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**DECLARATION OF CONDOMINIUM  
OF  
CHESTNUT COMMONS CONDOMINIUMS**

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CHESTNUT BUILDING PROPERTIES, LLC (hereinafter referred to as "Declarant"), does hereby make, declare and establish this Declaration of Condominium as and for the plat of ownership of Chestnut Commons Condominiums, being the property and improvements hereinafter described.

1. **Establishment of Condominium**

Declarant is the owner of the fee simple title to that certain real property in the City of Wilmington, New Hanover County, North Carolina, which property is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "Land"), and on which property there is located a three story commercial building containing 18,523 square feet (inclusive of Common Areas) comprised of ten (10) units (the "Building"). Declarant does hereby submit the above-described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statues of North Carolina (North Carolina Condominium Act) and hereby declares the same to be a condominium to be known as Chestnut Commons (hereinafter referred to as the "Condominium").

2. **Survey and Description of Improvements**

Filed simultaneously herewith and expressly made a part hereof in Condominium Book 15 at Page(s) 216-220 (as such may be amended or supplemented from time to time, the "Unit Ownership File"), is a survey of the land and graphic descriptions and plans of the improvements constituting the Condominium identifying the Condominium Units, the Common Areas and Facilities and the Limited Common Areas, as said terms are hereinafter defined, and their respective locations and approximate dimensions. Each Condominium Unit

is identified by specific number in the Unit Ownership File, and no Condominium Unit bears the same description as any other Condominium Unit.

3. **Definitions**

The Condominium consists of Condominium Units, Common Areas and Facilities and Limited Common Areas, as said terms are hereinafter defined.

- A. "Association" shall mean Chestnut Commons Condominium Owners Association, Inc., a North Carolina nonprofit corporation.
- B. "Common Areas and Facilities" unless otherwise provided in this Declaration, means and includes:
- (1) The Land and such other land and improvements thereon as may be specifically included in this Declaration;
  - (2) The foundations, columns, girders, beams, supports, main walls, roofs, windows, exterior doors, halls, elevators, stairs, stairways, fire escapes, and rear and side entrances and exits of the Building;
  - (3) Any yards and parking areas;
  - (4) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
  - (5) The tanks, pumps, motors, fans, compressors, ducts, and in general, all apparatus and installations existing for common use;
  - (6) Such community and commercial facilities as may be provided for in this Declaration; and
  - (7) All other areas and facilities shown as Common Areas on the Unit Ownership File.
- C. "Common Expenses," unless otherwise provided in this Declaration, mean and includes all costs directly related to:
- (1) Maintaining and operating the Common Areas and Facilities (whether located within or outside the Building) in a manner deemed by the Association to be reasonable and appropriate and for the best interests of the Unit Owners, including, without limitation, all costs or expenses of operating, heating, cooling, repairing, lighting, cleaning, painting, insuring (including liability insurance for personal injury, death and property liability and insurance against fire, theft or other casualties), removal of snow, ice, debris and surface water, sewer, traffic regulation, personnel cost in implementing said services, security, electronic intrusion and fire control devices and telephonic alert system devices, inspecting, workmen's compensation insurance covering personnel, fidelity bonds for personnel,

insurance against liability for defamation and claims of false arrest occurring in and about the Common Areas and Facilities, loss of income insurance, plate glass insurance, fees for permits, licenses or use taxes, and all non-capital costs and expenses of replacement of paving, curbs, sidewalks, walkways, roadways, parking surfaces, landscaping, drainage, utilities and lighting facilities;

- (2) Any repair, replacement or modification to any part of the Common Areas and Facilities (including, without limitation, the electrical and plumbing systems and on-site generator), but expressly excluding repair, replacement or modification of any personal property (upfitting) installed by a Unit Owner and expressly excluding any HVAC unit which is exclusively for a particular Unit(s), which shall be the responsibility of said Unit Owner;
- (3) Installation of new equipment (whether or not capital equipment) in and to the Common Areas and Facilities made necessary for compliance with federal, state or local laws, regulations or ordinances;
- (4) Ad valorem taxes and other assessments imposed against the Land and/or Building (to the extent not separately assessed to a particular Unit);
- (5) Premiums for casualty and other insurance obtained by the Association with respect to the Land and Building as required herein;
- (6) All utilities servicing any Common Areas and Facilities,
- (7) All water and sewer charges with respect to the Building (including usage within any Unit), and
- (8) Light bulb replacement (located in the Common Areas and Facilities).

