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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2005027742

DECLARATION  
FOR  
CAROLINA BAY CONDOMINIUM  
PURSUANT TO  
CHAPTER 47C OF THE NORTH CAROLINA GENERAL STATUTES,  
THE NORTH CAROLINA CONDOMINIUM ACT  
[New Hanover County Register of Deeds Condominium File No. 14e 269-278]

Prepared by and Return to: Alison R. Cayton, Manning, Fulton & Skinner P.A.,  
Post Office Box 20389, Raleigh, North Carolina 27619-0389

St. Josephs Partners, LLC, a North Carolina limited liability company, with its principal place of business located at 3301 Benson Drive, Suite 535, Raleigh, North Carolina 27609, hereinafter defined as "Declarant", does hereby make, declare and establish this Declaration of Condominium as, and for, the plan of ownership of Carolina Bay Condominium, being the property and improvements hereinafter described.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in New Hanover County, North Carolina, more particularly described and defined in Exhibit A of this Declaration attached hereto and made a part hereof (hereinafter called "Property"); and

WHEREAS, the Declarant plans to construct improvements upon the land with the intention of dividing the improvements into Condominium Units as defined under the provisions of the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and to sell and convey said Units to purchasers subject to the covenants, conditions and restrictions herein reserved.

WHEREAS, the members of the Carolina Bay Condominium Owners Association, Inc. shall be responsible for paying the Condominium Common Expenses of the Carolina Bay Condominium Owners Association, Inc.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit A of this Declaration attached hereto shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, uses, limitations, and obligations in furtherance of a plan for the division of said Property into Condominium Units and which shall be deemed to run with the land and be binding on all parties having any right, title, or interest in the land or any part thereof, their heirs, successors and assigns.

1.

## ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

Declarant does hereby submit that Property described in Exhibit "A" to this Declaration attached hereto and the improvements and appurtenances thereto to the form of condominium ownership pursuant to the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) as the same now exists or may be hereafter amended, and hereby declares that the Property shall be subject to the uses, restrictions, covenants, easements, limitations, obligations, and governing authority set forth in this Declaration of Condominium and as the same may be hereafter amended.

That the Property and improvements thereon shall be known as the Carolina Bay Condominium (hereinafter referred to as "Condominium").

2.

## DESCRIPTION OF PROPERTY AND IMPROVEMENTS

2.01 Property. The legal description of the Property on which the buildings and improvements are to be located is set forth in Exhibit "A" to this Declaration, along with a list of encumbrances thereon.

2.02 Unit Designations. The unit designation of each Condominium Unit, location, floor plan and typical description are set forth on Exhibit "B" to this Declaration.

2.03 Other Descriptions. Actual building locations, Limited Common Areas, Common Areas, utility lines, ground elevations, building elevations, and other land and construction information shall be found in the Condominium Unit Ownership File which number is referenced at the top of the first page of this Declaration recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

3.

## DEFINITIONS

The following shall be definitions applicable to this Declaration:

3.01 "Allocated Interests" means the undivided interests in the Condominium Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit as shown on Exhibit "C" attached hereto.

3.02 "Association" or "Unit Owners' Association" means that non-profit corporation, the name of which shall be Carolina Bay Condominium Owners Association, Inc. and which shall manage the Condominium Common Elements of the Condominium as specified in this Declaration, its Articles of Incorporation and corporate Bylaws.

3.03 "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the directors of the Association, and on behalf of the Association, as prescribed in its Articles of Incorporation and Bylaws.

3.04 "Building" means a structure constructed or erected on the Property which contains one or more Condominium Units.

3.05 "Bylaws" means the Bylaws of the Association as they now or hereafter exist.

3.06 "Condominium Common Elements" shall mean and comprise all of the Condominium other than the Condominium Units as herein defined, and appurtenances thereto and water and sewer lines located outside any public street, road or city utility easement.

