph cannot be changed, amended or modified without the written consent of the owners of all units; however, so long as the Declarant shall retain ownership of any units, it may it may utilize any such unit or units for sales or rental offices, models or other usage for the purpose of selling or renting units within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. The use by Declarant as such shall not be a violation of the use restrictions contained in the declaration, rules and regulations or other condominium documents. Declarant reserves the right to use any unsold unit for such purposes as its sole discretion, and to locate, or relocate, the units at will.

B. Property Rights

1. **Owners' Easements Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- a. The right to limit the number of unrelated occupants of two bedroom units to four (4) people, and the total number of occupants to Six (6) people, or the maximum allowed by the ordinances of City of Wilmington, whichever is less, and to limit the number of unrelated occupants of three bedroom units to six (6) people, and the total number of occupants to Eight (8) people, or the maximum allowed by the ordinances of City of Wilmington, whichever is less; and
- b. The right to the Association to limit the number of guests of members;
- c. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against this Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- d. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed necessary by the Developer or agreed to by a two-thirds (2/3) majority of all the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members as defined hereinafter agreeing to such dedication or transfer has been recorded; however, until such time as the Declarant has conveyed the Common Areas to the Association, the Declarant may, in its sole discretion, dedicate or transfer Common Area for drainage and utility easements reasonably necessary for the continuing development of the Property and any allowable additional property, and additional sections to be incorporated into the Development.
- e. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.
- f. The right of the Association to impose regulations on the conduct of Owners, tenants, guests, and invitees.
- g. There shall be no outside clothes lines, or similar facilities, in or on any common area or limited common areas, balconies, railing, or stairwells.
- h. All furniture, artwork, chimes, or other items visible in or on any common area, limited common areas, balcony or stairwell shall be approved by the Homeowners Association. The Association may require any item to be removed at their discretion, for any reason, including but not limited to aesthetic reasons and auditory reasons. Fines may be imposed for failure to remove any item after requested in writing.
- i. There shall be no tile, slate, or similar flooring used in any second or third floor unit without Homeowners Association approval. Any such flooring shall be installed with adequate sound dampening subflooring so as prevent increased noise levels in the unit beneath.

2. **Assignment of Use.** Owner may assign, in accordance with the By-Laws, his or her right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants, or contract purchasers who reside on the property.

3. Rights of Enforcement. Any Unit Owner is entitled to enforce the provisions contained in these covenants which are not the exclusive powers of the Owners Association or Declarant. Any powers which, by their terms, must necessarily be enforced by the Owners Association shall be solely enforced by the said Association.

9. COVENANTS FOR ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

1. An initial assessment equal to two months assessments as initial working capital, which shall be payable upon closing of the purchase of the Unit; and
2. Annual assessments or charges, which may be collected monthly, quarterly or bi-annually at the discretion of the Board of Directors; and
3. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
4. Any and all fines assessed per the terms of this declaration shall be an assessment on the unit owned by the person so fined.

The annual assessments, special assessments and fine or other levies, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area, including but not limited to the following:

1. Maintenance of the private roads, streets and walkways constructed within the development shall be the responsibility of the Association. Maintenance of the public roads and streets constructed within the development shall be the responsibility of the Association until accepted for maintenance by the City of Wilmington, or other municipal or governmental organization. The purpose of maintenance of the public roads and streets shall automatically terminate upon such roads and streets being taken over by the City of Wilmington, or similar entity for maintenance; however, provision shall continue for maintenance of walkways, sidewalks, and parking areas within a development.
2. Payment of all water and sewer bills for the units and Common Areas.
3. Maintenance of the exterior of the buildings, units and other common area improvements situated on the properties, specifically including swimming pools and associated improvements, and specifically excluding any Limited Common Area as defined herein and in NCGS Chapter 47C.
4. Payment of taxes and other municipal charges and fees assessed on the Common Areas.
5. Maintenance of all drainage easements, water lines and sewer lines located in the Common Area.

6. To keep all amenities in the Common Area clean and free from debris, and to maintain all amenities in an orderly condition. Further, to maintain the landscaping in accordance with reasonable standards for residential/rental communities, including any necessary removal and replacement of landscaping.

7. To provide garbage removal services for all units; Declarant reserves the right to enter contracts for the removal of trash and garbage for all such units in the development, which contracts can call for payments for such service either directly for the Unit Owner, or by the Unit Owners Association; any such contract shall have a maximum duration of three years.

8. To pay the premiums on all insurance carried by the Owners Association as required by this Declaration.

9. To pay all legal, accounting and other professional fees, incurred by the association in carrying out its duties as set forth herein or in the Bylaws or Rules and Regulations, specifically including fees charged by a management company.

10. To accumulate and maintain and a Contingency Reserve Fund for unanticipated expenses and capital improvement or repair to the Units or Common Area.

C. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be One Thousand Four Hundred Forty Dollars (\$1,440.00) per Unit (\$120.00 per month per Unit).

1. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

2. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of all members who are voting in person or by proxy, at a meeting duly called for this purpose.

3. The Board of Directors may fix the initial assessment provided for above at an amount not in excess of the maximum, provided that the Board of Directors may increase the amount of the initial annual assessment to a maximum of One Thousand Seven Hundred Fifty Two Dollars (\$1,752.00) per Unit (\$146.00 per month per Unit) notwithstanding the provisions of subparagraphs a and b above, and thereafter the limitations set forth in said subparagraphs shall apply to any annual increase.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the roads and Common Area, including maintenance of water or sewer lines and other elements of the water or sewer system as required by government permits or as needed, and to fixtures, and personal property related thereto.

E. Insurance. Amount and Scope of Insurance. All insurance policies upon the property, including Limited Common Areas (except personal property within a unit) shall be secured by the Board or by the Managing Agent, if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and for such amounts as the responsible authority shall determine. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property

damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas and legal liability arising out of law suits related to employment contracts of the Owners Association. In obtaining such coverage the responsible authority shall consider the reasonable requirements of holders of first liens on individual units.

All insurance policies must contain provisions generally as follows:

1. Amount and Scope of Insurance. All insurance policies upon the Units shall contain insurance against (1) Loss or damages by fire, flood, if applicable, or other hazards normally insured against, and (2) such other risks, including liability insurance, as from time to time shall be customarily required by institutional Mortgage Lenders or Investors for units similar in construction, location and use.
2. Insurance Provisions. The Board shall make reasonable efforts to assure that said insurance policies provide for the following:
 - (a) A waiver of subrogation by the insurer as to any claims against other Unit Owners, the Association, any officer, director, agent or employee of the Association, the Unit owner and their employees, agents, tenants and invitees.
 - (b) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
 - (c) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured, all mortgagees and the Association.
 - (d) Coverage will not be prejudiced by act or neglect of the Unit Owners when said act or neglect is not within the control of the Association, or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.
 - (e) The policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any one or more other individual Unit Owners.
 - (f) The policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect, and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Unit Owner or any Mortgagee.
 - (g) All policies shall be for 100% replacement value, and shall contain standard inflation increase coverage provisions.
3. Proceeds. All insurance policies purchased pursuant to these provisions shall name the Association as insured and shall provide that all proceeds thereof shall be payable to the Board of Directors as Insurance Trustee or to such attorney-in-fact or institution with trust powers as may be approved by the Board of Directors.
4. Policies. All insurance policies shall be with a company or companies doing business in the State of North Carolina and holding a rating of "B" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as Insurance Trustee or to such attorney-in-fact or institution with trust powers as may be approved by the Board of Directors.
6. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

a. Expenses of Trust. All reasonable expenses of the Insurance Trustee shall be first paid or provision made therefor.

b. Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairing the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such Common Expenses or purposes as the Board shall determine. Upon the agreement of 100% of Unit Owners in any damaged building, the building may not be rebuilt; however, the Insurance Trustee is authorized to demolish the remainder of the building, clear the units of all debris, and place, or return, the lot and section upon which the building was located to a safe and attractive condition. In the event any building is not rebuilt, all remaining insurance proceeds shall be used first to pay off all liens or encumbrances upon the units, then for clean up costs, as provided for above, then Insurance Trustee expenses, and the remainder to be divided among the Unit Owners as directed by the Board of Directors.

F. Other Insurance The Board of Directors of the Association shall obtain, maintain and pay for such other insurance coverage on the Common Areas and Facilities as is normally required by institutional mortgage companies or investors for projects similar in construction, location and use. The Board of Directors shall make its best efforts to assure that there is no coverage "gap" which would result in a loss to the Association, or Unit Owners in the event of damage or destruction to the Common Area, or any improvements located thereon.

G. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C and D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

H. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all similar Units and may be collected on a monthly or quarterly basis, as determined by the Declarant or the Board of Directors. Notwithstanding the provision for uniform assessments, if a unit or building is located in a flood hazard area, that units assessment may be higher to accommodate flood insurance on the improvements located thereon, as shall be determined at the sole discretion of the Declarant, or the Board of Directors.

I. Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to each Unit upon its sale by the Declarant, and shall be prorated for the month of sale (assuming annual assessments are collected monthly). The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in prorata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

J. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Eighteen Percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

K. Lien for Assessments. The Association may file a lien against a lot when any assessment levied is left unpaid for a period of 30 days or longer.

1. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of New Hanover County. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under article 2A of chapter 45 of the General statutes. Fees, charges, late charges fines, interest, reasonable attorney's fees, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

2. The lien under this section shall be prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot.

3. The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of the Superior Court.

3. Any judgment, Decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

4. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a lot obtains title to the Lot as a result of foreclosure of a first mortgage or deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all of the Lot Owners including such purchaser, its heirs successors or assigns.