D. "Declaration" shall mean this Declaration of Condominium of Chestnut Commons Condominiums established by Chestnut Building Properties, LLC.

E. "Hazardous Materials" shall mean hazardous or toxic waste or substances which are defined as those substances, materials, and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. Sec. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation

and Liability Act, 42 U.S.C. Sec. 9601, et seq. (42 U.S.C. Sec. 9601).

- F. "Limited Common Areas" shall mean and include those Common Areas and Facilities which either (i) may be accessed only through a specific Unit, or (ii) are designated as a Limited Common Area on the Unit Ownership File.
- G. "Majority" shall mean the Unit Owner(s) of fifty-one percent (51%) or more of the aggregate Undivided Interests.
- H. "Person" shall mean an individual, corporation, limited liability company, partnership, association, governmental unit, trustee or other legal entity.
- I. "Property" shall mean and includes the Land, the Building, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Declaration.
- J. "State" shall mean the State of North Carolina.
- K. "Undivided Interests" shall mean the undivided interests in Common Areas and Facilities appurtenant to each Unit as set out in **Exhibit B** attached hereto, incorporated herein by reference, and made a part hereof. The amount of Undivided Interests assigned to each Unit represents the ratio that the square footage of the Unit bears to the total square footage of all Units. In the event Declarant increases or decreases the number of Units pursuant to **Section 33**, the amount of Undivided Interests assigned to each Unit (including all newly created units) shall be calculated by Declarant in the same manner.
- L. "Unit" or "Condominium Unit" shall mean an enclosed space consisting of one or more floors and shall include such accessory spaces and areas as may be described in this Declaration. Each Unit is bounded by the walls, floors, and ceilings of each individual Unit as designated on the Unit Ownership File and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors or ceilings are a part of the Common Areas and Facilities set forth in **Paragraph B** above.

If any chute, flute, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Area, allocated exclusively to that area, and any portion thereof serving more than one (1) Unit or any portion of the Common Areas and Facilities is a part of the Common Areas and Facilities.

Notwithstanding anything in this Declaration to the contrary, the Generator Pad as shown in the Unit Ownership File, together with the Generator (Serial No. BA23025DM ) located on the Generator

Pad, is the sole property of the owner of Unit No. 2 (as designated in the Unit Ownership File). The owner of Unit No. 2 shall maintain the Generator and Generator Pad at its sole cost and expense. The Association shall have no rights to use the Generator and/or Generator Pad. Provided, however, in the event the Generator Pad falls into disrepair and the owner of Unit No. 2 fails to repair the Generator Pad, the Association may, after thirty (30) days written notice to the owner of Unit 2, repair the Generator Pad and assess the owner of Unit No. 2 for the cost of said repairs. Provided further, the owner of Unit No. 2 may, in its sole discretion and at its sole cost and expense, use the Generator to provide power to Common Areas and Facilities.

- M. "Unit Designation" shall mean the number designating the Unit in this Declaration as shown on the Unit Ownership File (which may refer to a Unit as a "Suite").
- N. "Unit Owner" shall mean a Person(s) who owns a Unit within the Building.

4. **Nature and Incidents of Unit Ownership**

Unit ownership as created and defined in this Declaration shall vest in the Unit Owner exclusive ownership and possession with all the incidents of real property. A Condominium Unit in the Building may be individually conveyed, leased and encumbered and may be inherited or devised by will, as if it were solely and entirely independent of the other Units. Such Unit may be held and owned by more than one Person either as tenants in common or tenants by the entirety or in any other manner recognized under the laws of the State.

