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BY: ANDREA CRESWELL  
ASSISTANT

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

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ELECTRONICALLY RECORDED

**DECLARATION OF CONDOMINIUM  
FOR THE CAROLINA BAY - GARDEN FLATS CONDOMINIUM  
(Condominium Book 18, Pages 316 through 323, New Hanover County Registry)**

**PREPARED BY AND RETURN TO:  
MORRIS, RUSSELL, EAGLE & WORLEY, PLLC  
2235 GATEWAY ACCESS POINT, SUITE 201  
RALEIGH, NC 27607**

**STATE OF NORTH CAROLINA**

**COUNTY OF NEW HANOVER**

THIS DECLARATION OF CONDOMINIUM is made this the 3rd day of December, 2015, by CAROLINA BAY PROPERTIES OF WILMINGTON, LLC, a North Carolina limited liability company, pursuant to the provisions of Chapter 47C of the North Carolina General Statutes.

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS. IT IS THE INTENT OF THIS DECLARATION TO REGULATE AND PROHIBIT IN PORTIONS OF THE CONDOMINIUM THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA AND THE STATE OF NORTH CAROLINA AND POLITICAL SIGNS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO N.C.G.S. SECTION 47C-3-121.**

**WITNESSETH:**

WHEREAS, Declarant is the owner of that certain real property located in Wilmington, New Hanover County, North Carolina, and as more particularly described on Exhibit "A-1" attached hereto and incorporated herein by this reference (the "Land" or the "Phase I Property"), and the improvements situated thereon (collectively, the "Improvements") (the Land, the Improvements, and all authorized additions thereto shall hereinafter sometimes be referred to collectively as the "Property"); and

WHEREAS, Declarant wishes to submit the Property to the provisions of the Condominium Act by the recording of this Declaration of Condominium with the office of the New Hanover County Register of Deeds; and

Submitted electronically by Morris, Russell, Eagle and Worley, PLLC in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the New Hanover Register of Deeds.

WHEREAS, under the Condominium Act it is necessary that the rights, privileges, and obligations of Declarant, Unit Owners, the Executive Board, Mortgagees, and others who may be interested therein, be explicitly set forth.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions and restrictions set forth herein,

## ARTICLE I.

### DEFINITIONS

The terms used in this Declaration and in the Exhibits attached hereto shall have the meanings stated in the North Carolina Condominium Act and as follows, unless the context otherwise requires:

1.1. Act, Condominium Act or North Carolina Condominium Act means the North Carolina Condominium Act in Chapter 47C of the North Carolina General Statutes.

1.2. Articles mean the Association's Articles of Incorporation, as the same may be amended from time to time.

1.3. Assessment or Common Charge means a Unit Owner's pro rata share of the Common Expenses assessed against a Unit Owner by the Association, from time to time.

1.4. Association means The Carolina Bay-Garden Flats Owners' Association, Inc., a North Carolina, non-profit corporation, pursuant to Section 47C-3-101 of the Act.

1.5. Board or Executive Board means the group of Persons selected, authorized and directed to operate the Association, as provided by the Act, this Declaration and the Association's Bylaws, as the same may be amended from time to time.

1.6. Buildings means the buildings situated on the Land which contain one or more Units, together with certain Common Elements and Limited Common Elements.

1.7. Bylaws mean the Bylaws of the Association, as the same may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit "D-2".

1.8. Carolina Bay or CCRC means Carolina Bay at Autumn Hall, a continuing care retirement community located in Wilmington, North Carolina consisting of the Independent Living Building and the Clubhouse. Purchasers of a Unit are required to become, or have a Designated Member become, a Member of the CCRC.

1.9. Carolina Bay Facilities means the Independent Living Building and the Clubhouse that are to be a part of Carolina Bay. For clarity, the Carolina Bay Facilities are not part of the Property or the Condominium.

1.10. Carolina Bay of Wilmington means Carolina Bay of Wilmington, LLC d/b/a Carolina Bay at Autumn Hall, a North Carolina limited liability company, who is an affiliate of Declarant, and the operator of Carolina Bay.

1.11. Clubhouse means the Clubhouse connected with the Independent Living Building that is a part of Carolina Bay.

1.12. Common Elements means all parts of the Condominium, other than individual Units, as depicted on the Plat and the Floor Plans, and as further defined in Article V of this Declaration.

1.13. Common Expenses means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves, which shall include, without limitation, funds for future repairs and replacements to property and equipment (the "Reserve Fund"). The Common Expenses shall include, but are not limited to, the following: (a) the cost of all insurance premiums and all policies of insurance required to be, or which have been, obtained by the Executive Board; (b) ad valorem taxes, public assessments or governmental liens levied against the Common Elements or Limited Common Elements; (c) sewer charges; (d) maintenance and repair of the Common Elements and Limited Common Elements; (e) maintenance of water and sewer lines located outside any public street right-of-way or public utility easement; (f) maintenance of landscaping; (g) general and administrative expenses associated with the operations of the Association; (h) management fees; (i) the Reserve Fund; (j) assessments for public improvements; (k) funds for maintenance and repair; and (l) those items set forth in Section 5.1.