3.07 "Condominium Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including, but not limited to:

- (1) All sums lawfully assessed against the Unit Owners by the Association;
- (2) Expenses of administration, maintenance, repair, or replacement of the Condominium Common Elements;
- (3) Expenses agreed upon as Condominium Common Expenses by the Association;
- (4) Expenses declared to be Condominium Common Expenses by the provisions of the North Carolina Condominium Act, by the Declaration or by the Bylaws;
- (5) Hazard, and such other insurance premiums as the Declaration and/or Bylaws may require the Association to purchase;
- (6) Taxes and public assessments levied against the Condominium Common Elements not otherwise assessed against the Units;
- (7) Any utilities, which are Condominium Common Expenses as determined by the Association;
- (8) The cost of installing and maintaining fire and/or burglar alarm systems if these are provided for the benefit of all Units.

3.08 "Common Expense Liability" means the liability for Condominium Common Expenses allocated to each Unit.

3.09 "Common Profits" means the balance of all assessment income and other income, rents, profits, and revenues from the Condominium Common Elements remaining after the deduction of the Condominium Common Expenses or reserves therefore;

3.10 "Common Surplus" means all funds and other assets of the Association, including excess receipts of the Association from assessments, rents, profits and revenues from whatever source in excess of the Common Expense.

3.11 "Condominium" shall mean all Condominium Units, the Condominium Common Elements and any Limited Condominium Common Elements, as said terms are herein defined, and all appurtenances, all comprising the Property described on Exhibit "A" to this Declaration attached hereto and the improvements thereon.

3.12 "Condominium Unit" or "Unit", as the term is used herein shall mean and comprise each of the separate numerically identified Units which are designated in Exhibit "B" to this Declaration attached hereto and which shall be the physical portion of the Condominium designated on that Exhibit for separate ownership or occupancy.

3.13 "Declarant" means the named Declarant on page one (1) hereof, and its successors and assigns to whom any of its rights hereunder are expressly transferred, in whole or in part, or who succeeds to any Special Declarant Right;

3.14 "Declarant Control Period" or "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of (i) two years after all Declarants have ceased to offer units for sale in the ordinary course of business, (ii) two years after any development right to add new units was last exercised, (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five (75%) of the Units (including Units which may be created pursuant to special declarant rights) to Unit Owners other than a Declarant, or (iv) five (5) years following conveyance of the first Unit.

3.15 "Declaration" means this instrument, as amended and duly recorded, by which the Property is submitted to the provisions of the North Carolina Condominium Act, and as it, from time to time, may be amended;

3.16 "Development Rights" means those rights, if any, reserved by Declarant herein to add real estate to the Condominium, to create Units, Condominium Common Elements or Limited Condominium Common Elements within the Condominium, to subdivide Units, convert Units into Condominium Common Elements, to withdraw any part of the Property from the Condominium, or other rights as may be provided in the North Carolina Condominium Act, all as reserved in Section Five (5) herein.

3.17 "Lessee" means any person entitled to present possession of a leased Unit, whether lessee, sublessee or assignee.

3.18 "Institutional Lender" shall be as defined in Section 31.

3.19 "Limited Condominium Common Elements" are certain portions of the Condominium Common Elements allocated or reserved by the Declaration for the use of a particular Condominium Unit or Units to the exclusion of other Units. Limited Condominium Common Elements and the Condominium Units to which they are reserved are described as follows:

- (A) Any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the boundary of a Unit and which serves only that Unit are Limited Condominium Common Elements and allotted to the Unit they serve. Any of the foregoing, which lies partially within and without a Unit and serves more than one Unit is a Condominium Common Element.
- (B) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, all exterior doors, exterior glass surfaces, windows, door frames, thresholds and fixtures designed to serve a single Unit, but located outside the Unit's boundaries, as defined herein, are Limited Condominium Common Elements allotted to the Unit which they serve.
- (C) Any pipe, wire, wiring, conduit, electrical circuit, panel or switch, plumbing, junction box, switch box, drain, water line or pipe, water heater or meter designed to serve a single Unit but located either wholly or partly outside of the Unit boundaries, as defined herein, or outside of the Building, are Limited Condominium Common Elements allotted to the Unit which they serve.

