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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

RECORDED AND VERIFIED  
REBECCA P. TUCKER  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

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DECLARATION OF CONDOMINIUM  
LULLWATER VILLAGE  
SECTION 1

LULLWATER ASSOCIATES, LTD., a North Carolina General Partnership, doing business in the State of North Carolina, hereinafter called "DECLARANT", being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47A of the North Carolina General Statutes, and to that end does hereby publish and declare that all of said property is and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which shall be deemed to run with the land and shall be a burden to Declarant, its successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

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

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

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

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

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

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

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

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

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

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

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

K. "Declarant" means LULLWATER ASSOCIATES, LTD., their heirs, successors, and assigns.

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

M. "Members" means every person, firm, corporation or entity who is an owner of a condominium unit of Lullwater Condominium Project. There shall be two classes of members, Class A, which shall be all owners with

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the exception of the Declarant and, Class B, which shall be the Declarant.

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

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

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

Q. "Plans" shall mean and refer to the plans and specifications of the condominium prepared by John A. Benson, Jr., Registered Land Surveyor, recorded under the name of the condominiums in the Unit Ownership file in the Office of the Register of Deeds of New Hanover County, and attached hereto as Exhibit "A", sheets 1 through 4 and incorporated herein by reference.

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

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

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

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

3. EXPANSION OF THE PROPERTY SUBJECT TO THIS DECLARATION.

A. By this Declaration the Declarant submits only the land described in Exhibit "A", together with the improvements thereon, and the same shall be known as Section 1 of LULLWATER VILLAGE. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "B", attached hereto and made a part hereof.

B. Such expansion shall occur, if at all, by the recordation of one or more amendments to this Declaration, which amendment(s) shall be executed by the Declarant or its successors and assigns. The recordation of any such amendment, and expansion of the Property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

C. The right and option described in sub-paragraphs A and B above shall terminate on July 1, 1992, and shall be subject to the conditions, restrictions and limitations set forth in sub-paragraphs D, E, F and G, of this paragraph 3.

D. If the Declarant adds all the land described in Exhibit "B" hereof, the Declarant covenants and agrees that no more than a total of 52 units will be built upon the Property subject to this Declaration including all possible expansions.

E. The Declarant covenants and agrees that all buildings containing units built on any of the expansion phases and made subject to this Declaration shall be similar to in construction and appearance, the

buildings previously constructed in Phase I and other previous phases.

F. The undivided interest of the units presently subjected to this Declaration (Section 1) are shown in Exhibit "D" attached hereto and made a part hereof. If any units are added to and made subject to this Declaration by the expansion contemplated by this paragraph, then the undivided interest in the common areas and facilities, the liability for common expenses not specially assessed, and the interest in any common surplus will thereafter be adjusted.

If any or all of the units contemplated in the proposed expansion are added to or made subject to this Declaration, the percentage of undivided interest in the common areas and facilities of all units shall be determined by a ratio formulated upon the approximate relation of the fair market value of each unit at the date of the supplementary declaration annexing such unit bears to the then aggregate fair market value of all units as determined by Declarant, and this determination shall be binding upon all units and unitowners; provided, however, that if Chapter 47A of the General Statutes of North Carolina shall be amended to provide for other methods of determining the percentages of undivided interests of unit owners in common areas and facilities, the Declarant shall have the right to use any other method then permitted by law for any phases not then already covered by a Supplemental Declaration, and thereby submitted to unit ownership.

G. Nothing herein shall be deemed to limit or alter Declarant's right, hereby reserved, to vary the internal layout or exterior configurations of any units hereafter constructed so long as Declarant substantially conforms with the provisions of this paragraph 3.

H. Every unit owner in LULLWATER VILLAGE, by accepting a deed to a unit therein, thereby agrees for himself and his heirs, successors and assigns, to any expansion of the property subject to this Declaration in accordance with the provisions of subparagraphs A through G of this paragraph 3.

I. Any expansion of the property subject of this Declaration shall be approved by the Veterans Administration and/or the Federal Housing Authority prior to such expansion.

#### 4. DESCRIPTION OF BUILDINGS AND UNIT DESIGNATIONS.

A. DESCRIPTION OF BUILDINGS. The Declarant has constructed or will construct, upon the property described in Exhibit "A" attached hereto, multi-unit buildings to be used for residential and lodging accommodation purposes, as hereinafter provided. A plat of survey of the property by John A. Benson, Jr., R.L.S., showing Section 1 and proposed Sections 2-13 and the location of those buildings in Section 1 and proposed for Sections 2-13 is attached hereto and made a part hereof as Exhibit "F". The multi-unit buildings are more particularly described in the plans of those buildings, a copy of which plans is attached hereto and made a part hereof as Exhibit "C", showing all particulars of the buildings as required by law. In general, each building has two stories and is constructed principally of wood frame on concrete slab foundation, or wood frame with wood or brick veneer on concrete slab foundation.

