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INSTRUMENT # 2004004328

DECLARATION OF CONDOMINIUM  
OF  
MAGNOLIA PLACE, A CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM ("Declaration") is made this 17<sup>th</sup> day of December, 2003 by N C HORNE FAMILY TRUST of the State of California ("Declarant"), pursuant to provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act"

RECITALS

Declarant is the owner of that certain parcel of real estate located in the Town of Carolina Beach, New Hanover County, North Carolina, and more particularly described as follows

BEING ALL of Lots 1 and 11, Block 8, Carolina Beach, as the same is shown according to the Official Plan of the Northern Section of Carolina Beach recorded in Map Book 8 at Page 67 in the Office of the Register of Deeds of New Hanover County

together with all improvements now or hereafter constructed or located thereon, which consists of one building containing four (4) residential condominium units per building, sidewalks, driveways, parking areas and other improvements Declarant desires to submit the above real property and the improvements located thereon to the terms and provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes, and desires and intends, by the filing of this Declaration to so submit said property and improvements

NOW, THEREFORE, Declarant does hereby publish and declare that the real property described hereinabove and all improvements located thereon are held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of said real estate into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person or entity acquiring or owning an interest in the said real estate and improvements, and their grantees, successors, heirs, executors, administrators, devisees and assigns

ARTICLE I  
DEFINITIONS

SECTION 1. Act "Act" shall mean and refer to N C G S 47C as the same may be amended from time to time

SECTION 2. Association "Association" shall mean and refer to MAGNOLIA PLACE UNIT OWNERS ASSOCIATION, INC , a corporation organized and existing under the Non-profit Corporation Act of the State of North Carolina pursuant to and in

accordance with this Declaration, the By-Laws, and the North Carolina Condominium Act.

**SECTION 3. Building** "Building" shall mean and refer to a structure containing condominium units located upon the land

**SECTION 4. By-Laws** "By-Laws" shall mean and refer to the By-Laws of the Association, which are incorporated herein by reference, and all amendments to such By-Laws which may from time to time be adopted

**SECTION 5. Common Elements** "Common Elements" shall mean and refer to all portions of the condominium other than the units, as more particularly described in Article V, Section 1 of this Declaration

**SECTION 6. Commons Expenses** "Common Expenses" shall mean and refer to expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the By-Laws and the North Carolina Condominium Act, as defined in N C G S 47C-1-103(6)

**SECTION 7. Condominium** "Condominium" means real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions

**SECTION 8. Condominium Documents** "Condominium Documents" shall mean and refer to this Declaration, the Articles of Incorporation for MAGNOLIA PLACE UNIT OWNERS ASSOCIATION, INC and the rules and regulations governing the use of the Property, as amended and supplemented from time to time, and all attachments and exhibits thereto

**SECTION 9. Declarant.** "Declarant" shall mean and refer to their successor in fee ownership of all remaining Units unsold to purchasers or as otherwise defined in N C G S 47C-1-103(9)

**SECTION 10. Executive Board** "Executive Board" shall mean and refer to the governing body, also known as the Board of Directors , from time to time of the Association as constituted in accordance with this Declaration, the Articles of Incorporation of the Association, the By-Laws and the North Carolina Condominium Act

**SECTION 11. Land** "Land" shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein

**SECTION 12. Limited Common Elements** "Limited Common Elements" shall mean and refer to those portions of the common Elements allocated by the Declaration or the terms of the North Carolina Condominium Act for the exclusive use and benefit of one or more but fewer than all of the Units, as more fully described in Article V, Section 2, hereinbelow, and as depicted on the Plans.

**SECTION 13. Mortgage** "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a lien on a unit

**SECTION 14. Mortgagee** "Mortgagee" shall mean and refer to the owner and holder of a Mortgage

**SECTION 15. Owner, Owners** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation "Owners" shall mean and refer to all or a portion of such record owners collectively

**SECTION 16. Plans** "Plans" shall mean and refer to the plans and specifications of the Buildings and Property prepared by LIGNELL W HOOD, R L S recorded under the name of the Condominium in the Condominium Plans Book in the Office of the Register of Deeds of New Hanover County, and which are incorporated herein by reference