5. **Undivided Interests in Common Areas and Facilities**

- A. Each Unit Owner shall be entitled to an Undivided Interest in the Common Areas and Facilities in the ratio expressed in this Declaration.
- B. The ratio of the Undivided Interests of such Unit Owner in said Common Areas and Facilities as expressed in this Declaration shall have a permanent character and, except as otherwise provided in **Section 6** and **Section 33**, shall not be altered except with the unanimous consent of all Unit Owners expressed in an amended declaration duly recorded.

6. **Restrictions Against Further Subdivision of Condominium Units; Separate Conveyance of Appurtenant Common Property Prohibited**

Except pursuant to an Amendment by the Declarant made pursuant to **Section 33** or pursuant to an Amendment hereto joined into by a Majority, no Condominium Unit may be divided or subdivided into a smaller Unit or Units than as shown in the Unit Ownership File nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The Undivided Interests shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the Undivided Interests shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such Undivided Interests is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit shall be null and void insofar

as it purports to affect any interest in a Condominium Unit and its Undivided Interests unless it purports to convey, devise or encumber the entire Condominium Unit, which described said Condominium Unit by the number designation assigned thereto in the Unit Ownership File shall be construed to affect the entire Condominium Unit and its Undivided Interests.

7. **Condominium Subject to Restrictions**

The Condominium Units, the Common Areas and Facilities and the Limited Common Areas are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Common Areas and Facilities and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its Undivided Interests, and said restrictions, easements, conditions, and covenants shall run with the Land and shall be appurtenant to the Property and each of the Units, and shall inure to the benefit of, and be enforceable by, Declarant, any Unit Owner, their respective legal representatives, heirs, successors and assigns. The Condominium Units, Common Areas and Facilities and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Land and Building.

8. **Perpetual Non-Exclusive Easement in Common Areas and Facilities**

The Common Areas and Facilities are hereby declared to be subject to a perpetual non-exclusive easement in favor of all Unit Owners for their use and the use of their guests, invitees and lessees, for all proper purposes and for the furnishing of services and facilities for which they are intended and for the enjoyment of the Unit Owners. The Common Area and Facilities are also hereby declared to be subjected to a perpetual non-exclusive easement in favor of the Association for the purpose of repairs, maintenance and such other reasonably necessary purposes as determined by the Association. The Common Area and Facilities are also hereby declared to be subjected to a non-exclusive easement in favor of Declarant for so long as Declarant has the right to exercise development rights pursuant to **Section 33**.

9. **Easement for Unintentional and Non-Negligent Encroachments**

In the event that any Condominium Unit or any of its appurtenant improvements shall encroach upon any Common Areas and Facilities, or any other Condominium Unit, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Areas and Facilities or upon a Condominium Unit for as long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas and Facilities shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Areas and Facilities upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium Unit or Common Areas and Facilities 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 and/or Common Areas and Facilities in accordance with **Section 21** hereof, there exist encroachments of portions of the Common Areas and Facilities upon any Condominium Unit, or upon any portion of the Common Areas and Facilities, 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. **Restraint upon Separation and Partition of Common Areas and Facilities**

Recognizing that the proper use of a Condominium Unit by a Unit Owner or Unit Owners is dependent upon the use and enjoyment of the Common Areas and Facilities in common with all the Unit Owners and that it is in the interest of all Unit Owners that the ownership of the Common Areas and Facilities be retained in common by the Unit Owners, it is hereby declared that the proportional Undivided Interests shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division, unless and until the Condominium is terminated in accordance with the laws of the State.

