

51  
162  
2

STATE OF NORTH CAROLINA

**DECLARATION OF CONDOMINIUM  
HUNTER'S CROSSING - Phase I**

COUNTY OF NEW HANOVER

ARMSTRONG BUILDERS LLC, a North Carolina Limited Liability Company doing business in the County of Cumberland, State of North Carolina, (herein "Developer"), does hereby make, declare and establish this Declaration of Condominium as and for the plan of unit ownership of HUNTER'S CROSSING Condominiums being the property and improvements hereinafter described.

**ARTICLE I.**

**ESTABLISHMENT OF CONDOMINIUM**

- A. Developer is the owner in fee simple of certain real property situated in Wilmington, New Hanover County, North Carolina, which property is more particularly described in **Exhibit "A (1)"**, attached hereto and incorporated herein by reference. Developer does hereby submit the above described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act), and hereby declares the same to be a condominium to be known and identified as "HUNTER'S CROSSING Condominiums, Phase 1." Hereinafter in this Declaration, "HUNTER'S CROSSING Condominiums" is sometimes referred to as "Condominium".
- B. Pursuant to the Act and to establish a plan of condominium ownership for the Condominium, the Declarant does hereby divide the Property into sixteen (16) condominium living units located in one (2) two-story building as shown on the Plats and Plans and does hereby designate all such units for separate ownership.
- C. The total number of Units in all phases will not exceed ninety-six (96). Phases II through VI, if constructed, will be located on the land described in **Exhibit "A (2)"**, attached hereto and incorporated herein by reference. The methods and procedures for expanding the Condominiums to include these additional buildings and the effects of such expansion are described in Articles IV and XXVII of this Declaration. There shall also be a common area for amenities, which will include space for a club house and swimming pool. The Developer intends on constructing approximately (35) Garage Condominiums that will be known as the HUNTERS CROSSING GARAGE OWNERS ASSOCIATION, and will be located on and be affiliated with HUNTER'S CROSSING Condominiums.

**ARTICLE II**

**SURVEY AND DESCRIPTION OF IMPROVEMENTS**

Referenced hereto and expressly made a part hereof as **Exhibit "B"** consisting of eleven ( 11 ) pages, as recorded in Condominium Book 12 , Page 312 through 322, New Hanover County Registry, is a survey of the land and graphic descriptions and plans of the improvements constituting Phase I of HUNTER'S CROSSING Condominium, identifying the Condominium Units and Common Areas and, Facilities, as said terms are hereinafter defined, and their respective locations, approximate dimensions and principal building materials. Each Condominium Unit is identified by specific alphabetical designation on **Exhibit "B"** and no Unit bears the same designation as any other Condominium Unit.

DRAWN BY & RETURN TO: CONSTANCE COLLINGTON

## ARTICLE: III

### DEFINITIONS

The Condominium consists of Condominium Units and Common Area and Facilities as said terms are hereinafter defined:

- A. "Condominium Units" (alternately referred to as "Unit") as defined herein shall comprise the separate alphabetically identified dwelling Units which are designated on attached plats and plans (and any subsequent additions), excluding all spaces and improvements lying:
- (1) Beneath the wood subflooring material of all floors excluding concrete slab on 1st floor;
  - (2) Behind the interior sheet rock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
  - (3) Above the interior sheet rock, wallboard or panel surfacing material of the ceilings; and further, excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to Condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior sheet rock, wallboard or panel surfacing material for walls and ceilings and sub flooring surfacing material for floors. All pipes, ducts, wires, conduits and other such facilities within the referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panels and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the HUNTER'S CROSSING Condominiums as hereinafter defined.
- B. Common Areas and Facilities, sometimes referred to herein as "Common Property" shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all Owners of Condominium Units. Limited Common Areas are Common Areas.
- C. Limited Common Areas are a portion of the common areas allocated by this Declaration or by operation of N.C.G.S. Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units. As used herein, the term "Limited Common Areas" shall also mean and refer to the following:
- (1) The patios, porches, breezeway and or decks which are located immediately adjacent to each unit, access to which shall be only through a Unit. The use of each patio, porch and/or deck shall be limited to the Unit Owner or occupant whose Unit affords interior access to them. Repair to all outside railings shall belong to each individual Condominium Owner.