1.14. Common Interest means the proportionate undivided interest, expressed as a numerical percentage, of each Unit in the Common Elements, as determined in accordance with this Declaration, as the same is set forth on Exhibit "B" attached hereto and incorporated herein by this reference. The total of all Common Interest percentages of all Unit Owners shall equal 100%.

1.15. Co-owner means an individual, trust, estate, corporation, partnership, association, limited liability company or other legal entity, or any combination thereof, which owns a Unit. The term "Owner" or "Co-owner" shall have the same connotation as the term "Unit Owner" as used in the Act.

1.16. Condominium means the Property, and all easements, rights and appurtenances belonging thereto, collectively known as THE CAROLINA BAY – GARDEN FLATS CONDOMINIUM, and as further defined in this Declaration, all of which are intended to be submitted to the provisions of the Condominium Act by this Declaration of Condominium.

1.17. Condominium Documents means this Declaration, the Articles, the Bylaws, the Plat (as defined in Section 2.4 hereof), the Floor Plans, and the Rules and Regulations.

1.18. Declarant means Carolina Bay Properties of Wilmington, LLC, a North Carolina limited liability company, with its principal place of business located in Wilmington, North Carolina, and its successors and assigns.

1.19. Declaration means this Declaration of Condominium and any amendments hereto which are recorded in the Office of the Register of Deeds, New Hanover County, North Carolina.

1.20. Designated Member means a Member who is not a Unit Owner, but who has been designated by a Unit Owner to enjoy the use of a Unit in a manner and under terms, circumstances and conditions as are permitted and described in the Residency and Care Agreement and in this Declaration.

1.21. Floor Plans means those floor plans of the Units, including a complete description thereof, together with the respective locations and dimensions of each Unit, recorded together with this Declaration in the Office of the Register of Deeds, New Hanover County, North Carolina.

1.22. Healthcare Center means the approximately one hundred (100) bed healthcare center located adjacent to Carolina Bay and operated by Carolina Bay Healthcare Center of Wilmington, LLC, a North Carolina limited liability company ("CBH"). Members will be provided healthcare services in the Healthcare Center pursuant to a Healthcare Services Transfer Agreement between Carolina Bay of

Wilmington and CBH, but the Healthcare Center is not a part of the CCRC, the Condominium or the Property.

1.23. Independent Living Building means the independent living facility containing one hundred twenty four (124) independent living rental apartments that is part of Carolina Bay;

1.24. Law means any local, state or federal rules, regulations or laws which may apply to the Condominium or any Person who maintains an interest in the Condominium or a Unit.

1.25. Limited Common Elements means and includes those portions of the Common Elements which service or are reserved for use by a certain Unit or Units to the exclusion of other Units, as further described in Section 5.4 of this Declaration.

1.26. Management Agent means the Person designated by the Executive Board to act as a Management Agent to perform such duties and services as the Executive Board shall authorize. Carolina Bay shall serve as the Management Agent for the purposes set forth in the Bylaws.

1.27. Member means a Person who has acquired non-transferable Membership pursuant to the terms of the Residency and Care Agreement and is therefore eligible for all rights of access to Carolina Bay.

1.28. Membership means that certain license or collection of non-transferable rights, coupled with the corresponding responsibilities and obligations, embodied in Carolina Bay, and which is available to Persons who meet the requirements set forth in the Residency and Care Agreement.

1.29. Mortgage means a mortgage or deed of trust constituting a first lien on a Unit. The holders of such Mortgages shall hereinafter be referred to collectively as the "Mortgagees"; and individually as a "Mortgagee".

1.30. Owner or Unit Owner has the same meaning as Co-owner, as set forth in Section 1.15.

1.31. Person means an individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or other entity.

1.32. Public Offering Statement means the statement described in Section 47C-4-103 of the Condominium Act.

1.33. Residency and Care Agreement means that certain Residency and Care Agreement executed by Carolina Bay of Wilmington and all Unit Owners or Members, which outlines the services, rights, privileges and obligations of Membership in Carolina Bay. A specimen copy of the form of the Residency and Care Agreement in effect as of the date of this Declaration is attached hereto as Exhibit "C."

1.34. Rules and Regulations mean those rules and regulations concerning the use of the Common Elements and the Limited Common Elements which may be promulgated and amended from time to time by the Declarant (during the Special Declarant Rights Period) or the Executive Board, as more fully provided in the Bylaws.

1.35. Special Assessments mean those Assessments levied by the Executive Board, from time to time, to meet the Common Expenses of the Association.

1.36. Special Declarant Rights means the rights described in Section 2.8 and Article VII, including, without limitation, the right to complete the improvements shown on the Floor Plans and use any Unsold Units as models and offices for the selling, renting, management, operation and promotion of the Unsold Units. Declarant may exercise these rights during the Special Declarant Rights Period.