B. UNIT DESIGNATION. The unit designation of each dwelling unit, its location, approximate area, and immediate common areas and facilities to which it has access and other data necessary for its proper identification are set forth in Exhibit "C" attached hereto and made a part hereof. Each unit is bounded vertically from the top of the first floor slab to the underside of the finished roof shingles. Each unit is bounded horizontally by the inside of all outside walls and the walls separating units, which are shown on said plans, subject to such encroachments as are contained in each building, whether the same now exist or may be caused or created by existing construction, settlement or movement of the building, or by permissible repairs, construction or alterations. The description of rooms in each of the units is as follows: two bedroom units will have approximately 1,020 square feet and consist of two bedrooms, a bath and a half, kitchen, dining area and living room. Three bedroom units will have approximately 1,320 square feet and have three bedrooms, two baths, kitchen, living room and dining room.

5. COMMON AREAS AND FACILITIES.

A. The common areas and facilities consist of the following:

(1) The land on which the buildings are erected and lands surrounding the buildings as is more fully described in Paragraph 2 above.

(2) All common foundations, columns, girders, beams, supports, load-bearing walls, and other structural members.

(3) All yards, roads, driveways, parking areas, walkways and paths.

(4) All roofs, exterior walls and interior walls except those non-load bearing partition walls, suspended ceiling wholly with a unit.

(5) All central and appurtenant installations, apparatus and equipment for utility services, including, but not limited to, power, light, gas, water, telephone, sewer, mail, irrigation, rash disposal, and cable tv, if any, supplied for the use and convenience of the unit owners, and which are not defined as part of the units.

(6) All other parts of the property and all apparatus and installations not specifically part of the units themselves, existing in the building or upon the property for common use or necessary or convenient to the enjoyment, existence, maintenance, or safety of the property, including, but not limited to the concrete walkways.

B. As this Declaration may be amended from time to time, to add sections to this project, for which provision is made in Paragraph 3 hereof, the building and installation of any additional swimming pool and other amenities shall be addressed in such Amendment, and every unit owner in LULLWATER VILLAGE, by accepting a deed to his/her unit, thereby acknowledges that any such amendment to this Declaration shall address the subject of amenities for the section or sections for which provisions are made in such Amendment.

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

D. The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described. A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit. The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

6. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are as follows:

A. Decks accessible by normal means solely from a particular unit; outside stairways and outside entry at ground level;

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

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

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

E. All air handling units, ducts and components and all water, power, telephone, television and cable television, electricity, plumbing.

gas and sewer lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

F. All fencing and gates enclosing the rear of a unit.

The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described. Subject to the limitations contained herein, the owners of any unit(s) shall have exclusive (100%) use, possession and control of the limited common areas and facilities appurtenant to such unit.

7. USE. Subject to the right of the Declarant specifically reserved hereby to construct models and a sales office to assist or facilitate the sale of units, the buildings and each of the units shall be used only for residential and lodging accommodation purposes, which shall include the rental of any units by the owner(s) thereof for residential and lodging accommodations pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings by persons owning or occupying such units; provided, however, that Declarant reserves the right to use all recreational and other common areas for its reasonable sales efforts. The uses contemplated by this paragraph cannot be changed, amended, or modified without the written consent of the owners of a majority of all units.

Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her unit and such right shall be appurtenant to and run with his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease.

8. PERSON TO RECEIVE SERVICE OF PROCESS. Edwin L. Burnett, III, is hereby designated to receive Service of Process in any action which may be brought against or in relation to these condominium units. Said person's residence or place of business is 2714 Market Street, Wilmington, New Hanover County, North Carolina, 28403, which is within the city and county in which the property is located. The Board of Directors may change the person designated to receive service of process by filing the appropriate information with the office of the Register of Deeds for New Hanover County.

9. MAINTENANCE.

A. All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the owner. Any replacement or substitution of such fixtures and equipment shall be compatible with any common areas and facilities effected thereby. No change in color, material or finish shall be made to the exterior of any unit, common area or limited common area without express written approval of the Board of Directors of the Association. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment.

B. All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance.

10. EASEMENTS. Each unit and all common areas and facilities and limited

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

Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and any other common areas and facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use pipes, ducts, cables, wires, conduits, public utility lines and any other common areas and facilities serving such other units and located in such unit.

