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OLEANDER TRADE CENTER, A CONDOMINIUM

DECLARATION OF CONDOMINIUM

PHASE 1

DEVELOPED BY

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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM  
OLEANDER TRADE CENTER, A CONDOMINIUM  
PHASE 1

THIS DECLARATION, made this the 15<sup>th</sup> day of December, 1993, by MARK L. MAYNARD and wife, ANNA U. MAYNARD, of the County of New Hanover, State of North Carolina, hereinafter referred to as "DECLARANT";

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the Declarant is the owner of record of the fee simple title of certain real property located entirely in the City of Wilmington, County of New Hanover, State of North Carolina, which is more particularly described in Exhibit "A" hereto attached and incorporated herein by reference; and

WHEREAS, the Declarant is the owner of the one (1) multi-unit building, and certain other improvements heretofore constructed upon the aforesaid property; and

WHEREAS, it is the desire and the intention of the Declarant to market, sell and convey interests in the property and the improvements thereon as a condominium project for commercial use pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled "The North Carolina Condominium Act"; and

WHEREAS, it is the desire and intention of the Declarant in the recordation of this DECLARATION in the Office of the Register of Deeds of New Hanover County, North Carolina, to submit said condominium project to the provisions of the said Chapter 47C;

NOW, THEREFORE, THE DECLARANT DOES HEREBY DECLARE THAT ALL OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "A" HERETO ATTACHED AS WELL AS ALL OF THE IMPROVEMENTS CONSTRUCTED THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED, USED, OCCUPIED, AND IMPROVED SUBJECT TO THE FOLLOWING ARTICLES OF COVENANTS, CONDITIONS, RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS, ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A BENEFIT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, AND ANY PERSON OR ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND IMPROVEMENTS, OR ANY SUBDIVISION THEREOF, THEIR GRANTEEES, SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

ARTICLE I.

Definitions

For the purposes of this Declaration and the By-Laws of the Association, hereinafter defined, the following definitions for the term used herein and therein shall apply unless otherwise defined by the context thereof:

1.1 ACT shall mean and refer to the The North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

1.2 ASSESSMENT shall mean and refer to a share or all of the funds required for the payment of the common expenses, hereinafter defined, of the Association which from time to time shall be levied

or assessed against a unit owner(s) by the Association, all as provided for hereinbelow.

1.3 ALLOCATED INTERESTS shall mean and refer to the undivided interest(s) in the common elements, the common expense liability and votes in the Association allocated to each unit.

1.4 ASSOCIATION shall mean and refer to OLEANDER TRADE CENTER ASSOCIATION, the mandatory association of all unit owners, as is more particularly described in Article VII hereinbelow and organized pursuant to North Carolina General Statutes 47C-3-101, et seq.

1.5 BUILDING shall mean and refer to the one (1) multi-unit building which the Declarant has constructed upon the real property described in Exhibit "A", to be used for commercial purposes, as hereinafter provided. Attached hereto and made a part hereof by reference is Exhibit "B", a survey of the real property showing the location of the building thereon and Exhibit "C" which consist of a full and exact copy of the plans of the building. Said building is more particularly described in the plans of said building, showing all particulars as required by law. In general, the building has one (1) story, has approximately 4,536 square feet with each Unit having approximately 648 square feet (with the end units, Nos. 1 and 7, having slightly less). There are no basements.

The building has been principally constructed of wood frame with brick veneer on a concrete slab.

1.6 BOARD shall mean and refer to the Executive Board or Board of Directors of the Association and DIRECTOR shall mean and refer to a member of said Board.

1.7 BY-LAWS shall mean and refer to those By-Laws of the Association providing for the government of the Association as they are duly adopted and amended from time to time by the Association.

1.8 COMMON ELEMENTS generally shall mean and refer to all of the real property, described on Exhibit "A", and all of the present or proposed improvements and facilities thereon which are not units, as defined hereinafter.