**SECTION 17. Property** "Property" shall mean and refer to the Land, the Buildings and all other improvements and structures located on the Land, all easements, rights and appurtenances belonging or appertaining to the Land, and all articles of personal property intended for common use in connection therewith

**SECTION 18. Unit** "Unit" means a physical portion of the condominium designated for separate ownership or occupance, the boundaries of which are described pursuant to N C G S 47C-2-105(a)(5)

**SECTION 19. Declaration** "Declaration" means any instruments, however denominated, which create a condominium, and any amendments to those instruments

**SECTION 20. Development Rights** "Development Rights" means any right or combination of rights reserved by a Declarant in the Declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium, to subdivide units or convert units into common elements, or to withdraw real estate from a condominium

**SECTION 21. Special Declarant Rights** "Special Declarant Rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the Declaration (Section 47C-2-11), to maintain sales offices, management offices, signs, advertising the condominium, and models (Section 47C-2-115), to use easements through the common elements for the purposes of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116), to make the condominium part of a larger condominium (Section 47C-2-121), or to appoint or remove any officer of the Association or any Executive Board Member during any period of Declarant control (Section 47C-3-103(3))

In addition thereto, those definitions set forth in N C G S 47C-1-103 are incorporated herein by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents unless expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended

## ARTICLE II DESIGNATION OF CONDOMINIUM

The land on which the Buildings and other improvements are located is located in the Town of Carolina Beach, New Hanover County, North Carolina, and is particularly described herein, which land is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is MAGNOLIA PLACE, A CONDOMINIUM

## ARTICLE III DESCRIPTION OF BUILDINGS

MAGNOLIA PLACE CONDOMINIUMS shall consist of one (1) building containing four (4) residential condominium units. The units will contain approximately 1,000 feet each. The building shall be constructed on site and is more particularly described in the Plans which are recorded under the name of the condominium in the Condominium Plans Book in the New Hanover County Register of Deeds Office, which plans show all particulars of the building and are incorporated herein by reference. Such plans contain

all certifications and information required by N C G S 47C-2-109.

#### **ARTICLE IV DESCRIPTION OF UNITS**

There are a total of four (4) Units in the building constituting MAGNOLIA PLACE CONDOMINIUMS. The location of the buildings is shown on the Plans filed in the Office of the Register of Deeds and incorporated herein by reference. The designation of the units, locations, identifying numbers, approximate area, number of rooms and immediate common elements to which each has access, are also shown on the plans, to which reference is hereby made for a more particular description.

Each unit consists of all the space bounded horizontally and vertically by its perimeter walls, floors and ceilings. Each unit includes those portions of the Buildings within such boundaries (with the exception of those items specifically listed below) and the space so encompassed. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of such walls, floors, or ceilings are part of the common elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. Subject to the provisions of the immediate preceding paragraph, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of that unit.

Any shutters, awnings, window boxes, door steps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit.

All windows and doors within the walls enclosing a unit shall be a common element of that unit, but the authority and responsibility for maintenance and painting, together with control over the exterior of the building or from any common element, shall remain with the Association. Replacement of any broken glass in a window that is a common element of a unit shall be the sole responsibility and expense of the owner or owners of that unit. Routine maintenance and repair of all lath, furring, wallboard, plasterboard, plaster and subflooring beneath, above, and/or beyond the finished surfaces of the perimeter walls, floor and ceiling of each unit shall be the sole responsibility of the unit owners, although such materials are part of the common elements.

#### **ARTICLE V COMMON ELEMENTS**

**SECTION 1. Common Elements** The Common Elements include all portions of the condominium that are not part of the Units and as are more particularly described in N C G S 47C-2-102.

- (a) The Land,
- (b) All improvements located upon the Land that are not part of the Units, including all foundations, columns, girders, beams, supports, wells, roofs, corridors, lobbies, stairs, fire escapes, and entrances and exits of the buildings,

(c) The yards, gardens, sprinkler systems, parking areas, and driveways, and

(d) Installation of central services for the furnishing of utilities and components of the heating and air conditioning systems that serve the Common Elements or serve more than one Unit

**SECTION 2. Limited Common Elements** The Limited Common Elements shall be composed of the following

(a) Those portions of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit serving exclusively that Unit shall be Limited Common Elements allocated exclusively to that Unit

(b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, decks, and all exterior doors, windows, skylights designed to serve a single Unit, but located outside the Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Unit, and