1.37. Special Declarant Rights Period means the period commencing on the date of recordation of this Declaration with the Office of the New Hanover County Register of Deeds and continuing until the earliest of (i) the date one hundred twenty (120) days after conveyance of seventy five percent (75%) of the Units to Unit Owners other than Declarant (including Units which may be created pursuant to the Special Declarant Rights (as defined in Section 1.36), or (ii) the date two (2) years after Declarant has ceased to offer units for sale in the ordinary course of business, or (iii) the date two (2) years after any development right to add new units was last exercised. Declarant may also voluntarily surrender control of the Condominium and the right to appoint and remove officers and members of the Executive Board before termination of that period (and the Association shall accept the obligations as set forth herein), but in that event Declarant may require, for the duration of the Special Declarant Rights Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Declarant shall transfer control of the Association to the Unit Owners upon the expiration of the Special Declarant Rights Period.

1.38. Unit means a portion of the Property, as further described in Article III, which is the subject of individual ownership by an Owner.

1.39. Unsold Unit means each Unit owned by Declarant, its designee or affiliate. All such Unsold Units are collectively referred to as Unsold Units. Except as may otherwise be provided herein, Declarant, its designee or affiliate shall have, with respect to the Unsold Units, all the rights and duties assigned to Unit Owners hereunder.

Notwithstanding the foregoing definitions, unless otherwise defined herein or in the other Condominium Documents, or unless the context otherwise plainly requires a different meaning, all capitalized terms shall have the meanings ascribed to them in N.C.G.S. § 47C-1-103.

## ARTICLE II.

### SUBMISSION OF PROPERTY TO CONDOMINIUM ACT

2.1. Submission to the Act, and Administration, of the Condominium. Declarant is the owner in fee simple of and hereby submits the Property to the provisions of the Act. The Condominium and its business shall be managed, controlled, directed and administered by the Association, in accordance with the Act, this Declaration, the Residency and Care Agreement, and the Articles and Bylaws. All powers granted in this Declaration or the Bylaws shall be exercisable by the Executive Board, except as otherwise expressly stated in the Declaration, the Bylaws or the provisions of the Act.

2.2. Name of the Condominium. The name of the Condominium shall be "Carolina Bay-Garden Flats Condominium."

2.3. Floor Plans. The improvements to the Property will be constructed in substantial accordance with the Floor Plans.

2.4. Plat and Description of Units. As shown on that certain plat of the Phase I Property recorded together with this Declaration in the Office of the Register of Deeds, New Hanover County, North Carolina (the "Plat"), there are six (6) units located within one (1) Building in Phase I (as defined in Section

3.1). Declarant hereby designates all such Units for separate ownership. Reference is hereby made to the Plat for separate descriptions of the boundaries of each Unit identified by number.

2.5. Maximum Number of Units. Declarant reserves the right to add the following to the Condominium, in accordance with Articles VII and VIII hereof:

- (a) Up to forty-eight (48) additional Units in up to eight (8) additional Buildings; and
- (b) Additional Common Elements and Limited Common Elements.

The maximum number of Units in Phase I and following phases shall not exceed fifty-four (54) Units. In the event that new Units are created pursuant to this Declaration, the Common Interests of all Units shall be automatically recalculated so that after giving effect to the creation of such Units, each Unit has a Common Interest that represents the proportionate square footage of such Unit compared to the total square footage of all Units. Declarant during the Special Declarant Rights period or the Board thereafter may cause this Declaration to be amended to reflect such recalculation.

2.6. Membership in the Association. Each Owner shall be a member of the Association and shall be entitled to a percentage interest vote in the Association for each Unit owned. The percentage interest shall be based on the Unit's Common Interest in the Common Elements, as shown on Exhibit "B" attached hereto. An Owner's right to exercise this vote shall be subject to the terms of the Bylaws.

2.7. Limited Common Elements. The only Limited Common Elements shall be those created under Section 2.5(b), Section 5.1, Section 5.4, and Section 7.2 hereof, and those specified in the Act.