1.9 COMMON EXPENSES shall mean and refer to the expenditures, costs and expenses incurred by the Association for the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the common elements as well as any other financial liability incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein or by law and designated as common expenses. Common expenses are additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association of unit owners as common expenses of the Association.

1.10 COMMON EXPENSE LIABILITY shall mean the liability for common expenses allocated to each unit (allocated interests) pursuant to North Carolina General Statutes 47C-2-107.

1.11 COMMON SURPLUS shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses.

1.12 CONDOMINIUM shall mean and refer to the entire proposed development created pursuant to this Declaration consisting of all the real property including units, all improvements and structures thereon, all common areas and facilities, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith, which are intended to be submitted to the provisions of the act by this

Declaration, and the supplements and amendments hereto, as are provided for hereinbelow.

1.13 DECLARANT shall mean MARK L. MAYNARD and wife, ANNA U. MAYNARD, their successors and assigns, as the owner of the property and who as a part of a common promotional plan offers to dispose of their interest in a unit not previously disposed of or reserves or succeeds to any special declarant right.

1.14 DECLARATION shall mean the Declaration of Condominium for Oleander Trade Center, a Condominium, Phase 1, and any and all amendments.

1.15 DEVELOPMENT RIGHTS shall mean any right or combination of rights reserved by the Declarant in this Declaration to add real estate to a condominium; to create units; to create 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.

1.16 DISPOSE OR DISPOSITION shall mean the voluntary transfer to a purchaser of any legal or equitable interest in a unit, but not a transfer or release of a security interest.

1.17 EXECUTIVE BOARD shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association. It generally shall be designated herein as the "Board of Directors" or "Board".

1.18 IDENTIFYING NUMBER means the symbol or address that identifies only one specific unit in the Condominium.

1.19 LIMITED COMMON ELEMENT shall mean a portion of the common elements if any allocated by this Declaration for the exclusive use of one or more but fewer than all of the units created in this Condominium.

1.20 PERSON shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

1.21 PURCHASER shall mean any person, other than the Declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than five (5) years, or (ii) as security for an obligation.

1.22 REAL PROPERTY OR REAL ESTATE shall mean and refer to all of the real property described in Exhibit "A" attached hereto as well as any leasehold or other estate or interest in, over, or under land, including structures, fixtures and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance.

1.23 SINGULAR, PLURAL GENDER whenever the context so permits the use of the plural, it shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

1.24 SPECIAL DECLARANT RIGHTS shall mean rights reserved herein for the benefit of the Declarant to complete improvements indicated on plats and plans filed with the Declaration under General Statutes 47C-2-109; to exercise any development rights under General Statutes 47C-2-110; to maintain sales offices, management offices, signs advertising the condominium and models under General Statutes 47C-2-115; to use easements through the common elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium under General Statutes 47C-2-116; to make the

Condominium part of a larger Condominium under General Statutes 47C-2-121; or to appoint or remove any officer of the Association or any executive board member during any period of Declarant control under General Statutes 47C-3-103(d); to have access across all common areas for any legal purpose whatsoever including but not limited to the purpose of access to all parts and areas of the real property described in Exhibit "A" and Exhibit "D".

1.25 UNIT or CONDOMINIUM UNIT shall mean and refer to either one of those subdivisions of enclosed space within the buildings, together with any additional areas or spaces accompanying the same as defined hereinbelow, and which are intended to or will be sold as commercial units or separate ownership pursuant to the Act and this Declaration. The deed for any particular unit shall convey such unit by its unit identifying number or letter and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the covenants, conditions, restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

All units, as well as the additional areas defined as part of each unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the units' perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings, and floors of the additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the buildings whether the same now exist or may be caused or created by existing construction, settlement, or movement of the buildings, or by permissible repairs, construction, or alteration.

Each unit is hereby defined also to include:

- (i) All non-load bearing partition walls located entirely within the unit;
- (ii) All materials, including, but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the unit; and all window panes, frames, panes and exterior doors (including garage doors);
- (iii) All air handling and condensing units for heating and cooling located within or outside the horizontal and verticle boundaries referred to above, ducts and components, and all water, power, telephone, electricity, plumbing and sewage lines, located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as defined hereinabove.