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, fan coil units, heating elements, return air trills and thermostats, whether located inside or located outside the designated boundaries of a Unit, shall be Limited Common Elements allocated exclusively to the Unit that they serve

(d) Such other areas designated as limited common areas in the plans

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual owners or Owner having the right to the use and enjoyment of such Limited Common Elements, but the responsibility for maintenance, painting, repair and replacement, together with control over the exterior decoration of the Limited Common Elements, shall remain with the Association. Notwithstanding any other provision of the By-laws or the Unit Ownership Act, the obligations for maintenance, repair, or replacement of any portions of the heating, ventilating and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References herein to Common Elements shall include Limited Common Elements unless the contents clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners.

**SECTION 3. Undivided Interest of Owners in Common Elements** Except for minor variations due to rounding the sum of the undivided interest in the Common Elements and Common Expense liabilities allocated at any time to all the Units shall each equal One Hundred (100%) Percent. The percentage of undivided interest in the Common Elements that is allocated to each Unit is Fifty (50%) Percent.

## ARTICLE VI

### PURPOSES FOR WHICH BUILDING AND UNITS ARE INTENDED TO BE USED, AND RESTRICTIONS ON USE

**SECTION 1. Unit Use** All Units shall be used for residential purposes only

**SECTION 2. Nuisance** No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners

**SECTION 3. Prohibitions and Use of Common Elements** The Common Elements shall not be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the description of the Executive Board. Stairs, entrances, sidewalks, yards, driveways and parking areas shall not be obstructed in any way. In general, no activity shall be carried on nor conditions maintained by an owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

**SECTION 4. Shrubbery** No Owner shall plant or permit to remain on the Property any type of hedge, shrubbery or other plantings except with prior written permission of the Association.

**SECTION 5. Parking** No Owner or employee, agent or invitee of any Owners shall park, store, or keep any vehicle except wholly within those portions of the Common Elements designated for such use by the Association.

**SECTION 6. Regulations.** Reasonable regulations governing the use of the Property may be made and amended from time to time by the Executive Board.

**SECTION 7. Hazardous Activities** Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements or any Unit.

**SECTION 8. Signs** No signs, flags or banners of any kind shall be displayed to the public view from any Unit or from the Common Elements.

**SECTION 9. Declarant's Use of Units** Any provision of the Declaration or the North Carolina Condominium Act to the contrary notwithstanding, Declarant shall have the right to utilize any unit or Units owned by it as a model Unit(s) or sales offices, and to erect and maintain a sign or signs on the Property for the purpose of advertising Units owned by it for sale or lease. These rights shall exist so long as Declarant is a Unit Owner.

**ARTICLE VII  
SERVICE OF PROCESS**

Bonnie Southard is hereby designated to receive service of process in any action which may be brought against or in relation to the Condominium. His place of business is 3980 Tillinghast Trail, Raleigh, NC 27613.

**ARTICLE VIII  
MAGNOLIA PLACE UNIT OWNERS ASSOCIATION, INC.**

**SECTION 1. Organization of Association** A nonprofit North Carolina corporation known and designated as MAGNOLIA PLACE UNIT OWNERS ASSOCIATION, INC. has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the By-Laws, and the North Carolina Condominium Act. Every Owner shall be required to be and shall automatically be member of the Association by virtue of his ownership interest in a Unit.

**SECTION 2. Powers: Lien for Assessment:** In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article X hereto and to the By-Laws, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Executive Board may deem to be in the best interests of the Association in accordance with the By-Laws. Any sum assessed by the

Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N C G S 47-C-116, and shall be enforceable by the Association in accordance with N C G S 47C-3-116

**SECTION 3. Period of Declarant Control** The Executive Board shall be appointed by the Declarant until the earlier occurs (i) one hundred twenty (120) days after conveyance of Units, to which one hundred (100%) percent of the total percentage of the ownership appertain, or (ii) two years after the Declarant ceases to offer any Units for sale in the ordinary course of business

## ARTICLE IX EASEMENTS AND PROPERTY RIGHTS

**SECTION 1. Easements of Owners and Executive Board with Respect to Common Elements.** Each Owner shall have a perpetual non-exclusive easement in common with all other Owners to use all pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to a perpetual nonexclusive easement in favor of all other Owners to use the pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements serving such other units and located in such Unit. The Executive Board, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair or replacement of the Common Elements