- (D) Any air handling ducts or drains, condenser ducts, drains or components, whether for heating or cooling designed to serve a single Unit but located either wholly or partly outside of the Unit boundaries, as defined herein, or outside of the Building, are Limited Condominium Common Elements allotted to the Unit which they serve.
- (E) Parking Spaces. Each unit owner will have one assigned parking space within the common element parking spaces. Each of the parking spaces located in each garage and the covered parking spaces, which are so designated on the Plats and Plans are Limited Condominium Common Elements and are allotted to the Unit, which they serve. All parking spaces located outside of the building shall be used by the unit owners for self-service and guest parking purposes, except as the Board of Directors may otherwise determine; provided, however, that no unit owner shall park on the common element parking spaces (excluding limited common element parking spaces) more than two vehicles (owned or leased by such unit owner, a member of such unit owner's household, an employee or a tenant leasing the unit) without the prior written consent of the Board of Directors. The cost of maintenance and repair of the covered parking areas not located in a garage and of all exterior, uncovered parking areas, including sand traps located along the edges of the uncovered parking areas, shall be a common expense. During the time that units are being sold by the Declarant, no more than five parking spaces may be restricted to the Declarant's use for sales purposes.
- (F) Boat Slip. The boat slips to be constructed within the Phase II Marina and the area within the boat slip filled with water are Limited Condominium Common Elements. One boat slip will be allotted to each unit as will be set out on Exhibit B herein at such time as the boat slips are constructed. Boat Slips shall not be resold or leased except as part of the Unit to which they are allotted. No unit owner shall dock within the limited common element boat slip more than one boat owned or leased by such unit owner, a member of such unit owner's household, an employee or a tenant leasing the Unit without the prior written consent of the Board of Directors. The dock surrounding the boat slips shall be a Common Element, however, the cleats, convenience electrical outlets and the hose bibs located adjacent to each boat slip shall be considered Limited Common Elements serving the boat slip to which they are adjacent to. The maintenance and repair of the boat slip limited common elements will be at the cost of the unit owner. The cost of maintenance and repair of the dock surrounding the Boat Slips shall be a common expense.

The cost of maintenance and repair of a Limited Condominium Common Element (except the painting of the exterior surfaces of the deck rails, window frames, door frames and door thresholds which is the maintenance responsibility of the Association) shall be the responsibility of the Owner, or if more than one, Owners, of the Unit or Units to which it is allocated.

No Limited Condominium Common Element may be altered or reallocated without the unanimous consent of all Unit Owners whose Units are affected. Any Unit Owners who reallocate a Limited Condominium Common Element as among themselves shall first seek and obtain approval from the Board of Directors. Any reallocation of a Limited Condominium Common Element, upon approval by the Board, shall be evidenced by an amendment to this Declaration executed by the Unit Owners affected and evidencing executed approval by the Association which amendment shall be recorded before it shall become effective. The Unit Owners affected by the reallocation shall pay the cost and expense of preparation of the amendment and the recording thereof; however, the form and substance of the amendment shall be first approved by the Board of Directors or the counsel for the Association.

Condominium Common Elements not designated or allocated as Limited Condominium Common Elements may not be so allocated to Unit Owners except upon written unanimous consent of all Unit Owners in the Condominium. Any such allocation shall be evidenced by a recorded amendment as set forth above.

3.20 "Majority" or "majority of unit owners" means the owners of more than fifty percent (50%) of the aggregate allocated interests in the Condominium Common Elements as established by this Declaration, in person or by proxy at a duly called meeting of the members of the Association;

3.21 "Mortgage" means a mortgage or deed of trust;

3.22 "Mortgagee" means a mortgagee or the owner and holder of a promissory note and deed of trust which describes a Unit or Units as the security property.

3.23 "North Carolina Condominium Act" or "Act" means the provisions of Chapter 47C of the North Carolina General Statutes as the same now exists or may hereafter be amended, or any new enactment in substitution or replacement thereof as the same by law may be applied to this Condominium.

3.24 "Person" means any individual, corporation, partnership, association, business trust, estate, trust, joint venture, government or any subdivision or agency thereof, or other legal or commercial entity.

3.25 "Plans" means the plans of the Buildings and Property filed with this Declaration and located in the Condominium File in the Office of the Register of Deeds in the County in which this Declaration is filed showing thereon graphically all particulars of the buildings and the Units.

3.26 "Property" means the real estate described on Exhibit "A" together with the buildings, structures and improvements thereon, or hereafter constructed thereon and all easements, rights, privileges and appurtenances belonging thereto, or in any way pertaining thereto which is herein submitted to the provisions of the North Carolina Condominium Act.