Except as set forth above, each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services to the units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for perimeter walls, ceilings and floors of the units. All such pipes, ducts, wires, conduits, and other such facilities are defined as a part of the unit at and from their point of entry into the unit.

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as

a part of the units is defined hereby as a part of the common areas, elements and facilities of the condominium.

1.26 UNIT OWNER shall mean and refer to a person, corporation, partnership, association, trust, other legal entity including the Declarant, or any combination thereof, in whose name or names the title to or an interest in the title to any unit is vested, excluding those who own or hold such title or interest under the terms of any mortgage or deed of trust or other similar instrument for the purposes of securing the payment of an indebtedness or the performance of an obligation.

ARTICLE II.

Submission of Property

Pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, the Declarant does hereby submit all of the real property described in Exhibit "A" attached hereto together with all improvements thereon and described herein, to the provisions of the "North Carolina Condominium Act" of the State of North Carolina, which is codified as Chapter 47C of the General Statutes of the State of North Carolina. The Condominium created hereunder shall be known as OLEANDER TRADE CENTER, A CONDOMINIUM.

Declarant has filed with the New Hanover County Register of Deeds the plat and plans to the OLEANDER TRADE CENTER, A CONDOMINIUM, PHASE 1, and shall be considered a part of this Declaration. Said plats and plans are recorded in Condominium Plat Book No. 10 at Pages 246-249 in the New Hanover County Register of Deeds Office.

ARTICLE III.

Future Development Rights

3.1 By this Declaration Declarant submits only the land described in Exhibit "A" together with improvements thereon and the same shall be known as Oleander Trade Center, a Condominium. Declarant hereby reserves the right and option but not the obligation, to build additional units on property adjacent to the property described in Exhibit "A" and other property that the Declarant may own adjacent to that described in Exhibit "A" including property described in Exhibit "D".

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

3.3 The right and option described in subparagraphs 3.1 and 3.2 above shall terminate on January 1, 2004, and shall be subject to the conditions, restrictions and limitations set forth in subparagraphs 3.4, 3.5, and 3.6 of this Article III. The Declarant covenants and agrees that no more than a total of twenty (20) units will be built upon the property subject to this Declaration including all possible expansions on adjacent property.

3.4 The Declarant covenants and agrees that all buildings containing units built on any of the phases and made subject to this Declaration shall be similar to in construction and appearance of the initial building constructed. However, this requirement does not prohibit the Declarant from constructing a building containing multiple units which is otherwise similar in construction and appearance.

3.5 The undivided interest of the units presently subjected to this Declaration are set forth in Article IV. If any units are

added to and made subject to the Declaration by the expansion contemplated by this Article III, 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 area and facilities of all units shall be determined by allocating to each existing unit an equal and proportional interest in the total then existing common areas.

3.6 Nothing herein shall be deemed to limit or alter the Declarant's right, hereby reserved, to vary the internal layout or exterior configuration of any unit(s) hereinafter constructed so long as Declarant substantially conforms with the provisions of this Article III.

3.7 Every unit owner in Oleander Trade Center, A Condominium, 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 paragraphs 3.1 through 3.7 of this Article III.

#### ARTICLE IV.

##### The Nature and Incidents of Unit Ownership

4.1 Each unit shall be conveyed and treated as an individual real property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common areas and facilities of OLEANDER TRADE CENTER, A CONDOMINIUM. The undivided interest in the common areas and facilities of OLEANDER TRADE CENTER, A CONDOMINIUM, appurtenant to each of the initial seven (7) units of OLEANDER TRADE CENTER, A CONDOMINIUM, PHASE 1, is as follows:

Unit 1	-	14.2857
Unit 2	-	14.2857
Unit 3	-	14.2857
Unit 4	-	14.2857
Unit 5	-	14.2857
Unit 6	-	14.2857
Unit 7	-	14.2857

Said proportional interest in the common areas and facilities that is appurtenant to each unit has been determined in a manner consistent with the Act.