**SECTION 2. Encroachment Easements** If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such Encroachment shall occur hereafter as a result of the settling or shifting of the Building(s), there shall exist a valid easement for the Encroachment and for the maintenance of same for so long as the building(s) shall stand. In the event the Building(s), any Unit, or any portion of the Common Elements shall be partially or totally destroyed by fire or other casualty or as a result of the condemnation or eminent domain proceedings, and shall thereafter be rebuilt, Encroachment of part of the Common Elements upon any Unit or upon any portion of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building(s) shall stand

**SECTION 3. Granting of Easements by Executive Board** The Executive Board may hereafter grant easements for utility purposes for the benefit of the Property including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer or cable television wires, cables and equipment, electrical conduits, and wires over, under along and on any portion of the Common Elements, and each Owner hereby grants the Executive Board an irrevocable power of attorney to execute, acknowledge and record in the name of each Owner such instruments as may be necessary to effectuate the foregoing

**SECTION 4. Emergency Access** In case of any Emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Executive Board, or any other person authorized by it, shall have the right to enter any Unit for the purposes of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right to entry shall be immediate

**SECTION 5. Easement for Ingress and Egress and Reservation of Alienable Easements by Declarant** 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 Elements and facilities, and for vehicular traffic over, through and

across all streets as from time to time may be paved and intended for such purposes, for all Unit Owners in MAGNOLIA PLACE CONDOMINIUMS, their guests, invitees and lessees, the Association, the Declarant, their successors and assigns

**SECTION 6. Alterations** Units may be altered pursuant to N C G S 47C-2-211, provided each of the following conditions are met

- (a) Before commencing any alteration of the Unit the Owner of such Unit shall notify the Association,
- (b) The materials and construction methods used in altering the Units must be substantially the same as the materials and construction methods used for existing walls in the Building
- (c) No work shall be performed which would materially and adversely affect the structural soundness and integrity of the Building or any portion thereof
- (d) The Owner of the Unit being altered shall have the sole responsibility for payment of all costs and all work performed, and for assuring that all work is performed in a workmanlike manner. The Owner of the Unit shall indemnify and hold the Association and all other Owners harmless from and against any and all loss, cost or damage arising out of such alteration

**SECTION 7. Conveyance of or Lien Against the Common Elements** While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyance of, or liens of any nature shall arise or be created against the Common Elements except with the written consent of all the Owners and the Mortgagees. Every agreement for the performance of labor or the furnishings of materials to Common Elements whether oral or in writing must provide that it is subject to the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the liens of assessments for Common Expenses provided for in Article VIII, Section 2 of this Declaration. Provided, however, that nothing in this Section shall be construed to limit the right of any Owner to convey or to encumber his undivided interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his unit

**SECTION 8. Nature of Interest in Unit** Every Unit, together with its allocated interests in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property and the Owner thereof shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only the covenants, conditions restrictions, easements, uses, limitations, obligations, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be continued herein and in the accompanying By-Laws and in the minutes of the Executive Board of the Association

**SECTION 9. Intent** It is the intent of this Article IX to permit alterations within Units. Further, the intent of this Article IX is to prevent the subdivision of or relocation of boundaries between adjoining Units.

## **ARTICLE X ASSESSMENTS**

**SECTION 1. Taxes** Every Unit, together with its allocated interest in the Common Elements shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit

**SECTION 2. Common Expenses** Each Owner shall contribute a percentage of

allocated interest in the Common Element, all in accordance with the definition of Common Expenses set forth in Article I, Section 1.5 hereinabove, the By-Laws, and the provision of the North Carolina Condominium Act. Due dates for payment of such Common Expenses shall be established by the Executive Board and shall be collected at least quarterly

**SECTION 3. Common Surplus** The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in the same proportion that the undivided interest in Common Elements appurtenant to each Owner's Unit bears to the total of all such appurtenant interest in the Common Elements, provided, however, that said Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in accordance with their percentage interests in Common Surplus as declared herein