11. **Administration of Condominium by Owners Association**

To efficiently and effectively provide for the administration of the Condominium by the Unit Owners, the Association has been organized and shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. Each Unit Owner shall automatically become a member of the Association upon acquiring an ownership interest in title to any Condominium Unit and its Undivided Interests; such membership shall terminate automatically upon the Unit Owner being divested of such ownership interest in the title to such Condominium Unit, regardless of how such ownership may be divested. No Person holding any lien, mortgage, or other encumbrance upon any Condominium Unit shall be entitled by virtue of such lien, mortgage, or other encumbrance, to membership in the Association or to any of the rights or privileges of such ownership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration; to levy and to collect assessments in the manner hereinafter provided; and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Areas and Facilities, as the Board of Directors of the Association may deem to be in the best interest of the Unit Owners.

12. **Use of Common Areas and Facilities and Use of Building Subject to Rules of Association**

The use of all Common Areas and Facilities and the use of the Building by the Unit Owners, and all other Persons authorized to use the same, shall be subject to such rules and regulations as may prescribed and established by the Association, including without limitation, those attached hereto as **Exhibit C**. Within each Unit, each Unit Owner shall be responsible for all acts of its guests, invitees or lessees in connection with the provisions of this Declaration which may be enforced by monetary fines in such amounts as the Association, in its sole discretion, decides.

13. **Condominium to be Used for Lawful Purposes; Restrictions Against Nuisances**

No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Areas and Facilities; and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Unit Owner shall permit anything to be done or kept in its Condominium Unit, or on the Common Areas and Facilities, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium, nor shall any Unit Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which

interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Areas and Facilities.

14. **Right of Entry into Condominium Units in Emergencies and for Maintenance of Common Areas and Facilities**

In case of any emergency originating in or threatening any Condominium Unit or the Common Areas and Facilities, regardless of whether the Unit Owner is present at the time of such emergency, the Board of Directors of the Association or any other Person authorized by it shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Whenever it may be necessary to enter any Condominium Unit in order to perform any non-emergency maintenance, alteration or repair to any portion of the Common Areas and Facilities, each Unit Owner shall permit representatives or agents of the Association to enter such Condominium Unit for such purposes, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

Additionally, to the extent necessary, the Association shall have the right to access any hallway within a Unit shown on the Unit Ownership File to the extent necessary to access any Common Area.

15. **Limitation upon Right of Owners to Alter and Modify Condominium Units; No Right to Alter Common Areas and Facilities**

No Unit Owner shall permit any structural modifications or alterations to be made to such Condominium Unit without first obtaining the written consent of the Association which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Unit Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including any improvements or changes which exist at the time of the filing of the Declaration of Condominium, and also including painting or other decoration, or the installation of electrical wiring, television or radio antennae, including dish antennae, chimneys, solar devices or solar collection devices, or any other objects or machines which may protrude through the walls, windows or roof of the Condominium, or in any manner alter the appearance of the exterior portion of any building) or any other part of the Common Area and Facilities without the prior written consent of the Association. No Unit Owner shall cause any object to be fixed to the Common Areas and Facilities or in any manner change the appearance of the Common Areas and Facilities without the written consent of the Association being first obtained; provided, however, that the Association shall maintain a directory sign for the use of the Unit Owners (and their tenants).

16. **Right of Association to Alter and Improve Common Areas and Facilities and Collect Assessments Therefor**

The Association shall have the right to make such alterations or improvements to the Common Areas and Facilities which do not prejudice the rights of any Unit Owner in the use and enjoyment of its Condominium Unit, providing the making of such alterations or improvements are approved by the Board of Directors of the Association, and such costs shall be Common Expenses to be assessed and collected from all of the Unit Owners.

However, where any alterations or improvements are exclusively or substantially for the benefit of the Unit Owner or Unit Owners requesting them, then the cost of such alterations or improvements shall be assessed against and collected solely from the Unit Owner or Unit Owners, exclusively or substantially benefitted and the assessment shall be levied in such proportion as may be reasonably determined by the Board of Directors of the Association.