The initial and subsequent Boards may grant or assume easements, leases or license for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer liens, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the units, and/or common areas and facilities and limited common areas and facilities; and each unit owner hereby grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge and record for or in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

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

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

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

In case of any emergency originating in or threatening any unit or the common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other

necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

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

11. PARTITIONING. The common areas and facilities shall not be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a unit by the entirety, jointly, or in common or in any other form permitted by law.

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

13. TAXES. Each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "D" hereto attached, shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to, special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

14. LIENS.

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

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

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

D. Assessments against unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed six percent (6%), and shall create a lien to the extent of such assessment, together with interest thereon, in favor of the Association against the unit of the defaulting owner.

E. All liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage or deed of trust

given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of such claimed first lien mortgage or deed of trust in the Office of the Register of Deeds of New Hanover County, North Carolina. Further rights of Eligible Mortgage Holders are set out in Paragraph 19 of this Declaration.

**15. NATURE OF INTEREST IN UNIT.**

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

B. The owner shall be entitled to use the common areas and facilities in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the owners of other units.

**16. INSURANCE.**

A. Securing Policies. All insurance policies upon the property (except personal property within a unit and limited common areas and facilities) shall be secured by the Board or by the Managing Agent if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required for other property similar in construction, location and use as the property and the improvements thereon, all under such terms and for such amounts as the responsible authority shall determine. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities. In obtaining such coverage, the responsible authority shall consider the reasonable requirement of holders of first liens on individual units.

B. Insurance Provisions. The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the unit owners and their employees, agents, tenants and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the names insured and all mortgagees.

C. Premiums. All insurance policy premiums on the property and for the benefit of the Association purchased by the Board or the Managing Agent and any deductibles payable by the Association upon loss shall be a common expense.

D. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors. The sole duty of insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose elsewhere stated herein or stated in the By-Laws and for the benefit of the unit owners in accordance with the Act.

**17. DISTRIBUTION OF INSURANCE PROCEEDS.** Proceeds of insurance policies

shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. Expense of Trust. All reasonable expenses of the insurance trustee shall be first paid or provision made therefor.

B. Proceeds on account of damage to common areas and facilities shall be held in undivided shares for each unit owner and his mortgagee, if any, each unit owner's share to be the same as such unit owner's undivided interest in the common areas and facilities. In the event a mortgage endorsement has been issued with respect to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their respective interests may appear.

C. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, in accordance with the Act, the remaining proceeds shall be paid to defray the cost thereof as provided in Paragraph 16 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

D. Failure to Reconstruct or Repair. If it is determined, as provided in Paragraph 16 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, including lienholders of record.

18. DAMAGE AND DESTRUCTION. Except as hereinafter provided, damage to or destruction of the common areas and facilities, and to the extent insurance proceeds are available, limited common areas and facilities, shall be promptly repaired and restored by the Board using the proceeds of any insurance available for those purposes, and the unit owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities; provided, however, if the buildings be more than two thirds destroyed by fire or other casualty and the owners of three fourths of the units resolve not to proceed with reconstruction or restoration, then, in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47A-25 of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall be in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and any governmental authorities whose approval may be necessary.

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all common elements, the award for such taking shall be payable to the Association, which shall represent the owners named in the proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement or improvement of the remaining common elements, if only part are taken. If all or more than two-thirds of all the general common elements are taken, it shall be deemed a destruction of more than two-thirds of all of the common elements and the condominium shall be terminated as provided for in this Declaration. Any funds, not utilized (in case of a partial taking or condemnation) shall be applied in payment of common expenses otherwise assessable. In the event of the taking of all or part of a unit, the award shall be made payable to the owner of such unit and his mortgagee, if any, as their respective interest may appear.

19. RIGHTS OF ELIGIBLE MORTGAGE HOLDERS. To the extent permitted by law, an eligible mortgage holder upon written request to the Owners Association, identifying the name and address of the holder, will be entitled to timely written notice of:

A. Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a first mortgage

held by such eligible mortgage holder.

B. Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held, by such eligible holder, which remains uncured for a period of sixty (60) days.

C. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners Association.

D. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders.

E. In addition to the foregoing rights, the eligible mortgage holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina Condominium Statutes as they now exist or as may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to eligible mortgage holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible holders holding mortgages on all remaining unit estates whether existing in whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to eligible holders of mortgages.

(3) If a professional management is ever used to govern the condominium, any decisions to establish self management by the Association shall require the prior consent of owners of unit estates to which at least 67% of the votes of the Owners Association are allocated and the approval of eligible holders holding mortgages on unit estates which have at least 51% of the votes of unit estates subject to eligible holder mortgages.