3.27 "Special Declarant Rights" means those rights, including Development Rights, permitted by the North Carolina Condominium Act and specified in Section Six (6) herein.

3.28 "Unit Designation" means the identifying number, letter, symbol or combination thereof designating a Condominium Unit and set forth in this Declaration.

3.29 "Unit Owner" or "Owner" means Declarant or any other person, or any combination thereof, who owns a Condominium Unit, but excludes any person having an interest in a Unit solely for security purposes.

4.

OWNERSHIP OF CONDOMINIUM UNITS  
AND  
APPURTENANT ALLOCATED INTEREST IN CONDOMINIUM COMMON ELEMENTS

4.01 Ownership Interest. Each Condominium Unit shall be held, conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each Condominium Unit, an undivided allocated interest in the Condominium Common Elements. The undivided allocated interest appurtenant to each Condominium Unit shall be as set out in Exhibit "C" attached hereto and made a part hereof. The Allocated Interest in the Condominium Common Elements that is appurtenant to each Condominium Unit has been determined such that each Unit at the date of the Declaration owns an equal share of Condominium Common Elements. Upon addition of Units to the Condominium, the Allocated Interest shall be reallocated such that all Units own an equal share of the Condominium Common Elements.

4.02 Change in Allocated Interests. Except such reallocations as may be required by the exercise of Declarant Development Rights pursuant to Section 5 herein, as may be required by law, as may arise in the case of condemnation as set forth in Section 40 herein, as may result from a casualty loss as specified in Section 24 herein, or as may occur because of exercise of any Development Rights reserved by Declarant herein, if any, the Allocated Interests in the Condominium Common Elements allotted to each Unit shall not be changed except with the unanimous consent of all of the Owners of all of the Condominium Units and with the consent of all of the Institutional Lenders, as defined in Section 31 hereof, holding first mortgages or deeds of trust on the Condominium Units.

4.03 No Division of Condominium Common Elements. The Condominium Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Condominium Common Elements by an Owner made without the Condominium Unit to which that interest is allocated is void.

5.

DECLARANT DEVELOPMENT RIGHTS RESERVED

Declarant reserves unto itself, its successors and assigns, as Declarant, the right to construct and create additional Units on the Property and to establish additional Condominium Common Elements and to designate additional Limited Condominium Common Elements on the Property at locations determined by Declarant. In adding additional units, Condominium Common Elements and Limited Condominium Common Elements Declarant reserves the right to grant easements, licenses and permits for utilities and other services to the Property and, generally, to develop the Property without encumbrance of this Declaration until such time as the additional Units, additional Condominium Common Elements and the additional Limited Condominium Common Elements are subjected to the terms and conditions of this Declaration.

The method of adding the Units developed on the Property or any portion thereof, to the Condominium shall be pursuant to the provisions of G.S. 47C-2-109 and 110 of the North Carolina Condominium Act.

There is no specific time within which any portion or all of the Additional Property shall be developed and added to the Condominium, except that all property to be added shall be done

within five (5) years of the date of the sale of the first Unit in that Property described in Exhibit "A".

Other than the twenty-two (22) Units initially created by this Declaration, the maximum number of additional Units that may be created within the Property is twelve (12) Units, making a total of thirty-two (32) units maximum on the Property. It is the intent of Declarant to develop the additional twelve (12) units in one (1) phase.

Declarant reserves the right to construct a dock and boat slips within the common area notated on the plats and plans in one phase, within the period of Declarant Control. The dock and boat slips shall be considered Common Elements and Limited Common Elements as set out in Section 3.19(F) above. Upon construction of the dock and boat slips, Declarant shall record a document allocating boat slips to particular Units.

All additional Units created on the Property will be restricted exclusively for the uses permitted in this Declaration, and all restrictions, terms, covenants and conditions in this Declaration and the Association Bylaws shall apply to any and all additional Units that may be created within the Property.

Any buildings and Units that may be erected upon the Property, or a portion thereof, will be compatible with the other buildings and Units in the Condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size.