17. **Maintenance and Repair by Unit Owners**

Every Unit Owner shall promptly perform all maintenance and repair work in and out of its Condominium Unit, which, if omitted, would affect the Condominium either in its entirety or in any part belonging to other Unit Owners, every Unit Owner being expressly responsible for the damages and liability which its failure to do so may cause. Within each Condominium Unit, each Unit Owner shall be liable and responsible for the maintenance, repair and replacement of heating and air-conditioning equipment or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, gas, sewage and sanitary service to its Condominium Unit. Additionally, each Unit Owner shall be responsible for all costs associated with the maintenance, repair or replacement of any HVAC unit which is exclusively for its Unit (if such HVAC unit services more than one Unit, all costs thereof shall be prorated between such Units). Such Unit Owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings and floors within its Unit including painting, decorating and furnishings and all other accessories which such Unit Owner may desire to plan or maintain in its Condominium Unit. Each Unit Owner shall be responsible and liable for all utility expenses with respect to any separately metered utility servicing such Unit. Unit Owners shall be responsible for maintenance of any improvements in the Limited Common Areas adjacent to their Unit or designated to their Unit in the Unit Ownership File. Notwithstanding the foregoing, at the option of the Association, the Association may perform all such services and assess each Unit Owner for the cost of such services to the extent applicable to any such Unit (which applicable assessment may differ from the undivided Interest appurtenant to such Unit).

18. **Maintenance and Repair of Common Areas and Facilities By the Association**

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Areas and Facilities, including those portions thereof which contribute to the support of the buildings and conduits, ducts, plumbing, gas, water lines outside the dedicated street right of way, wiring and other facilities located in the Common Areas and Facilities for the furnishing of utilities and other services to the Condominium Units and said Common Areas and Facilities, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done by the Association in the maintenance, repair or replacement of any Common Areas and Facilities, the Association shall, at its expense, repair such incidental damage. Without limiting the foregoing, all exterior doors, window frames, panes and screens shall be maintained by the Association. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Unit Owner, its guests, invitees or lessees, and such loss or damage may be covered by any insurance maintained in force by the Association, then and in that event the proceeds from such insurance shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by guests, invitees or lessees) shall be required to pay such portion of the costs as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such

maintenance, repair or replacement. The Association is hereby authorized to contract with a management company to provide the services detailed herein.

19. **Insurance and Authority to Purchase Insurance**

Insurance policies upon the Property (other than title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association as trustees for the Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Unit Owners, the Association and their respective servants, agents, and guests. In addition, each Unit Owner shall obtain insurance, at its own expense, affording coverage upon its Condominium Unit, its personal property including any built-in appliances not covered under the master policy maintained by the Association, and for its personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above if available.

20. **Insurance Coverage to be Maintained; Use and Distribution of Insurance Proceeds**

- A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Areas and Facilities:
- (1) Fire insurance with an extended coverage endorsement for an amount not less than ninety percent (90%) of the then current replacement cost (excluding foundation, grading, and excavation costs) of the Building, including all improvements thereto.
  - (2) Glass Replacement insurance coverage for replacement of all glass then situated in the Building.
  - (3) Vandalism and Malicious Mischief insurance coverage.
  - (4) Sprinkler and Water Damage insurance.
  - (5) Boiler and Pressure Vessel Explosion insurance.
  - (6) Commercial General Liability and Property Damage insurance coverage on an occurrence basis with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate.
  - (7) Such other insurance coverage as the Association may from time to time determine consistent with coverage which is or may in the future be considered prudent for similar income producing property situated in the same general geographic area as the Building or as may reasonably be required by any mortgagee or creditor of any Unit Owner.

With respect to the insurance described above, the Association may exclude from coverage improvements required to be insured by the Unit Owners or by other tenants or occupants of the Building.