2.8. Reservation of Special Declarant Rights. Notwithstanding anything contained in the Condominium Documents to the contrary, Declarant may, during the Special Declarant Rights Period, without the consent of the Executive Board or other Unit Owners: (a) complete any improvements shown on the Floor Plans; (b) grant permission for the use of any Unsold Unit as a professional office or for any other purpose; provided, however, that such use is permitted by applicable Law and Declarant complies with all applicable governmental regulations; (c) use any Unsold Units as model units and offices for the selling, renting, management, operation, and promotion of the Unsold Units or for any other purpose, subject only to compliance with Law; (d) lease any Unsold Units to third parties for their occupancy; (e) transfer any Declarant rights created or reserved under the Condominium Documents to any Person by recording in the Office of the Register of Deeds for New Hanover County, North Carolina, a written instrument evidencing the transfer, which instrument is executed by Declarant and the transferee; (f) annex additional land to the Condominium or exercise any development right in accordance with Articles VII and VIII hereof; (g) use easements through the Common Elements and Limited Common Elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium; (h) make the Condominium part of a larger condominium; (i) modify the lease restrictions set forth in Section 3.8 of the Declaration; and (j) assign specific Unit Owners or their Designated Member exclusive possession of the parking garage spaces situated underneath any Building pursuant to a separate contractual arrangement. Further notwithstanding anything contained in the Condominium Documents to the contrary, for so long as Declarant remains a Unit Owner, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve Declarant from its obligation to pay the Assessments charged to each Unit it owns, as specified in Section 3.7 hereof: (i) Declarant, for itself, its successors or assigns, reserves the unrestricted right to sell, assign, mortgage, or lease any Unit that it continues to own after the recording of the Declaration and to post signs for such purposes on the Condominium; and (ii) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Property except as specifically set forth herein or in the Public Offering Statement, and no Person shall rely upon any warranty or representation not so specifically made

herein. The Floor Plans and the estimated Common Charges are deemed accurate, but no warranty or guaranty is made nor intended, nor may one be relied upon with respect thereto.

2.9. Special Declarant Rights Period. Notwithstanding anything contained in the Condominium Documents to the contrary, Declarant may, during the Special Declarant Rights Period, without the consent of the Executive Board or other Unit Owners appoint and remove officers of the Association or members of the Executive Board, provided, however, that : (i) no later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; and (ii) not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

### ARTICLE III.

#### DESCRIPTION OF UNITS; REPAIRS; USE RESTRICTIONS

3.1. General Description of Units; and Use. "Phase I" of the Property includes six (6) Units in one (1) multi-story Building. The Property may also include the Future Phase Property (as defined in Section 7.1) upon submittal to the Condominium. All Units may only be used for residential purposes, except as permitted under Section 2.8 of this Declaration. Each Unit shall have a proportionate undivided Common Interest in the Common Elements of the Property based on the relative square footage of the Units.

3.2. Units. There are different Floor Plans for the Units. Declarant may modify the Floor Plans for Phase I or any future phase. The Floor Plans, together with the Unit boundaries set forth in Section 3.3 hereof, shall constitute a complete description of the Units within the Condominium.

#### 3.3. Unit Boundaries.

- (a) General Rules. The upper and lower boundaries of each Unit shall consist of the unfinished perimeter walls, floors and ceilings, as more particularly described on the Plat and Floor Plans. More specifically, the horizontal plane of the bottom surface of the wallboard in the ceilings of the top floor level within a Unit shall be the upper boundary thereof, and the top most horizontal plane of the top surface of the concrete or gypcrete flooring of the floor assembly of each Unit shall be the lower boundary thereof. All lath, furrowing, additional wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the Unit. All other portions of the demising, load bearing and corridor separation walls, floors, or ceilings are a part of the Common Elements. All interior walls that are not load bearing, partitions, fixtures, appliances, cabinets and other facilities and other improvements lying completely within the boundaries of a Unit shall be part of such Unit.
- (b) Multi-Story Units. With respect to any Unit containing more than one (1) level connected by interior or exterior stairwells, if any, the definition of upper and lower boundaries set forth above applies to each level of the Unit. With respect to Units with various foundation plans (e.g., slab on grade or crawl space), the lower boundary of the Unit shall be the top surface of the concrete or gypcrete flooring

on the lowest floor in the Unit. The disappearing stairway leading to the attic space above the ceiling in a Unit, if any, is also a part of the Unit. The attic space above the ceiling of the Units, if any, and any equipment located in the attic space, shall be Limited Common Elements for the exclusive use of the Unit.

3.4. Maintenance and Repair of the Units.

- (a) Association Maintenance and Repair. Each Unit Owner or Designated Member shall be responsible for the maintenance and repair of his or her Unit. Notwithstanding the foregoing, the monthly payment to be paid by each Unit Owner or Designated Member pursuant to the Bylaws shall include the maintenance and repair of the following:
- (i) The doorways, windows, vents and other structural elements in the walls, floors, and ceilings of the Unit which are regarded as enclosures of space.
  - (ii) The doors opening into the Unit and into any mechanical area integral to the Unit, including the frames, casings, hinges, handles, and other fixtures which are part of the doors.
  - (iii) The window glass, screens, frames, wells, and casings which are part of the window openings in the Unit.
  - (iv) The metal flue, the plumbing, and the mechanical vents that exclusively serve the Unit.
  - (v) The screens, partitions, railings, and balustrades bounding or enclosing any walkways or service area that is integral and exclusive to the Unit, and the concrete surface or other surface covering within any such area.
  - (vi) All pipes, wires, ducts, and other plumbing, mechanical, and electrical appurtenances which are integral and exclusive to the Unit, including lamps attached to the exterior of the Unit.
  - (vii) The disappearing stairways located within the ceilings of the Units, if any.
- (b) Owner Maintenance and Repair. Notwithstanding the provisions of Section 3.4(a)(i)—(vii), a Unit Owner will be responsible for any damage caused by his or her negligence or willful misconduct.
- (c) Upgrades and Improvements. If custom changes are made to a Unit, including, without limitation, non-standard or upgraded appliances or flooring; additional appliances or plumbing equipment; and addition of a bathtub enclosure or an enclosed breezeway (collectively, the “custom changes”), the Unit Owner will reimburse the Association for any amounts expended to maintain, repair, insure and replace the custom changes, to the extent such amounts exceed the amount that would have been expended for standard appliances, fixtures and finishes.
- (d) Failure to Maintain or Repair. If the Association determines that a Unit Owner or Designated Member has failed or refused to properly maintain, repair, or replace any items for which he or she is responsible under this Declaration, the Association