In addition to the buildings and Units that may be erected upon the Property, or a portion thereof, the other improvements and Condominium Common Elements that may be made or created upon, or within, the Property or each portion thereof which may be added to the Condominium, will be generally similar in quality and quantity to the improvements and Condominium Common Elements located in the Condominium.

These assurances made will not apply with respect to any Property that is not added to the Condominium.

Upon the exercise of such development rights creating new units and additional Condominium Common Elements, Declarant shall prepare and file an Amendment to this Declaration complying with this Declaration and the Act. The Condominium Common Elements as then constituted shall be reallocated to the Units, both new and previously existing, based on the formula set forth in Section 4.01 hereof.

Such amendment shall:

- (a) assign an identifying number to each new Unit created;
- (b) reallocate the allocated interests among the Units;
- (c) describe all Condominium Common Elements and Limited Condominium Common Elements thereby created;
- (d) designate the unit(s) to which each Limited Condominium Common Element is allocated.

During the period of Declarant Control, Declarant reserves the right to recombine the Property with the property to the south such that the recombination results in a net gain of acreage to the Property. Declarant shall be permitted to accomplish the recombination no more than two (2) times after the date of recording this Declaration. There shall be no requirement for

Association approval of these recombinations, and Declarant's signature or that of the President or Vice President of the Association shall be on the recombined map.

6.

SPECIAL DECLARANT RIGHTS RESERVED

6.01 The Declarant reserves the following Special Declarant Rights with respect to the Condominium:

- (A) All of those rights of Declarant, if any, reserved as Declarant Development Rights pursuant to Section 5 herein.
- (B) The right to complete the Condominium in accordance with the Plans filed contemporaneously herewith as an Exhibit to this Declaration and as a part of the Unit Ownership File identified on page 1 hereof.
- (C) The right to maintain sales or management offices at the Condominium along with appropriate signs for advertising the sale of Units and the location of such office. Such office shall be at a location selected by Declarant and may be a Unit occupancy or may be a separate standing office located on the Condominium Common Elements. The size of the office shall be as determined by Declarant and may be relocated by Declarant, at its discretion. Declarant reserves the right to use a Unit for a sales office and a model for exhibition to prospective purchasers. If Declarant shall construct a sales office in the Condominium Common Elements, the same shall be removed by Declarant within thirty (30) days of the sale of the last Unit or the office shall then become part of the Condominium Common Elements.
- (D) The right of access, ingress and egress over the Condominium Common Elements for the purpose of discharging Declarant's obligations and reservation of rights hereunder.
- (E) The right to elect or name persons to the Board of Directors and to name and appoint officers of the Association and to otherwise control the activities of the Board and Association until the rights of Declarant terminate, all as specified in the Bylaws or this Declaration.

**RESTRICTION AGAINST FURTHER SUBDIVIDING OF CONDOMINIUM  
UNITS; RELOCATION OF UNIT BOUNDARIES; SEPARATE  
CONVEYANCE OF APPURTENANT CONDOMINIUM COMMON ELEMENTS  
PROHIBITED**

7.01 **No Division of Condominiums.** No Condominium Unit may be divided or subdivided into a smaller Unit or Units, nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit, except as expressly set forth below in Section 7.04. The Allocated Interest in the Condominium Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the Allocated Interest in Condominium Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Condominium Unit.

7.02 **Instruments of Conveyance.** Any conveyance, mortgage or other instrument which purports to grant any title, right, interest or lien in, to or upon a Condominium Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Condominium Unit and its appurtenant Allocated Interest in Condominium Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any Condominium Unit, without limitation or exception, shall be deemed or construed to affect the entire Condominium Unit and its appurtenant Allocated Interest in the Condominium Common Elements.

7.03 **Joint Ownership Not Prohibited.** Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant Allocated Interest in the Condominium Common Elements by more than one person as tenants in common, joint tenants, or as tenants by the entirety.

7.04 **Relocation of Unit Boundaries.** The boundaries of Units may be relocated by the affected Unit Owners upon application to, and approval by, the Board of Directors. Any such application must be in such form and contain such data as the Board may require detailing the relocation of the boundaries of the affected Units and the reallocation of their respective Allocated Interests. Such application shall be accompanied by a plat prepared by a North Carolina licensed engineer or architect showing the relocation. The Board in its discretion may determine the relocation to be unreasonable. If the Board shall approve the application, or if within thirty (30) days after filing the application with the Board, the Board has not denied the application, then the Board, at the expense of the Owners affected, shall have prepared an amendment to the Declaration and the same shall be filed of record in the county in which the Condominium is located, at which time the relocation shall be effective.