**SECTION 4. Assessments in General** The Association shall be empowered to levy assessment against the Owners of Units within the Condominium for the payment of expenditures made by the Association for purposes of providing liability insurance, payment of taxes, maintenance of recreation and other facilities located within the Condominium. Any such assessments that remain unpaid by the Owner of any Unit shall constitute a lien on the Unit of the Owners. It shall be further provided that upon default by the Association in the payment to the governmental authority entitled thereto to any ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Unit in the Condominium shall become personally obligated to pay the tax assessing governmental authority a portion of such taxes or assessments in any amount determined by dividing the total taxes and/or assessments due by the percentage of ownership of each Unit Owner in the Condominium. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Unit of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same or may elect to foreclose the lien against the property of the Owner

## **ARTICLE XI INSURANCE**

**SECTION 1. Property Insurance** The Executive board shall obtain and maintain at all times insurance on the Building and all other improvements upon the Land, and all personal property included in the Common Elements in an amount, after application of deductibles, equal to the replacement value of the Property at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the cost of the Land, excavation, foundations, streets and parking facilities and other items normally excluded from property policies; provided, that such insurance may be written on a co-insurance basis of not less than ninety percent (90%). The policies evidencing such coverage shall insure against all risks of direct physical loss including fire and extended coverage perils, shall contain clauses providing for waiver of subrogation against any Owner or member of his household and any Owner's employees or agents, shall contain the standard condominium endorsement, and a Replacement Cost Endorsement providing for repair and replacement of the Building and all other improvements located upon the Land from the insurance proceeds, substantially modified without at least thirty (30) days' prior written notice to all insured, including all Mortgagees, and shall provide that no act or omission by any Owners, unless acting within the scope of his authority on behalf of the Association, will preclude recovery upon such policy. All such policies shall provide that adjustment of loss shall be made by the Executive Board as insurance trustee. All

policies shall comply with N C G S 47C-3-113 Each policy shall provide for the issuance of certificates or mortgage endorsements to Mortgagees

**SECTION 2. Public Liability Insurance** The Executive Board shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of ownership, maintenance or repair of the Common Elements, provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$500,000.00 per person and \$1,000,000.00 per occurrence against liability for bodily injury, including death resulting therefrom, and \$50,000.00 per occurrence against liability for damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof Such insurance shall include endorsements covering cross liability of the Owners as a group or a single Owner The Executive Board shall comply with the requirements set forth in N C G S 47C-3-113 (a) and (d)(1) through (4)

**SECTION 3. Fidelity Coverage** The Executive Board shall be required to obtain fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association The fidelity insurance policy must name the Association as the named insured and shall be written in an amount not less than the estimated maximum funds, including reserve funds in the custody of the Association or its duly authorized agent, as the case may be, at any given time, during the term of each bond In no event, however, may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus the amount of all reserve funds An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers The fidelity insurance policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to the insured and all Mortgagees

**SECTION 4. Other Insurance Policies** The Executive Board shall be authorized to obtain such other insurance coverage, including workman's compensation, as the Executive Board shall determine from time to time desirable or necessary

**SECTION 5. Premiums** Premiums upon insurance policies purchased by the Executive Board shall be paid by the Executive Board and charged as a Common Expense.

**SECTION 6. Distribution of Insurance Proceeds** All insurance policies procured by the Executive Board shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated interest in the Common Elements

(b) Proceeds on account of damage to Units shall be held in the following undivided shares

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Owners, which cost shall be determined by the Executive Board

(2) When the damage is not to be restored an undivided share for each Owner, such share being the same as each such Owner's allocated interest in the Common Elements

(c) In the event a mortgage endorsement or certificate has been issued with respect to a Unit, the share of the Owners shall be held in trust for the Mortgagee and the Owner as their respective interest may appear

(d) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed to or for the benefit of Owners in the following manner:

(1) If it is determined, as provided in Article XII hereinafter, that the damaged property with respect to which the proceeds are paid shall not be distributed to the owners and their lienholder, if any, as their interest may appear. Notwithstanding the provisions of this subsection, Section 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Lienholder, if any, as their interest may appear.

**SECTION 7. Insurance obtained by Owners** It shall be the responsibility (but not the obligation) of each Owner to obtain at his own expense such additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire.