- (8) Blanket fidelity bond insurance coverage for anyone who either handles or is responsible for funds held or administered by the Association whether or not he or she receives compensation for services. These bonds should name the Association as the obligee and the premiums are paid as a Common Expense by the Association.
- B. In addition to the premiums for the bonds, premiums upon all other insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Unit Owners.
- C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their respective interests in the Common Areas and Facilities may appear, and shall provide that all proceeds received thereon shall be held in trust for the benefit of the Association, the Unit Owners and their respective mortgagees in the following shares:
- (1) Proceeds on account of damage to Common Areas and Facilities: In undivided shares for each Unit Owner, in the same proportion as the Undivided Interests.
  - (2) Proceeds on account of damages to Condominium Units shall be held in the following undivided shares:
    - (a) Partial destruction when the Condominium is to be restored for the Owners of damaged Condominium Units in proportion to the costs of repairing the damage suffered by each damaged Condominium Unit;
    - (b) Total destruction of the Condominium or where the Condominium is not to be restored for all Unit Owners, the share of each being in the same proportion as the Undivided Interests.
- D. In the event a mortgagee insurance endorsement has been issued with respect to a Condominium Unit, the share of the Unit Owner shall be held for the mortgagee and the Unit Owner as their interests may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.
- E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner:
- (1) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs of repair or reconstruction. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Unit Owners, all

remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by it.

- (2) If it is determined the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Unit Owners, remittance to the Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by it.

**21. Reconstruction or Repair of Casualty Damage; Damage to Common Areas and Facilities; Damage to Condominium Units**

- A. If any part of the Common Areas and Facilities shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:
  - (1) Partial destruction shall be destruction which renders two-thirds (2/3) or less of the Condominium Units untenable. In the event of partial destruction, the Common Areas and Facilities shall be reconstructed or repaired unless this Declaration is terminated by a vote of a Majority of Unit Owners.
  - (2) Total destruction shall be destruction which renders more than two-thirds (2/3) of the Condominium Units untenable. In the event of total destruction, the Common Areas and Facilities shall not be reconstructed or repaired unless at a meeting, which shall be called within thirty (30) days after such adjustment, a Majority of Unit Owners vote for reconstruction or repair.
  - (3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications of the original construction.
- B. If the damage is only to those parts of one or more Condominium Units for which the responsibility for the maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after the casualty. In all other instances, the responsibility for reconstruction and repair after casualty shall be that of the Association as follows:
  - (1) Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems appropriate.
  - (2) When the damage is to both Common Areas and Facilities and Condominium Units, the insurance proceeds shall be applied first to the costs of repairing the Common Areas and Facilities and the balance of the Condominium Units.

- C. Each Unit Owner delegates to the Board of Directors of the Association its right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one Condominium Unit.

22. **Association to Maintain Register of Owners and Mortgagees**

The Association shall maintain a register setting forth the names of the Unit Owners of all Condominium Units. In the event of the transfer (whether by deed, devise or inheritance) of any Condominium Unit to a third party, the transferee shall notify the Association in writing of its interest in such Condominium Unit, together with the recording information necessary to identify the instrument by which the transferee has acquired its interest. The Owner of each Condominium Unit shall also notify the Association of the parties holding any mortgage or lien (except for ad valorem taxes or special assessments) on any Condominium Unit, the amount of such mortgage and recording information necessary to identify the mortgage. The holder of any mortgage upon any Condominium Unit may notify the Association of the existence of any mortgage and the Association shall register in its records all pertinent information relating thereto.