- (2) As shown on **Exhibit "B"**, the walks, halls and breezeway located in each building which are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees.
- (3) Such other Limited Common Areas as may be shown on the Plats and Plans recorded in Condominium Plat Book \_\_\_\_\_, Pages \_\_\_\_\_ New Hanover County Registry.

**D.** Garage Units will be separate Condominium Units as the same are designated on the attached plats and plans (and any subsequent additions) that will be sold separately from residential units and which will have a separate association encompassing members of the Garage Association from the residential units, as determined by the Association of Unit Owners Board of Directors. The owners of Garage Units **will not** have a vote in the affairs of the Association based on their ownership of a Garage Unit. Only members of HUNTER'S CROSSING Condominiums shall be allowed to own a membership in HUNTER'S CROSSING GARAGE OWNERS ASSOCIATION.

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Unit" or "Condominium Unit", "Unit Designation" and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

#### ARTICLE IV.

##### OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY

- A.** Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each shall also own, as an appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit as of the date of this Declaration is set out in Column I of **Exhibit "C"** attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each Condominium Unit as shown in **Exhibit "C"** has been determined by a ratio formulated upon the percentage that each Unit bears to the total number of Units. Each Condominium Unit Estate shall also include the right to use Limited Common Areas as they are defined in Article III and as they are shown on the plats and plans recorded and applicable to each Unit. Every Unit Owner may transfer its interest in Unit ownership free of any right of first refusal reserved in the Declarant.
- B.** The Condominium is not subject to any zoning, subdivision, building code, or other real estate use law, ordinance or regulation imposing conditions or requirements upon a condominium which are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to N.C.G.S. Section 47C-1-106 for the purpose of providing marketable title to the Units in the Condominium.

**ARTICLE V.**

**RESTRICTION AGAINST FURTHER SUBDIVISION OF  
CONDOMINIUM UNITS; SEPARATE CONVEYANCE  
OF APPURTENANT COMMON PROPERTY PROHIBITED**

No Condominium Unit may be divided or subdivided into smaller Unit or Units than as shown on **Exhibit "B"** hereto nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumber or otherwise dealt with separately from said Condominium Unit and the undivided interest in Common Property 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. 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, void and of no effect so far as the same purports to affect any interest in Common Property, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in **Exhibit "B"** without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Property by more than one person or entity as tenants-in-common, joint tenants, or as tenants by entirety.

**ARTICLE VI.**

**THE CONDOMINIUM SUBJECT TO RESTRICTIONS**

The Condominium Units, Common Property and Limited Common Areas 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, Common Property and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Property, and said Condominium Units, Common Property and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominium. Each Unit owner will be subject to all rights and duties as set out herein and when Declarant is the owner of any unsold units in the Condominium, it will enjoy the same rights of the Unit Owners and assume the same duties of the Unit Owners as they relate to each individual unit, subject to the provisions of Article XXIV B.

**ARTICLE VII**

**RESTRICTIONS ON USE OF UNITS**

Owners are prohibited from maintaining fires of any kind including but not limited to charcoal grills, gas grills or hibachis on any structure including but not limited to decks, patios, porches, breezeway, balconies or other appurtenant structures. No personal belongings allowed in the breezeway.