## ARTICLE XII DUTY TO REPAIR OR RECONSTRUCT

**SECTION 1. Reconstruction and Repair** In the event of damage to or destruction of the building as a result of fire or other casualty, unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) voted, including one hundred percent (100%) approval of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt, the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Building not including any decoration or covering for walls, ceiling, or floors, or furniture, furnishings, fixtures or equipment unless the subject insurance policy covers a portion or all of such loss, in which the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provision of Section 11 6(d)(2) of this Declaration. Any payment shall constitute a Common Expense. Any Reconstruction or repair shall be in accordance with the Plans or as the Executive Board, shall otherwise approve.

**SECTION 2. Obligations of Owners** Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans or as the Executive Board shall otherwise approve, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Executive Board, except as authorized in Article IX, Section 6 of this Declaration. Upon the failure of any Owner to so maintain his Unit, the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII  
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws, as said Declaration, By-Laws, and rules and regulations may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and any rules and regulations which may be adopted are accepted and ratified by such Owners, tenant or occupant, and an agreement that 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 Units as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XIV  
AMENDMENT TO AND SUPPLEMENT OF DECLARATION

Except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of Owners of Units to which unanimous of the ownership of the Association is allocated, together with the consent of their respective Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws. Any amendment which amends or alters the percentage of allocated interests of any Unit in the Common Elements, increases the number of Units, changes the boundaries of any Unit, creates or increases special declarant rights or changes the use to which any Unit is restricted shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by an officer designated for that purpose or, in the absence of designation, by the president of the Association, and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the Consent of Declarant.

ARTICLE XV  
TERMINATION

The Condominium may be terminated only in strict compliance with N C G S 47C-2-118, as the same may be amended from time to time.

ARTICLE XVI  
RIGHTS RESERVED TO MORTGAGEES

SECTION 1. Rights of Mortgagees to Examine Books and Records Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year.

SECTION 2. Mortgagees Rights to Notice If any Mortgagee, or any guarantor or insurer of a loan secured by a Mortgage, has served written notice of its desire to receive notices under this Article XVI, Section 2 upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Mortgage that it holds, guarantees, or insures,

which notice designates the place to which notices are to be given by the Association to such party, then such party shall have the right to receive from the Association prompt written notice of the following

- (a) Default under any of the terms or provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured or guaranteed by such party
- (b) Any loss or damage to condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association
- (d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees

## ARTICLE XVII EMINENT DOMAIN

**SECTION 1. Taking of a Unit:** If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant of which may not practically or lawfully be sued for any purpose permitted by this Declaration, the award must compensate the Unit Owner of his Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemnor acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

**SECTION 2. Taking of Part of a Unit:** Except as provided in Article XVII, Section 1, above, if a part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the Declaration, and (2) the portion of the allocated interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

**SECTION 3. Taking Part of Common Elements:** If part of the Common Elements is acquired by eminent domain, the portion of the award not payable to Unit Owners under Article XVII, Section 1, must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a Limited Common Element must be apportioned among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

## ARTICLE XVIII MISCELLANEOUS PROVISIONS

**SECTION 1. Invalidity:** The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the

remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein

**SECTION 2. Waiver** No provisions contained in the 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

**SECTION 3. Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Declaration or the intent of any provision hereof

**SECTION 4. Conflict of Laws** It is the intent of the Declarant herein that MAGNOLIA PLACE CONDOMINIUMS shall comply with Chapter 47C of the General Statutes of North Carolina as if such development had been submitted to the provisions of that Chapter

**SECTION 5. Liberal Construction** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed this 17<sup>th</sup> day of December, 2003

DECLARANT

N C HORNE FAMILY TRUST

By N.C. Horne (SEAL)  
N C HORNE, TRUSTEE

STATE OF NC  
COUNTY OF New Hanover

I, Sandra P Baity, a Notary Public, do hereby certify that N C HORNE, Trustee of the N C HORNE FAMILY TRUST personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand or official seal, this the 17<sup>th</sup> day of Dec., 2003

Sandra P Baity  
Notary Public

My Commission Expires 10-16-2008



EXHIBIT A

FARLOW CONDOMINIUM TO DECLARATION OF CONDOMINIUM 315 SPENCER

<u>UNIT NO.</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN COMMON ELEMENTS</u>	<u>PERCENTAGE OF COMMON EXPENSES</u>	<u>VOTES IN THE ASSOCIATION</u>
119	25%	25%	1
111	25%	25%	1
113	25%	25%	1
115	25%	25%	1