shall give the Unit Owner or Designated Member written notice (except in an emergency, when no notice shall be required) of the Association's intent to perform the necessary maintenance, repair or replacement at the Unit Owner's or Designated Member's expense (the "Repair Notice"). The Repair Notice shall state, with reasonable particularity, the maintenance, repair, or replacement to be performed. The Unit Owner or Designated Member shall have fifteen (15) days after receipt of the Repair Notice in which to complete the necessary maintenance, repair, or replacement (or such additional period of time as may be reasonably necessary to complete the work, so long as the work is commenced within the fifteen (15) day period and thereafter diligently pursued to completion). Such work shall be performed in a good and workmanlike manner. In the event of an emergency or failure of the Unit Owner or Designated Member to comply with the Repair Notice, the Association may perform the necessary maintenance, repair, or replacement at the Unit Owner's cost and expense, and place a lien on the Unit as security for such cost and expense.

### 3.5. Use of Units.

- (a) Residential Use. Except as permitted under Section 2.8 of this Declaration, the Units may only be used for residential purposes, in accordance with the terms of the Residency and Care Agreement; and each Unit may only be used for such purposes by the Owner thereof or such Owner's Designated Members, invitees, and tenants (to the extent leasing is permitted hereunder).
- (b) Nuisance. No Unit Owner or Designated Member shall do, suffer, or permit to be done, anything in his or her Unit that would (i) impair the soundness or safety of the Condominium; (ii) be noxious, offensive or an interference with the peaceful possession and proper use of other Units; (iii) require any alteration of or addition to any of the Common Elements in order for the same to be in compliance with any applicable law or regulation; or (iv) otherwise be in violation of law. No Unit Owner or Designated Member shall be permitted to smoke cigarettes, pipes, or cigars on the Property.
- (c) Emergencies. In case of any emergency originating in or threatening a Unit, or any portion of the Common Elements or Limited Common Elements, regardless of whether the Owner or a Designated Member, if any, is present at the time, the Executive Board and the Association's managerial personnel shall have the right to authorize access to such Unit for the purpose of remedying or abating the cause of the emergency, and such right of entry shall be immediate. To facilitate entry in the event of an emergency, each Unit Owner, if required by the Association, shall deliver to the Association a key to his or her Unit. The Executive Board and the Association's managerial personnel shall also have the right to authorize access to a Unit for any purposes consistent with the terms of the Residency and Care Agreement.
- (d) Leasing. Use of the Units is subject to the leasing restrictions set forth in Section 3.8 hereof.
- (e) Signs. No commercial sign, including "for rent", "for sale" and other similar signs, shall be installed or maintained in or on any Unit by anyone, including, without limitation, the Owner, a realtor, a contractor or subcontractor, except as may be

required by legal proceedings. This sign restriction is not intended to prevent directional and information signage to be installed by the Declarant or by the Association in the Common Elements or Carolina Bay of Wilmington Facilities.

- (f) Satellite Dishes and Antennas. No television antenna, dish, radio receiver or sender, or other similar device shall be attached to or installed on the exterior of any Unit without the express permission of Declarant (during the Special Declarant Rights Period) or the Association, which consent shall be discretionary; provided, however, that the provisions of this Subparagraph shall not apply to the Declarant or Carolina Bay of Wilmington for the installation of equipment necessary for a master or centralized antenna system for community members, a cable television satellite receiver, and mobile radio systems or other similar systems within Carolina Bay.
- (g) Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and deposited only in the common trash receptacles located within the Common Elements.
- (h) Alterations for Compliance with Law. The Declarant or Carolina Bay of Wilmington may make alterations to any Unit or the Common Elements at any time to meet mandatory requirements of applicable Law. The Owners agree to temporarily relocate to other facilities provided by Carolina Bay of Wilmington, at its cost, if it becomes necessary to vacate the Unit in order to make such changes.
- (i) Binding Covenants. The use restrictions described herein shall be deemed restrictive covenants running with the land, and are imposed as a limitation and burden upon each Unit, the Declarant, and all future Unit Owners.