8.

THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units, Condominium Common Elements and Limited Condominium Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Condominium Common Elements and Limited Condominium Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant Allocated Interest in the Condominium Common Elements, and said Condominium Units, Condominium Common Elements and Limited Condominium Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the Property constituting the Condominium.

9.

PERPETUAL NONEXCLUSIVE EASEMENT IN  
CONDOMINIUM COMMON ELEMENTS

9.01 Condominium Common Elements. The Condominium Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their employees, servants, guests, invitees and lessees, for all proper and normal purposes, including, but not limited to the right of access, ingress and egress to and from all public streets and public walkways and over walkways and parking areas within the Condominium Common Elements, and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners of Condominium Units.

9.02 Rules and Regulations. Notwithstanding anything provided in this Section, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his employees, servants, invitees, guests and lessees may be entitled to use the Condominium Common Elements, including the right to make permanent and temporary assignments of parking spaces (except such parking spaces as may be declared Limited Condominium Common Elements), and to establish regulations concerning the use thereof and to establish rules and regulations concerning the use of any recreation area.

9.03 Utilities. Each Unit Owner shall have an easement in common with the owners of all other Units to use all chutes, flues, pipes, wires, ducts, cables, conduits, and public utilities serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the chutes, flues, pipes, ducts, cables, wires, conduits, public utility lines, and other Condominium Common Elements serving such other Units and located in such Unit. The Board of Directors, or its agents, shall have a right of access to each Unit from time to time during reasonable hours as may be necessary to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Condominium Common Elements contained therein or accessible therefrom, and to make emergency repairs therein necessary to prevent damage to the Condominium Common Elements or to another Unit or Units. Each Unit Owner specifically shall have an easement to maintain all components of a heating and air conditioning system serving his Unit in their present location and as shown upon the Plans attached hereto.

9.04 Structural. Every portion of a Unit, such as bearing column, and bearing wall, which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Units and for the Condominium Common Elements.

**EASEMENT FOR UNINTENTIONAL AND  
NON-NEGLIGENT ENCROACHMENTS &  
EASEMENT TO INSPECT AND RIGHT TO CORRECT**

10.01 **Present Encroachment.** In the event that any Condominium Unit shall encroach upon any Condominium Common Element, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Condominium Common Elements or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Condominium Common Elements shall encroach upon any Condominium Unit then an easement appurtenant to such Condominium Common Elements for the continuance of such encroachment upon a Unit shall exist for so long as such encroachment shall naturally exist.

10.02 **Encroachments on Reconstruction.** If any Condominium Unit or Condominium Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and, if upon reconstruction of such Unit or Condominium Common Elements, there exist encroachments of portions of the Condominium Common Elements upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Condominium Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

10.03 **Easement to Inspect and Right to Correct.**

A. **Easement.** Declarant reserves for itself, General Contractor and such other Persons as each may designate, perpetual, non-exclusive easements throughout the Properties to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, modifying or improving any portion of the Properties, including Units and the Common Elements. Pursuant to this Section and any express warranty provided by either party, Declarant and General Contractor shall have the unilateral right, at any time, to redesign, correct, modify or improve any part of the Properties, including Units and the Common Elements, to the extent reasonably necessary to correct any design defect, construction-related defect or other design or construction-related problem, to improve the operational efficiency and structural integrity of any improvement located on the Properties, and to otherwise provide a superior or enhanced housing product within the Properties.

B. **Right of Entry to Units.** In addition to the above easement, Declarant for itself and General Contractor reserves a right of entry onto any Unit upon reasonable notice to the Owner; provided, however, except in an emergency, notice shall not be required. Entry into a Unit shall be only after Declarant or General Contractor notifies the Owner (or occupant) and agrees with the Owner regarding a reasonable time to enter the Unit to perform such activities. Owner agrees to cooperate in a reasonable manner with Declarant and General Contractor in their exercise of the rights provided to it by this Section.