## ARTICLE VIII.

### EASEMENTS

- A. **Perpetual Non-Exclusive Easement in Common Property.** The Common Property shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests, invitees and lessees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. The Common Property shall be subject, also, to an easement of ingress, egress, and regress in favor of Developer, its representatives, employees, and designees for the purpose of construction of succeeding phases, as further defined in Article XXVII hereof. Notwithstanding anything above provided in this Article, the **Association hereinafter shall have the exclusive right to** establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof.
- B. **Easement for Unintentional and Non-Negligent Encroachments.** In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance and maintenance of such encroachment upon the Common Property or upon a Condominium Unit for as long as such encroachment shall naturally exist; and in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Property upon any Condominium Unit for as long as such encroachment shall naturally exist. If any Condominium Unit or Common Property 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 Property in accordance with Article XXII hereof, there exists encroachments of portions of the Common Property upon any Condominium Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the continuation and maintenance thereof shall exist so long as such encroachments shall naturally remain.
- C. **Rights of Ingress and Egress for Unit Owners.** Every Unit Owner shall have a perpetual right of ingress to and egress from its Unit, such right being appurtenant to the right of Unit Ownership
- D. **Easement to the City of Wilmington.** As common areas on the map referenced hereinabove are hereby made subject to an easement to the City of Wilmington as the same is shown on said map.

## ARTICLE IX.

### RESTRAINT UPON SEPARATION, PARTITION & LEASE OF COMMON PROPERTY

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent

upon the use and enjoyment of the Common Property in common with the Owners of all other Condominium Units, and that it is in the interest of all owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void unless the unit to which that interest is allocated is also transferred. Further, no part of the Common Areas shall be subject to a lease between the Unit Owners (or the Association) and another party. However, the one exception shall be that a sales office shall be used by the developer or the developer's agent.

## **ARTICLE X.**

### **ADMINISTRATION OF THE CONDOMINIUM BY HUNTER'S CROSSING HOMEOWNERS' ASSOCIATION, INC.**

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known and designated as HUNTER'S CROSSING Homeowners' Association, Inc. (herein "Association") has been organized, and said corporation 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. A true copy of said Bylaws and Articles of Incorporation are annexed hereto and expressly made a part hereof as **Exhibits "D" and "E"**, respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of how such ownership may be divested. No person, firm or corporation 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 membership. 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 Property as its Board of Directors may deem to be in its best interest. Any Unit Owner, as the same is defined herein, is granted a right of action against the Association for failure to comply with the provisions of this declaration or with decisions of the Association which are made pursuant to authority granted the Association.

## **ARTICLE XI.**

### **RESIDENTIAL USE RESTRICTIONS APPLICABLE TO CONDOMINIUM UNITS: EXCEPTIONS TO TITLE**

Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invites and lessees. Any lease or rental agreement for a Unit shall be in writing and for a period of at least one hundred and eighty (180) days. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. No Owner of any Condominium Unit shall permit the use of his Unit for transient hotel or for commercial purposes. There shall be no more than three (3) persons residing in any two bedroom unit, and no more than four (4) persons residing in a three bedroom unit, except for individuals living together as a family unit. However, this is left to the discretion of the Board of Directors. Corporate or partnership members, other than the Developer, shall permit the use of a Condominium Unit owned by it only by its principal officers, directors or partners, or other guests or lessees. Such corporate or

partnership member shall annually sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Condominium Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration of Condominium and with the rules and regulations which may be promulgated by the Association from time to time and acknowledging that the party's right to use such Condominium Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate or partnership member to remove a party for failure to comply with the terms and provisions of the Declaration of Condominium and/or the rules and regulations of the Association or for any other reason and corporate or partnership member shall forthwith cause such party to be removed, failing which, the Association, as agent of the Owner, shall take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefor upon demand, together with such attorneys' fees as the Association may have incurred in the process of removal. The Board of Directors may maintain a portion of the clubhouse as an office.

Anything in this Declaration to the contrary notwithstanding, Developer shall have the right to maintain the club house as a sales office and as model units and to display advertising signs upon the Common Property during the period of Unit Sales. Such right shall terminate when all Units in all phases of the Condominium are sold and transferred by deed. Developer, its representatives, employees and designees shall have an easement of ingress, egress and regress upon across the Common Property for construction of succeeding phases, as described in Article XXVII hereof, which easement shall terminate when all Units in all phases are completed and sold and transferred by deed. It is expressly stipulated that the developer or an agent of the developer shall have the undisputed right to maintain an office in said clubhouse at the end of the sellout, for the benefit of future resales and rentals subject to annual review by the association beginning in July, 2006.