**20. MANAGEMENT AGENT.**

A. Interim Management Agent and Assessments. From the date of the first conveyance of title by the Declarant to an owner until the date of the first Annual Meeting of the Members of the Corporation, the Declarant or its designee shall serve as the interim Management Agent with responsibility for coordinating all normal management services of the Association. During the period from conveyance of title by Declarant to an owner of a unit until the First Annual Meeting (the time of determination by the Association of the new operating budget), the interim Management Agent shall not receive a Management fee. During such period, the owner shall pay monthly to the interim Management Agent the assessment set forth in Exhibit "E" attached hereto and incorporated hereby by reference. The operating expenses in excess of the total assessments received from owners for operating expenses prior to the first Annual Meeting of Members shall be paid by Declarant.

B. Regular Management Agent and Assessments. Upon selection by the Association of a regular Management Agent and the holding of the first Annual Meeting of Members, any excess of interim assessments over total, actual Association operating expenses shall be deposited by Declarant to the account of the Corporation. The interim Management Agent shall provide to the regular Management Agent an accounting of operating revenues and expenses. The Declarant shall be subject to regular assessments for any any units owned by Declarant.

C. Time of Payment. Each Unit's monthly assessment as set forth in Exhibit "E", of the common expenses for the month of closing shall be payable at the time of conveyance of title to the owner by the Declarant pro-rated as of the closing date. Subsequent payment shall be due on the first day of each month. Payments not received when due shall bear interest at a rate not to exceed six percent (6%) per annum.

D. Initial Assessment. At the time of conveyance of title to the owner by the Declarant, the owner of each such unit shall pay, as a special assessment, the sum of One Hundred Dollars (\$100.00) to be comingled with the other general funds of the Association.

21. WORKING CAPITAL. At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities furnishings and equipment, etc. At the time of selection of the regular Management Agent, the interim Management Agent shall pay to the account of the Association all unused funds and shall provide an accounting of all

revenue and expenditures. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments.

22. UNITS SUBJECT TO CONDOMINIUM DOCUMENTS. All present and future owners, tenants and occupants of units and their guest or invitees, shall be subject to, and shall comply with the provisions of the Condominium Documents, and as the Condominium Documents may be amended from time to time, including all rules and regulations adopted by the Board of Directors of the Corporation. The acceptance of a deed of conveyance or the entering into a lease or the entering into occupancy of any dwelling unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of the Condominium Documents shall entitle the Association or any owner to seek legal and/or equitable relief, including costs and reasonable attorney's fees incurred in enforcing such compliance.

23. AMENDMENT OF DECLARATION. This Declaration may be amended by the vote of 67% of the common interest of all unit owners, cast at a meeting duly held in accordance with the provisions of the By-Laws. The By-Laws may be amended in accordance with the provisions of the By-Laws. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for the County wherein the Property is located. In no event may the Declaration be amended so as to deprive the Declarant of any rights granted herein, including, without limitation, the right to rent any unit.

Any amendment to the Declaration must have prior approval of the Veterans Administration and/or Federal Housing Authority prior to becoming an effective amendment.

24. TERMINATION. Except as provided in Paragraph 18 above, this Declaration may be terminated, and the condominium property removed from the provisions of the Unit Ownership Act, only by an instrument to that effect executed by all of the unit owners and duly recorded, which said instrument shall provide that their liens be transferred to the percentage of undivided interest of the unit owners who shall own the property as tenants-in-common following such termination, which shall be the percentage of undivided interest of such unit owner in the common area.

In the event it is determined in the manner provided in Paragraph 18 hereof that the property shall not be repaired or reconstructed after fire or other casualty, the condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after fire or other casualty shall be evidenced by a certificate of the Association providing that all liens affecting all of the units are transferred to the percentage of undivided interest of the unit owners as set forth hereinabove, and certifying as to facts effecting the termination, which certificate shall become effective upon being duly recorded in the New Hanover County Register of Deeds.

25. NON-PROFIT CORPORATION. It is the intention of Declarant that all rights of the Association shall be vested in a non-profit corporation known as LULLWATER HOMEOWNERS' ASSOCIATION, INC., which shall be or has been formed pursuant to the laws of the State of North Carolina and the applicable Federal laws. Such corporation shall be formed and operated in accordance with this Declaration and the By-Laws attached hereto and incorporated herein, and all governing laws, as they shall be amended from time to time.

The Association will have two classes of voting membership:

CLASS A. Class A members shall be all owners, with the exception of Declarant, and shall be entitled to one vote for each unit owned. When more than one person or entity holds an interest in any unit, all such persons shall be members; the vote for such unit shall be exercised as they may determine, but in no event shall more than one vote be cast with respect to any unit.