3.6. Deeds to Units. Upon the conveyance of a Unit, the deed effecting that transfer conveys to the purchaser all of the seller's rights, title and interest in the Unit, including the Unit's Common Interest in the Common Elements, whether or not the Common Interest is expressly described in the deed.

3.7. Assessments for Common Expenses and Maintenance Responsibilities. The obligations of all Unit Owners and/or Designated Members with regard to Assessments for Common Expenses and the maintenance and repair of the individual Units are set forth in the Association's Bylaws.

3.8. Limitations on Leasing of Units. Units may only be leased by Unit Owners subject to the following conditions:

- (a) Declarant Leasing. Declarant shall have the right to lease Units, in accordance with Section 14.2 hereof, for use in the manner contemplated by the Residency and Care Agreement.
- (b) Unit Owner Leasing. All Unit Owners other than Declarant may only lease their Units to members of the Owners' families that are Members. Declarant and the Association expressly reserve the right, in its sole discretion, to modify this lease restriction. Anyone occupying a Unit pursuant to this provision must execute a Residency and Care Agreement, meet Carolina Bay of Wilmington residency requirements specified therein, and become a Designated Member of Carolina Bay. Each Designated Member shall execute a guaranty agreement in a form approved by Declarant evidencing the joint and several liability of the Owner and

the Designated Member for the Condominium fees and Carolina Bay of Wilmington service costs. Any authorized lease must expressly provide that the tenant must comply with the terms and conditions of the Condominium Documents. The lease must further provide that, if the tenant is in default under the lease or any of the Condominium Documents, the Association will have the right to terminate the lease and evict the tenant by summary proceedings brought in the name of the Unit Owner. Any lease entered into by a Unit Owner pursuant to the provisions of this Subparagraph shall be deemed to contain the requirements set forth herein, whether or not they are actually contained therein, and the landlord and tenant under the lease shall be bound by these provisions.

3.9. Declarant's Right of First Refusal. When a Unit Owner (other than Declarant) receives an offer to purchase his or her Unit (the "Sale Unit"), which offer is acceptable to the Unit Owner (the "Purchase Offer"), the Unit Owner will forward a copy of the Purchase Offer to the Declarant prior to the Unit Owner's acceptance thereof. The Declarant, or its affiliated assign, shall have a right of first refusal to purchase the Sale Unit upon the same terms and conditions set forth in the Purchase Offer (the "Right of First Refusal"). Declarant may exercise the Right of First Refusal by written notice thereof delivered to the Unit Owner within five (5) business days after receipt of the Purchase Offer. If Declarant does not timely exercise its Right of First Refusal, the Unit Owner may sell the Sale Unit to the prospective buyer, pursuant to the terms of the Purchase Offer. If such sale to a third party is not consummated within six (6) months after the Purchase Offer is delivered to Declarant, the terms and limitations of this Section shall again be imposed upon any sale by the Unit Owner. If Declarant elects to purchase such Unit, the transaction shall be consummated on the terms offered (including purchase price); provided, however, that Declarant shall have a minimum of five (5) business days from the delivery of notice to consummate the transaction. The provisions of this Section 3.9 shall not apply to sales under powers contained in Mortgages and similar security instruments.

- (a) Each purchase and sale agreement from a Unit Owner to a third-party ("Third Party Buyer") shall contain the following Provision:

"The deed of conveyance from the Seller to the Buyer shall contain the following provision: "This conveyance is subject to that Right of First Refusal as set forth in Section 3.9 of that Declaration of Condominium for Carolina Bay-Garden Flats Condominium recorded in Condo Book 18, Pages 316-323, New Hanover County Registry. The term of this Right of First Refusal shall commence upon the date this deed is recorded with the New Hanover County Registry."

- (b) Each deed of conveyance ("Deed") from a Unit Owner to a Third Party Buyer shall contain the following provision ("Deed Provision"):

"This conveyance is subject to that Right of First Refusal as set forth in Section 3.9 of that Declaration of Condominium for Carolina Bay-Garden Flats Condominium recorded in Condo Book 18, Pages 316-323, New Hanover County Registry. The term of this Right of First Refusal shall commence upon the date this deed is recorded with the New Hanover County Registry."

In the event the Deed fails to contain the Deed Provision, the Deed shall be deemed to have contained the Deed Provision and the Third Party Buyer shall have been deemed to have accepted such as a condition to the conveyance.