23. **Assessments; Liability, Lien and Enforcement**

The Association is given the authority to administer the operation and management of the Condominium as being in the best interest of the Unit Owners. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Unit Owners, the Common Expenses. To provide the funds necessary for such property operation, management and capital improvements, the Association has been granted the right to make, levy, and collect assessments against the Unit Owners and the Condominium Units. In furtherance thereof, the following provisions shall be operative and binding upon the Owners of all Condominium Units:

- A. All assessments levied against the Unit Owners and their Condominium Units shall be uniform as to services and costs which benefit all Units and, unless specifically otherwise provided for herein, all assessments made by the Association shall be in such an amount that any assessments levied against a Unit Owner and its Condominium Unit shall bear the same ratio to the total assessment made against all Unit Owners and the Condominium Units as the Undivided Interests bear to the total undivided interest in the Common Areas and Facilities appurtenant to all Condominium Units. Should the Association be a Unit Owner, the assessment which would otherwise be due and payable to the Association by such Unit Owner, reduced by the amount of income which may be derived from the leasing of such Unit by the Association, shall be apportioned and assessment therefor levied ratable among all Unit Owners of all Units which are not owned by the Association, based upon their proportionate interests in Common Areas and Facilities exclusive of the interests therein appurtenant to any Unit or Units by the Association.
- B. Assessments provided for in Paragraph A shall be payable in monthly installments, or in such other manner as the Board of Directors of the Association shall determine. Statutory assessments shall commence for each Unit on the first day of the first month following the recordation of this Declaration.

- C. The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with **Paragraph E**, items relating to operations and maintenance from items relating to capital improvements. Upon adoption of such annual budget by the Board of Directors of the Association, copies shall be delivered to each Unit Owner although the delivery of a copy of it to each Unit Owner shall not affect the liability of any Unit Owner for such assessment. Should the Board of Directors at any time determine that the assessments levied are insufficient to pay the costs of operation and management of the Condominium, the Board of Directors shall have the authority to levy such additional assessments as they may deem necessary. In the event the Association is faced with unexpected expenses of whatever nature, the Board of Directors may call for special assessments to pay for such expenses, provided, however, that no special assessment may be levied against the members without the affirmative vote of a Majority.
- D. The Board of Directors of the Association, in establishing the annual budget for operation, management, and maintenance of the Condominium shall designate a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Areas and Facilities (herein "Capital Improvement Fund") which shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Areas and Facilities, and the replacement of personal property constituting a portion of the Common Areas and Facilities. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Areas and Facilities. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association, and shall be used only to make capital improvements to Common Areas and Facilities. Any interest earned on the Capital Improvement Fund may be expended for current operation and maintenance.
- E. All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating and managing the Condominium or to the proper undertaking of all acts and duties imposed upon it by this Declaration, the Articles of Incorporation, and the Bylaws of the Association. Although all funds and common surplus including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Areas and Facilities, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer its membership interest therein, except as an appurtenance to its Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall

constitute an asset of the Association which may be used in the operation and management of the Condominium.

- F. The payment of any assessment or installment thereof shall be in default, if such assessment or installment is not paid to the Association within thirty (30) days of its due date. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of ten percent (10%) per annum until paid in full to the Association.
- G. Each Unit Owner or Unit Owners shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular, special, or contractual, which may be levied by the Association against its Condominium Unit while such party or parties are Unit Owner or Unit Owners. In the event that any Unit Owner or Unit Owners are in default in the payment of any assessment or installment owed to the Association, such Unit Owner or Unit Owners shall be personally liable, jointly and severally for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including reasonable attorney fees, whether suit be brought or not.
- H. No Unit Owner may exempt himself from liability from any assessment levied against its Condominium Unit by waiver of the use or enjoyment of any of the Common Areas and Facilities, or by abandonment of the Condominium Unit, or in any other way.
- I. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Unit Owners, and that the payment of such common expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its Undivided Interests, which lien shall secure the funds due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit. The lien granted to the Association may be enforced under Article 8, Chapter 44 or Article 2A of Chapter 45 of the North Carolina General Statutes and under N.C.G.S. 47C-3-116 or pursuant to any other applicable statute now or hereinafter enacted. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at the rate of ten percent (10%) per annum on any such advances so made. All Persons who shall acquire any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien, or other encumbrances thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.
- J. The lien herein granted to the Association shall be enforceable from the time of recording a claim of lien in the Public Records of New Hanover County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the Unit Owner, the amount