4.2 No unit may be divided or subdivided into a smaller unit or units than as shown on Exhibits "B" and "C" hereto. The undivided interest in the common areas and facilities declared to be an appurtenance to each unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said unit, and the undivided interest in common areas and facilities appurtenant to each unit shall be deemed conveyed, devised, encumbered, or otherwise included with the unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such unit. Any conveyance, mortgage, or other instrument which purports to grant any right, interest, or lien in, to or upon a unit, shall be null, void and of no effect insofar as the same purports to

affect any interest in a unit and its appurtenant undivided interest in common areas and facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any unit, which described said unit by the identifying number assigned thereto in Exhibit "C" without limitation or exception, shall be deemed and construed to affect the entire unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety; provided, however, no unit shall be sold, or transferred under a time-share or interval ownership concept, as those terms are commonly used in the home building/real estate industry.

4.3 The common areas and facilities shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners of units in OLEANDER TRADE CENTER, A CONDOMINIUM for their use and the use of their immediate families, guests or 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 units.

4.4 The Condominium is not subject to any zoning, subdivision, building code or other real estate use law, ordinance or regulation (i) prohibiting the Condominium form of ownership or (ii) imposing any requirement upon a Condominium which it would not impose upon a substantially similar development under a different form of ownership. This statement is made pursuant to N.C.G.S. 47C-1-106 for the purpose of helping provide marketable title to the units in the Condominium.

#### ARTICLE V.

##### Use Restrictions

5.1 Each unit is hereby restricted to commercial use (principally warehouse or storage) by the owner hereof, his immediate family, guests, invitees and lessees.

5.2 No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas and facilities, which will increase the rate of insurance on the condominium, or which will obstruct or interfere with the rights of other owners of the other units or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit, or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

5.3 The use of common areas and facilities, by the owner or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

5.4 No owner of a unit shall permit any structural modification or alteration to be made to such unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect

or in any manner endanger the condominium in part or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennas or any other objects, machines or air conditioning units which may protrude through the walls or roof of the condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first obtained. No unit owner shall cause any object to be fixed to the common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the written consent of the Association being first obtained.

5.5 The use of the condominium may be further restricted under the By-Laws of the Association, or its Rules and Regulations.

ARTICLE VI.

Easements

In addition to easements and rights established and/or reserved elsewhere in this Declaration, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

6.1 In case of any emergency, as determined by the Board or its agent, originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Board, or any other person authorized by it, or the managing agent, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

6.2 Each unit owner shall have an easement in common with the other owners of all units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common 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 the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors of the Association or their designee shall have the right of access to each unit to inspect the same, to remove or correct violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

6.3 The initial and subsequent Boards may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, 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, 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.

6.4 Ingress and egress is reserved for pedestrian traffic over, through and across any 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 the portions of the common areas as may be paved for such purposes, with the common use of paved parking spaces provided, to be used exclusively by unit owners, their guests, families, invitees, lessees, the Association, its successors and assigns.

6.5 In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment upon the common areas and facilities or upon a unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings and if upon reconstruction of such unit and/or common areas and facilities in accordance with this Declaration, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

6.6 The Declarant has such easements to the common elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special Declarant rights whether arising under the Act or reserved in this Declaration.

#### ARTICLE VII.

##### The Owners Association

7.1 Organization of Association: To efficiently and effectively provide for the administration and maintenance of OLEANDER TRADE CENTER, A CONDOMINIUM by the unit owners, a non-profit corporation incorporated pursuant to N.C.G.S. 55A known and designated as OLEANDER TRADE CENTER OWNERS ASSOCIATION (hereinafter the "Association"), has been organized pursuant to N.C.G.S. 47C-3-101 et seq. The Association shall administer the operation and management of the Condominium and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its duly adopted By-Laws. The membership of the Association at all times shall consist exclusively of all the unit owners. Except as may be limited by the terms of this Declaration, each unit shall be allocated one vote in the Association to be used by the unit owner or unit owners of each respective unit.