3.10. Alteration of Units.

- (a) After approval by the Declarant during the Special Declarant Rights Period or the Association thereafter, an Owner may make improvements or alterations to his or her Unit that do not impair the structural integrity or mechanical systems, or lessen the support, the acoustic separation, or the fire separation of any portion of the Building in which the Unit is located.
- (b) Except as may otherwise be permitted herein, no Owner may modify or alter the Common Elements, the exterior of a Unit, or any portion of the Unit which is visible from outside the Unit, i.e., paint, awnings, or window coverings (other than white), without the prior written consent of the Declarant during the Special Declarant Rights Period or the Association thereafter.
- (c) If a Unit Owner wishes to make any exterior (or visible to the exterior) alterations to his or her Unit, the Unit Owner shall submit to the Declarant during the Special Declarant Rights Period or the Association thereafter a written request and proposed plans for the alteration that conform to the applicable provisions of the Act. Such plans must make adequate provision for any required fire and emergency exits, mechanical and support systems of the Building, utilities, and assurance that there will be no impairment of the structural integrity of the Unit and/or Building. If the proposed alteration will alter the boundaries of the Unit, within sixty (60) days after receipt of such a request from an Owner, the Declarant during the Special Declarant Rights Period or the Association thereafter shall:
  - (i) Cause to be prepared an Amendment to this Declaration and a certified Amendment to the Floor Plans that conforms to requirements of this Declaration and the Act. Subject to the requirements of the Act, the Amendment to the Declaration shall reallocate the assigned appurtenant interest among all the Units resulting from the alteration of the Unit; and
  - (ii) Upon payment by the Unit Owner requesting the alteration of all permit, recording, legal, architectural and other fees incurred by the Declarant and/or the Association, the Declarant during the Special Declarant Rights Period or the Association thereafter shall execute the Amendment to Declaration and record same, together with the Amendment to the Floor Plans.
- (d) Any Unit Owner altering a Unit pursuant to this Section 3.10, upon request by Declarant during the Special Declarant Rights Period or the Association thereafter shall:
  - (i) Provide a waiver of all mechanics lien rights that may arise as a result of the alteration;
  - (ii) Provide certificates of insurance for the alteration work which name the Declarant and the Association as additional insureds;
  - (iii) Indemnify and hold the Declarant, Carolina Bay of Wilmington, the Association and other Unit Owners harmless from the effect of the work;
  - (iv) Minimize the disturbance to other Unit Owners during the work; and

- (v) Reimburse the Declarant and the Association for any expenses incurred in connection with the alterations, including, without limitation, the following additional fees: legal fees, consulting fees, cleaning fees, security fees, and project management fees.
- (e) When the alterations approved by the Declarant or the Association, as applicable, are completed, the Unit Owner that requested the alterations shall deliver to the Declarant or the Association as applicable, a copy of the "As Built" plans and specifications therefor certified to by an architect licensed to practice in North Carolina.

#### ARTICLE IV.

##### AREA COMPRISING THE PROPERTY

Phase I of the Condominium is constructed on the Land, and is comprised of the Improvements, which include the following: six (6) Units in one (1) multi-story Building. The remaining portion of the Land is comprised of Common Elements. The Property may include the Future Phase Property upon submittal to the Condominium.

#### ARTICLE V.

##### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

The Common Elements of the Property are as follows:

##### 5.1. General Common Elements:

- (a) The Buildings, and other Improvements located on the Land but excluding the Units and Limited Common Elements.
- (b) The foundations, columns, girders, beams, supports, exterior and interior load-bearing walls, roofs, balconies, patios, decks (except as the same are designated to be Limited Common Elements), and all other structural elements of the Buildings.
- (c) The landscaped and planted areas, walks (except as the same are designated to be Limited Common Elements), driveways (except as the same are designated to be Limited Common Elements), parking areas, roadways, and other facilities used in common.
- (d) Central and appurtenant installations for services such as electricity, telephone, water, stairs, lobbies, garbage and sewage disposal, and other services for common use.
- (e) Tanks, pumps, motors, ducts, pipes, wires, cables, and, in general, all apparatus and installations existing for common use.
- (f) Easements for access, maintenance, repair, reconstruction, or replacements of the foregoing structural members, equipment, installations, and appurtenances, and for all other services necessary or convenient to the existence, maintenance, safety, and use of the Property.

- (g) All tangible personal property required for the operation and maintenance of the Condominium owned by the Association.

In addition to all of the rights reserved by Declarant hereunder, Declarant specifically reserves the right to repair, improve, upgrade, expand, modify, enlarge and otherwise add to the Common Elements and the Limited Common Elements.

5.2. Common Elements Not Severable From Units. The undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit, although such interest may not be expressly mentioned or described in the conveyance or other instrument.

5.3. No Partition of Common Elements. The Common Elements shall remain undivided, and no Unit Owner or any other Person shall bring, or shall have the right to bring, any action for partition or division thereof, except as is expressly permitted pursuant to the terms of this Declaration or the Bylaws. Further, any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which such interest is allocated is also transferred.

5.4. Limited Common Elements. Limited Common Elements shall mean and include those areas and facilities of the Condominium reserved for exclusive use by the Unit Owner or Designate Member of a particular Unit(s), which areas and facilities shall include, without limitation, any deck, porch, patio, or courtyard appurtenant to a Unit(s) or the space lying between the upper boundary of each Unit and the floor or roof above such Unit, or the attics in Units, if any, all as shown on the Floor Plans. In addition, the Limited Common Elements shall include the residential storage spaces (individually, "Storage Unit") more particularly described in the Floor Plans, if any. Each Storage Unit is a Limited Common Element dedicated to the applicable Unit. Subject to the rights reserved to the Declarant and Association as set forth herein, each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Elements associated with the Owner's Unit. The Association shall be responsible for the maintenance and repair of the Limited Common Elements; but each Unit Owner shall be responsible for the cleanliness and orderliness of the Limited Common Elements associated with the Owner's Unit.