The liens, defects and encumbrances on the property to which the Unit owners are hereby made subject are set out on **Exhibit " F "** attached hereto and incorporated herein by reference.

## **ARTICLE XII.**

### **USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION**

The use of Common Property, including the Limited Common Areas and Facilities, by Owner or Owners of all Condominium Units and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the Association.

## **ARTICLE XIII.**

### **THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES: RESTRICTION AGAINST NUISANCES**

No immoral, improper offensive or unlawful use shall be made of any condominium Unit or of the Common Property, and all laws, zoning ordinance and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of enjoyment of other occupants of the Condominium because of unreasonable noises, nor shall any 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 Property.

The Board of Directors has the authority to regulate the type, size and number of domestic

animals.

#### **ARTICLE XIV.**

##### **RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES**

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

#### **ARTICLE XV.**

##### **RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY: RIGHTS OF ASSOCIATION FOR PROPER OPERATION OF PROJECT**

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit an agent of Association to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice. The Owner of each Unit further permits the Association the right to grant permits, licenses and easements for utilities, road construction and repair and other necessary items for proper operation of the Condominium project.

#### **ARTICLE XVI.**

##### **LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS: NO RIGHT TO ALTER COMMON PROPERTY**

No owners of a Condominium Unit shall permit any structural modification or alteration to such Condominium Unit without first obtaining the written consent of the Association, any consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion at such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety.

The Association, through the Board of Directors (or its Architectural control committee), shall regulate the external design, appearance, use, location and maintenance of the Condominium and of improvements therein, including window treatments and blinds, in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. No owner shall cause any improvements, alteration, repairs or changes to be made on the exterior of the Condominium (including painting or other decoration, the installation of electrical wiring, television or radio antennae or any other objects or devices which may protrude through the walls or roof of the Condominium), or window treatments and blinds, or in any manner alter the other appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No Unit Owner shall cause any object to be fixed to the Common Property or to any Limited Common Area (including but not limited to the location or construction of fences and the planting or shrubs or any other vegetation) or in any manner change the growing of flowers, trees, appearance of the Common Property or Limited Common Area without the written consent of the Association being first had and obtained.

Any Unit Owner desiring to make improvements, alteration or changes described above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board of Directors which shall evaluate such plans and specifications in light of the purpose of this Article as set forth above Board of Directors shall have sole discretion in making this decision. As a condition to the granting of approval of any

request made under this article, the Association may require that the Unit Owner requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Unit Owner, and any subsequent Owner of the Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth in Article XXIV subject to the lien rights described in said Article.

## **ARTICLE XVII.**

### **RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON PROPERTY AND ASSESSMENT THEREFOR**

The Association shall have the right to make or cause to be made such alterations or improvements to Common Property (including the right to grant and establish upon, over and across the Common Property such easements as are necessary or desirable for providing service or utilities to the Units and the Common Property) which do not materially prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations and improvements shall be common expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Condominium Unit or Units requesting the same, then the cost of making, maintaining, repairing and insuring such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefitted, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

## **ARTICLE XVIII.**

### **MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS**

Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which its failure to do so engenders. The Owner of such Condominium Unit shall be liable and responsible for the maintenance, repair and replacement of all heating and air conditioning equipment, regardless of where located, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair, and replacement of the exterior surfaces of any and all walls, ceilings and floors within his Condominium Unit, including painting, decorating and furnishing, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair or replacement of any item for which the Owner is obligated to maintain or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the proceeds of the insurance received by the Association shall be used for Association, the purposes of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement 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. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners.