5. A claim of lien shall set forth the name and addresses of the association, the name of the record owner of the Lot at the time the claim of lien is filed, a description of the Lot and the amount of the lien claimed.

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

10. PROCESS AGENT. Thomas N. Tucker, 315 Friday Drive, Wilmington, New Hanover County, North Carolina 28411, is hereby designated as the person to receive service of process in any action provided for in the Act. The Board of Directors may change the process agent by filing a Declaration of Change in the Office of the Register of Deeds of New Hanover County.

11. MAINTENANCE.

A. All Limited Common Area, including, but not limited to, plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the

owner. Any replacement or substitution of such fixtures and equipment shall be compatible with any common areas and facilities effected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment, except that the Association shall maintain and repair all handrailings on balconies serving only one unit, providing that any such maintenance or repair caused by the Unit Owner's misuse shall be an expense of the unit owner to be collected by special assessment as provided for herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

B. All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the insurance underwriters of the insurance for the common areas and facilities when so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the Condominium Documents or a determination by the Board of its designated agent that such failure will endanger or impair the value of the common areas and facilities or any unit, or the limited common areas and facilities belonging to another owner, may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association at the expense of the unit owner, to be collected by special assessment as provided for herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

12. EASEMENTS.

A. Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Association shall have the right to be exercised by the Board of Directors or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the condominium to inspect the same, to remove violation therefrom and to maintain, repair or replace the common facilities, if any, contained therein or elsewhere in the building.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subject to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common areas and facilities, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common areas; each unit owner hereby grants to the Board, or its designee, an irrevocable power of attorney to execute, acknowledge, and record, for and in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon any other unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or common elements so encroaching so long as all or any part of the building containing such unit or common elements so encroaching shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the

common elements if such encroachment occurred due to the willful conduct of said owner or owners.

E. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved and intended for such purposes, for all unit owners or units in AZALEA TRACE CONDOMINIUM, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

F. In case of any emergency originating in or threatening any unit or the common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

G. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any other owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

H. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the units and Common Areas in the performance of their duties.

I. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation of street lighting, which contract requires a continuing monthly payment to Carolina Power and Light by each residential customer.

13. **PARTITIONING.** The common area and facilities shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof, unless the property has been removed from the provisions of the Act. Nothing herein contained, however, shall be deemed to prevent ownership of a dwelling unit by the entireties, jointly, or in common, or in any other form permitted by law.

14. **COMMON EXPENSES, COMMON PROFITS.** The unit owners are bound to contribute prorata, in the percentages computed according to Chapter 47C of North Carolina General Statute which percentages are set forth in Exhibit "C" hereto attached, toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. No unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common area and facilities or by the abandonment of the unit belonging to him.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonably necessary and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the Condominium Documents, shall be distributed among the unit owners according to the percentages for each unit set forth in Exhibit "C".

15. **TAXES.** If there is any unit owner other than a Declarant, each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "C" hereto attached, shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to, ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against

his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

16. LIENS.

A. With the exception of liens which may result from the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

B. No labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Condominium Documents or expressly authorized by the Board, in which event, same might be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

C. Unless otherwise provided by law, in the event a lien against one or more condominium units becomes effective, each owner thereof may relieve his condominium unit of the lien by paying the proportionate amount attributable to his condominium unit. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium unit.

D. Assessments against unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed the maximum rate allowed by law, and shall create a lien to the extent of such assessment, together with interest thereon, in favor of the Association against the unit of the defaulting owner and shall be enforced as provided by the North Carolina Condominium Act.

E. To the extent permitted by law, all liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of said first lien mortgage in the Office of the Register of Deeds of New Hanover County, North Carolina.

17. DAMAGE AND DESTRUCTION. Except as provided elsewhere in this Declaration, damage to or destruction of the common areas and facilities, and to the extent insurance proceeds are available, limited common areas and facilities, shall be promptly repaired and restored by the Board using the proceeds of any insurance available for those purposes, and the unit owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities; provided, however, if more than eighty percent (80%) of the owners of the condominium project units and one hundred percent (100%) of the units not to be rebuilt resolve not to proceed with reconstruction or restoration, then in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47C-2-118 (Termination) of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall substantially in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and by eligible holders holding mortgages on units which have at least 51% of the votes of units subject to eligible holder mortgages.

18. NATURE OF INTEREST IN UNIT.

A. Every unit together with its undivided common interest in the common areas and facilities, shall for all purposes be a separate parcel of real property, and the unit owner thereof shall be entitled to the exclusive ownership and possession of such unit subject only to the Condominium Documents and the covenants, restrictions, easements, regulations, resolutions and decisions adopted pursuant thereto.