C. **Right of Entry to Common Elements.** Entry onto the Common Elements and into any improvements and structures thereon may be made by Declarant or General Contractor at any time with advance notice to the Association; provided, however, in an emergency, such notice shall not be

required and Declarant and General Contractor shall be permitted to enter upon any portion of the Properties without advance notice or consent.

D. Notice Requirement. Upon notice, observation, or suspicion of a design defect, construction-related defect or other design or construction-related problem with any improvement located on the Properties, including the Common Elements and any Unit, the Association immediately shall notify General Contractor of such issue in writing and, in the case of a condition posing an imminent threat of damage to person or property, telephonically. Upon such notice, General Contractor shall have the right to come onto the Properties to observe the defect or problem and to unilaterally undertake any corrective measures that it deems appropriate without the additional consent or participation of the Association or the Owner(s). The rights of notice, inspection and correction granted to General Contractor pursuant to this Section 10.03 shall be provided by the Association and any affected Owner prior to the Association and any affected Owner consulting with, hiring or retaining, in any capacity whatsoever, any third party to examine, correct, repair or improve any design defect, construction-related defect or other design or construction-related problem with the Properties, any Common Element or Unit. Failure by the Association or any Owner to provide General Contractor with the above described notice, inspection and cure rights granted to it by this Section 10.03, automatically shall constitute an absolute and unconditional waiver of any legal claim or other claim or remedy whatsoever, including any warranty claims and any right to file a claim in arbitration, that the Association or the Owner(s) otherwise may have regarding such defect or problem absent such waiver.

E. Damage. Any damage to the Properties, a Unit or the Common Elements resulting from the exercise of the easement and right of entry described in the above subsections of this Section promptly shall be repaired by, and at the expense of, the party exercising this easement; provided, however, the obligation to repair shall be limited to restoring the affected area to the same approximate condition and state of repair which existed prior to the undertaking of the work permitted by this easement and after taking into account the nature of any corrective work or improvement so performed by Declarant or General Contractor pursuant to this Section 10.03.

F. No Implied Warranty and Enforcement. THE TERMS OF THIS SECTION 10.03 SHALL NOT BE DEEMED TO PROVIDE ANY IMPLIED OR EXPRESS WARRANTY RIGHTS WHATSOEVER BY DECLARANT AND GENERAL CONTRACTOR TO THE ASSOCIATION OR ANY OWNER, AND DECLARANT AND GENERAL CONTRACTOR EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE FULLEST EXTENT PERMITTED BY NORTH CAROLINA LAW. Declarant and General Contractor may seek enforcement of the rights afforded to each of them under this Section 10.03 by filing an action at law or in equity, including specifically the remedy of specific performance, in the appropriate court of competent jurisdiction in the State of North Carolina and notwithstanding to the contrary any arbitration provision set forth in this Declaration or any other instrument whatsoever.

G. General Contractor, Notices and Amendment As used in this Section 10.03, the term "General Contractor" shall mean Saieed Construction Systems, Corp. a North Carolina corporation, its employees, officers, directors, agents, subsidiaries, affiliates and assigns as well as all subcontractors hired by General Contractor (or subcontractors of such subcontractors) to perform work on the Properties, the Common Elements and any Unit. Notices to General Contractor shall be

delivered as follows: Saieed Construction Systems, Corp., 3301 Benson Drive, Suite 501, Raleigh, North Carolina 27609, Attn: Project Manager for Carolina Bay Condominium, Phone 919-876-4772.

Such notice address and phone number may be amended from time to time by General Contractor upon the filing of a new notice address in the appropriate land records where the Condominium is located with cross-reference to this Declaration. General Contractor is an express beneficiary of the terms set forth in this Section 10.03, and the terms of this Section 10.03 may not be amended in any manner whatsoever without General Contractor's prior written consent. Declarant covenants with General Contractor that it immediately shall forward to General Contractor any notice whatsoever that Declarant receives from the Association or any Owner regarding any alleged design defect, construction-related defect or other construction related problem whatsoever regardless of whether or not such notice also shall be addressed to General Contractor and regardless of whether or not Declarant determines that such complaint is without merit.