## ARTICLE XIX.

### MAINTENANCE AND REPAIR OF COMMON PROPERTY BY THE ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the Common Property and Limited Common Area (except where the Owner of a Condominium Unit has the exclusive use of any Limited Common Area wherein that unit owner shall maintain such at his own expense;) including as part of the Common Area and Limited Common Area those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property. The Association will maintain an adequate reserve fund out of the monthly assessment fees for replacement or improvement of common areas and any limited common areas it is obligated to maintain. Any incidental damage done pursuant to the furnishing of utility, heating and other services to the Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. 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 an act of a Condominium Unit Owner, his immediate family, guests, lessees or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association 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 his family; guests lessees or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, or by reason of any deductibility provision of such insurance proceeds, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

## ARTICLE XX.

### AUTHORITY TO PURCHASE INSURANCE

Insurance policies upon the Common Property, including Limited Common Areas and Facilities (except title insurance) shall be purchased by the Association, as Trustees for the Condominium Unit Owners, for the benefit of the Condominium 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 Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability as may be permitted or required by law but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

## ARTICLE XXI

### INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE AND CONDEMNATION 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 Property:
- (1) Casualty insurance covering the building and all improvements upon the land and all personal property included within the Property described in

**Exhibit "A"** hereto or as it may amended from time to time, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage. Such policy shall contain an Agreed Amount Endorsement or an Inflation Guard Endorsement, if available. By the way of illustration and not of limitation, such casualty insurance shall cover fixtures, comprising a part of the building within each individual Condominium Unit (as that term is defined in Article III hereof) in accordance with the original condominium plans and specification. In determining the amount of coverage for such fixtures, installations or additions, the Board of Directors of the Association shall annually set the standard allowance for such items as carpeting, bathroom and kitchen cabinets, wall covering, vinyl floor covering, ceramic tile, kitchen appliances, bookshelves, etc., which were included in the original condominium plans and specifications. By the way of illustration and not of limitation such casualty insurance shall not cover furniture, furnishings or other household or personal property owned by, used by or in the care, custody or control of a Condominium Unit Owner (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Condominium Unit by the Owner thereof at his expense. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

- (2) A comprehensive policy of public liability insurance insuring the Association in an amount no less than Three Million Dollars (\$ 3,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage.
- (3) The Board of Directors shall maintain fidelity coverage against dishonest acts by the Association's officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall provide adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of the paragraph XXI-A-(3), hereinbelow. If the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or directors of the Association can and do directly receive or disburse the monies of the Association), then the Board of Directors shall provide the coverage set forth in this paragraph. Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least but not less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association and to any Institutional Lender who has given the notice

required under Article XXIX of this Declaration.

- (4) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a condominium Unit Owner.
- B. As a separate expense from the Common Expenses, premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.
- C. All insurance policies purchased by the Association attributable to the Common Property shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of Association, the Condominium Unit Owners and their respective mortgagees as follows:
- (1) Proceeds on account of damage to Common Property shall be held by the Association in undivided shares for each condominium Unit Owner and his mortgagee, if any, which shares as to each Condominium Unit are shown on **Exhibit "C"** attached hereto.
- (2) Proceeds on account of damages to Condominium Units shall be held in the following undivided shares:
- (a) If the damage is considered partial destruction when the Condominium is to be restored as set out in Article XXII proceeds shall be payable to the Owners of damaged Condominium Unit Owners, the share of each being set forth in **Exhibit "C"**.
- (b) In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear.
- D. Condemnation. In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied, in accordance with N.C.G.S. Section 47C-1-107.
- E. Each Condominium Unit Owner shall be deemed to have delegated to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association and to negotiate with governmental authorities any condemnation claims.

## ARTICLE XXII.

### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE; DAMAGE TO COMMON PROPERTY: DAMAGE TO CONDOMINIUM UNITS

- A. If any part of the Common Property 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 deemed to mean destruction which renders less than two-thirds (2/3) of the Condominium Units untenable. In the event of

partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair. Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the declaration and the original plans and specifications.