## ARTICLE VI.

### COMMON CHARGES

6.1. Purpose of Common Charges. The Assessments shall be used exclusively for the purposes of promoting the beautification of the Property, the recreation, health, safety and welfare of the Owners, and the improvement, maintenance and repair of the Limited Common Elements and the Common Elements related thereto. Common Expenses shall include, without limitation, taxes and Assessments levied against the Common Elements (and Limited Common Elements, if applicable), all insurance premiums required hereunder (including, without limitation, casualty, liability and fidelity bond premiums), Association operational costs, management fees, if any, the enforcement of this Declaration and the rules of the Association, the employment of counsel, accountants and other professionals for the Association when necessary, the cost of landscaping, maintaining and repairing the Common Elements and the Limited Common Elements, and the cost of such other needs as may arise. The Association may maintain a reserve fund for periodic maintenance, repair, and replacement of the Limited Common Elements and the Common Elements, including the storm pipes and the facilities associated therewith.

6.2. Non-Use Is Not Exemption From Common Charges. Except as otherwise set forth in Bylaws, no Unit Owner or Designated Member may exempt him/herself from liability for his or her proportionate share of Common Expenses by not using his or her Unit or any of the Common Elements.

6.3. Assessments Subordinate to Mortgages. All Unit Owners shall be obligated to pay Common Charges and Special Assessments assessed by the Executive Board pursuant to the terms of the Bylaws at such time or times (but not more than annually) as the Executive Board shall determine. Unless otherwise determined by the Executive Board, Common Charges shall be payable in installments on the first day of every month in advance. A Unit Owner who fails to pay, when due, any Common Charges shall be obligated to pay a monthly late charge equal to one and one-half percent (1 1/2%) of the delinquent amount from the due date thereof until paid, together with all expenses, including attorney's fees, incurred by the Board in connection with its efforts to collect such unpaid Common Expenses. To the extent permitted by Law, the Executive Board shall have a lien on each Unit, on behalf of all Unit Owners, for unpaid Common Charges assessed against the Unit. Such lien shall, however, be subordinate to a first mortgage on such Unit that was recorded before the delinquent Assessment was due, and, to the extent required by Law, to any liens for real estate taxes assessed against the Unit. Upon the happening of a default under the terms of the Mortgage or other liens that would permit the Mortgagee to declare the entire principal sum due, notice of the intention of the Mortgagee to do so shall be given to the Board, but the failure to give such notice shall not prevent the Mortgagee from instituting a foreclosure action. The foreclosure of a Mortgage will extinguish the lien for any unpaid Common Charges that were payable before the foreclosure sale. Except as otherwise provided herein, any Unit Owner shall be free to convey or transfer its Unit without restriction. No Unit Owner shall be permitted to convey or lease its Unit unless it shall have paid in full to the Board all unpaid Common Charges theretofore assessed against the Unit and shall have satisfied all unpaid liens, other than that of permitted Mortgages, levied against the Unit. However, where the payment of such unpaid Common Charges is made by the grantee or provided for out of the proceeds of the sale, a sale may take place notwithstanding the foregoing. Except as otherwise provided herein, a lien for Common Charges will not be affected by the sale or transfer of a Unit.

6.4. Notice of Mortgage and Notice to Mortgagee. A Unit Owner who obtains a Mortgage on its Unit shall notify the Board in writing of the name and address of the Mortgagee, and shall file a conformed copy of the Mortgage with the Board. Upon the written request of a Mortgagee, the Board shall promptly provide written notice of: (a) any unpaid Common Charges due from, or any other default by, the Unit Owner of the mortgaged Unit; (b) any condemnation or casualty loss that affects a material portion of the Building or the mortgaged Unit; (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (d) any proposed action that requires the consent of a specified percentage of the Mortgagees.

## ARTICLE VII.

### RESERVED DEVELOPMENT RIGHTS GENERAL PLAN OF DEVELOPMENT

7.1. General. The Declarant reserves the right to develop the Condominium in more than one phase. The Declarant has constructed Phase I of the Condominium on the Land. Declarant reserves the right to construct additional Units and other improvements in additional phases, in accordance with Section 2.5(a) hereof ("Future Phases"), on that certain real property more particularly described on Exhibit "A-2" attached hereto and incorporated herein by reference ("Future Phase Property").

7.2. Additions to, and Modifications of, Common Elements and Limited Common Elements. The Future Phase Property may consist of additional Common Elements and Limited Common Elements, including, without limitation, expanded Carolina Bay Facilities. Declarant reserves the right to amend the