#### **10.04 Arbitration and Actions Against the General Contractor and/or Declarant.**

A. **Prerequisites to Actions Against the General Contractor and/or Declarant.** Prior to filing a civil action or arbitration claim of any nature whatsoever against Declarant and/or General Contractor (each severally or collectively as the case may be, the "Respondent"), and prior to consulting with, retaining or hiring in any capacity whatsoever, any third party consultant, advisor, property inspector, architect, engineer, contractor or repairmen to correct the problem or to examine, investigate, or advise the Association or any Owner with respect to any suspected or reasonably inferable design defect, construction-related defect or other construction-related problem with the Properties, Common Elements and any Unit, the Association and Owner shall first notify the Respondent(s) of the alleged or suspected problem and shall first provide responsible Respondent with a reasonable opportunity to inspect and repair the problem pursuant to the terms of Section 10.03 above. For the purposes of this Section 10.04 and Section 10.03 above, a minimum of sixty (60) days from first notice to a Respondent shall be deemed a reasonable opportunity for that Respondent to inspect and repair any alleged or suspected problem; provided, however, in certain circumstances, this period of time may be longer depending on the complexity of the condition and the length of time reasonably necessary to obtain parts and services from third parties as such additional time shall be communicated to the Association and Owner by Respondent.

After the above right to inspect and correct period elapses, and prior to the Association bringing any Claim (as such term is defined below) against the Respondent, the Association shall first call a special meeting of the Owners to discuss the alleged problems or deficiencies and the Association shall obtain the affirmative vote of at least 67% of all Owners prior to initiating any such Claim against the Respondent. Similarly, prior to any Owner(s) bringing any Claim against the Respondent, the affected Owner(s) shall first notify the Association of their intent to do so, shall meet with the Association's board of directors to discuss the nature and merit of their Claim and whether such Claim concerns the Common Elements, and shall provide the Association with at least sixty (60) days (if requested by the Board) to obtain the consent of the Owners for the Association to join-in such Claim against the Respondent with respect any affected Common Elements only.

B. **Notice.** After first complying with the terms and conditions set forth above in subsection "A," if the Association and/or an Owner(s) (severally or collectively as the context requires, the "Claimant") desires to pursue a legal claim of any nature whatsoever against

General Contractor, then the Claimant shall notify the Respondent(s) in writing (the "Notice"), stating plainly and concisely:

- i. the nature of the claims), including the parties involved and the Respondent's roles in the claim (including all conditions, matters, and claims arising out of or related to said claims whether or not specifically stated, the "Claim");
- ii. the legal basis of the Claim (i.e., the specific authority out of which the claim arises); the Claimant's proposed remedy, including any non-monetary remedies, if available; and
- iv. an affirmation that the Claimant will meet with the Respondent to discuss good faith ways to resolve the Claim pursuant to the terms of this Section \_\_\_\_.

For purposes of clarification of the above terms and conditions, an Owner may file a Claim against Respondent for problems or deficiencies with his or her Unit only; an Owner may not file a Claim against the Respondent for problems or deficiencies with the Common Elements as all Owners covenant and agree that all such Claim rights are exclusively those of the Association. The Association may only file Claims against the Respondent for problems or deficiencies with the Common Elements or for problems and deficiencies affecting more than 20% of all Units in the Properties and, in such case, all Owners covenant and agree that the Association shall serve in a representative capacity on behalf of all such affected Unit Owners should the Association elect to do so.

C. Negotiation and Mediation. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation within thirty (30) days of the Notice. If the parties do not resolve the Claim amongst themselves within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent, mutually acceptable agency providing dispute resolution services in Raleigh, North Carolina.

If Claimant does not submit the Claim to mediation within such time period, or does not appear for the mediation, Claimant shall be deemed to have absolutely, unconditionally and forever waived the Claim, and Respondent shall be released and discharged from any and all liability whatsoever to Claimant on account of such Claim.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such additional time as determined by the mediator, the mediator shall issue to all parties a written notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the parties are at an impasse and the date that such mediation was terminated.

Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails

to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If Respondent (severally and collectively) fails to make a Settlement Offer, the Respondent(s) not making an offer shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

D. Final and Binding Arbitration. If the parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, then the Claimant shall have