CLASS B. Class B members shall be the Declarant and shall be entitled to three votes for each unit owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of the earlier of either (1) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or October 1, 1989.

Class B membership shall be reinstated if, prior to July 1, 1991, Lullwater Condominium Project is expanded to include additional sections, or lots, and the expansion results in Declarant owning twenty five or more, percent (25%) of the units in Lullwater Condominium Project.

26. INVALIDITY. The invalidity of any provision of this Declaration shall not impair or effect the validity and enforceability of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included.

27. WAIVER. No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

28. PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON AREAS. The common areas and facilities shall be, and the same are 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 and invitees, 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. Notwithstanding anything above provided in this Article, the LULLWATER HOMEOWNERS' ASSOCIATION, INC., herein identified, 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 areas and facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish rules and regulations concerning the use thereof and to establish rules and regulations concerning the use of any recreation area.

29. LAW CONTROLLING. This Declaration and the By-Laws attached hereto shall be construed under and controlled by the Laws of the State of North Carolina.

30. WARRANTIES. Declarant acknowledges that all contractual warranties set forth in the buildings' construction contract, of material and equipment in the unit, shall accrue to the benefit of the owner of such unit, along with all warranties, if any, provided by the manufacturer or supplier of appliances, air conditioning, heating and utility systems in the unit. THE CLOSING OF TITLE OR OCCUPANCY OF THE UNITS SHALL CONSTITUTE AN ACKNOWLEDGMENT BY THE UNIT OWNER THAT DECLARANT MAKES NO OTHER IMPLIED OR EXPRESS WARRANTIES RELATING TO THE UNIT OR THE COMMON AREAS AND FACILITIES, EXCEPT FOR SUCH WARRANTIES AS ARE SET FORTH IN THE GENERAL WARRANTY DEED TO THE UNIT.

31. Reference is hereby made to Condominium Plat Book \_\_\_\_\_ Pages \_\_\_\_\_ for survey map and plot plan.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by the parties hereto, this the 9th day of July 1986.

LULLWATER ASSOCIATED, LTD.

BY: Frank Carter  
Frank Carter, Partner

BY: Edwin L. Burnett, III Partner

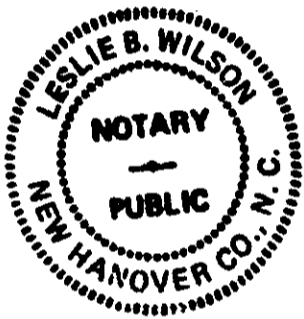
BY: Charles E. Ruffin, III Partner

BY: Garland F. Palmer, Jr. Partner

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Frank Carter, Edwin L. Burnette, III, Charles E. Ruffin, III, and Garland F. Palmer, Jr., partners in Lullwater Associates, Ltd., a North Carolina General Partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 9th day of July 1986.



Leslie B. Wilson  
Notary Public  
My Commission Expires: 7-27-90

The foregoing Certificate(s) of

Leslie B. Wilson, a Notary Public,

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

REBECCA P. TUCKER, REGISTER OF DEEDS FOR NEW HANOVER COUNTY

BY: Phyllis Lynn Deputy/Assistant Register of Deeds

## EXHIBIT "A"

## DECLARATION OF CONDOMINIUM

## LULLWATER VILLAGE

## LEGAL DESCRIPTION FOR SECTION 1

BEING and lying in the City of Wilmington, New Hanover County, North Carolina, and beginning at a control monument, the intersection of the Northern right of way of Franklin Avenue and the Western right of way of Lullwater Drive, and running thence Westerly with the Northern right of way line of Franklin Avenue (30 feet from the centerline thereof) South  $81^{\circ} 35'$  West 137.00 feet to a point in the Northern right of way of Franklin Avenue; running thence North  $02^{\circ} 08' 15''$  West 109.39 feet to a point; running thence North  $84^{\circ} 36'$  East 98.58 feet to a point; running thence North  $05^{\circ} 24'$  West 375.55 feet to a point at the beginning of a curve to the left; running thence with the said curve to the left a chord distance of 73.69 feet North  $57^{\circ} 01' 13''$  West to a point; running thence North  $18^{\circ} 38' 27''$  West 30.00 feet to a point; running thence North  $71^{\circ} 21' 33''$  East 99.27 feet to a point in the Western right of way line of Lullwater Drive (30 feet from the centerline thereof); running thence in a Southerly direction with the Western right of way line of Lullwater Drive South  $05^{\circ} 24'$  East 575.24 feet to the point of Beginning; and being Section 1 of Lullwater Village Condominiums containing Units 20-A and 20-B.