- (2) Total destruction shall be deemed to mean destruction which renders two thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Condominium Unit Owners who in the aggregate own three-fourths (3/4) or more of the Condominium Units vote against reconstruction or repair and such vote is approved by the Institutional Lenders as set out in Article XXIX below to which at least 51% of the votes of units subject to mortgages held by the Institutional Lenders are allocated.

**B.** If the damage is only to those parts of one or more Condominium Units for which the responsibility for maintenance and repair is that of Condominium Unit Owner shall be responsible for reconstruction and repair after casualty or condemnation. In all other instances, the responsibility of reconstruction and repair after casualty or condemnation shall be that of Association as follows:

- (1) Immediately after the casualty or condemnation 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 conditions good as that before the casualty or Condemnation. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.
- (2) When the damage is to both Common Property and Condominium Units or to Common Property only, the insurance or condemnation proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Property and the balance to the Condominium Units.

### **ARTICLE XXIII.**

#### **ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES**

The Association shall at all times maintain a Register setting forth the names of the Owners of all of the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Condominium Unit. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgagee or mortgages on any Condominium Unit, the amount of such mortgage or mortgagee and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto. The Association is required to make this Register available for inspection to unit owners, and any

Institutional Lenders as the same are defined herein.

## ARTICLE XXIV.

### ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Condominium Units. To administer properly the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units costs and expenses which are sometimes herein referred to as "Common Expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments and fines against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to Association to make, levy and collect assessments and fines to pay the costs and expenses for the operation, management of and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

- A. Unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total undivided interest in Common Property appurtenant to all Condominium Units as shown on **Exhibit "C"** attached hereto.
- B. Assessments provided for herein shall be payable in monthly installments as determined by the Board of Directors of the Association. Unit Owners shall be subject to assessment by the Board of Directors upon acquiring title to their Units. The Declarant shall not be liable for assessments for unsold Units contemplated by this declaration until such time as said Unit is (1) completed and a certificate of occupancy issued therefor; and (ii) occupied or used for model, sales or other purposes by the Declarant, or (iii) offered or used for rental purposes by the Declarant.
- C. In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, Provided that any such assessment shall have the assent of Unit Owners owning two-thirds (2/3) of the Common Areas and Facilities who are voting in person or by proxy at a meeting duly called for such purposes, insurance increases excepted.
- D. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence, the Association had established a Working Capital Fund. At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12) of the current annual assessment established by the Association. No such payments made into the working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws. Once control of the Homeowners' Association is transferred to the Unit Owners pursuant to Article XXX herein, the Working Capital Fund will be transferred to a segregated fund. Developer may not use any funds designated as Working Capital Funds to defray any of its expenses, reserve contributions or construction costs or to recoup any budget deficits while it retains control of the Board of Directors pursuant to Article XXX, or at any time thereafter.

- E. 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, and the budget shall take into account projected 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 "G " hereof, items relating to operation and maintenance froth items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Owner a Condominium Unit and the assessment for said Budget shall be established based upon such Budget, although the delivery of a copy of said Budget of each Owner shall not affect the liability of any Owner for such assessment.
- F. Until January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment shall be Nine Hundred Forty-Eight and No/1 00 (\$1080.00) Dollars per Unit. After January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) by the Board of Directors. Any increase of more than ten percent (10%) over the previous year's assessment requires a vote of the Unit Owners owning two-thirds (2/3rds) of the Common Areas and Facilities who are voting in person or by proxy insurance excepted, at a meeting duly called for such purpose.
- G. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of any capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his proportionate interest in the Common Property as shown on **Exhibit "C"** and the Association shall annually notify each Unit Owner of the amount of his balance in the Capital Improvement Account; however, such balance shall not be subject to withdrawal by a Unit Owner.
- H. All monies collected by the Association shall be treated as the separate property of the Association, and such monies 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 virtue of this Declaration of Condominium, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by the other Owners of Condominium Units. 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