7.2 Powers: The Association shall have the power to: adopt and amend By-Laws and rules and regulations; adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners; hire and terminate managing agents and other employees, agents and independent contractors; institute, defend or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium; make contracts and incur liabilities; regulate the use, maintenance, repair, replacement and modification of common elements; cause additional improvements to be made as a part of the common elements; acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112; grant easements, leases, license and concessions through and over the common elements; impose and receive any payments, fees or charges for the use, rental or operation of the common elements and for services provided unit owners; impose charges for late payment of assessments, and after notice and an opportunity to be heard, levy reasonable fines not to exceed \$150.00, or the maximum allowed by law, whichever is greater, per violation for violation of the Declaration, By-Laws and rules and regulations of the Association; impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates or statements of

unpaid assessments; provide for the indemnification of and maintain liability insurance for the officers, the Board, its employees and agents; exercise all other powers that may be exercised in North Carolina by legal entities of the same type as an Association; and exercise any other powers necessary and proper for the governing and operation of the Association.

7.3 Declarant Control: Subject to paragraph 7.4 below, the Declarant may appoint and remove the officers and members of the Board of Directors of the Association during the period that shall terminate no later than the earlier of (i) 120 days after conveyance of 75% of the units, including units which may be created pursuant to special Declarant rights, to unit owners other than a Declarant; (ii) two years after all Declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised hereinafter referred to as the "period of Declarant control". The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the period of Declarant control, but in that event Declarant shall have the right for the duration of the period of Declarant control to specify that any or all of the following actions of the Association or Executive Board be approved by the Declarant before they become effective:

1. Amend the Declaration or By-Laws;
2. Terminate the Condominium;
3. Prepare a budget for the Owners Association.

During the period of Declarant control, and at all times thereafter, the Board of Directors shall manage and operate the Association in a manner consistent with the terms and conditions of this Declaration, any and all supplements or amendments hereto, the Association's By-Laws and the North Carolina General Statutes. Upon the Declarant's written notification to each unit owner prior to the termination of the period of Declarant control, said notice manifesting the Declarant's intention to surrender his right to appoint and remove the officers and members of the Board, the Association shall call a meeting of the membership for the purpose of electing a new Board of Directors for the Association from the membership of the Association. From that point on, the new Board shall then become responsible for the operation and management of the Association and the Declarant's responsibility for same terminates.

7.4 Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the units, including units which may be created pursuant to special Declarant rights, to unit owners other than the Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by unit owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units to unit owners other than the Declarant, not less than thirty-three percent (33%) of the members of the Board shall be elected by unit owner other than the Declarant. Not later than the termination of any period of Declarant control, the unit owners shall elect an Executive Board of at least three (3) members, at least a majority of whom must be unit owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

7.5 The Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate the Condominium or elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Board members except upon the approval of unit owners holding at least those percentages of ownership referred to in the North Carolina General Statutes, Chapter 47C. The Board may fill vacancies in its

membership for the unexpired portion of any term. Notwithstanding any other provision of this Declaration or the By-Laws attached hereto to the contrary, the unit owners, by at least a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than members appointed by the Declarant.

7.6 Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) days nor more than thirty (30) days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting two-thirds (2/3) of all of the unit owners reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the unit owners ratify a subsequent budget proposed by the Board.

7.7 Common Expenses: The common expenses of the Association shall be shared by the unit owners in the same proportions that the undivided interest in the common areas and facilities appurtenant to each owner's unit bears to the total of all undivided interests in the common areas and facilities appurtenant to all units, such assessment against the unit owners and their units being as provided for below.

7.8 Management and Maintenance: The Association, as a common expense, shall be responsible for the maintenance, repair and replacement as necessary of all of the common elements, including those portions thereof which contribute to the support of the building or buildings. All pipes, conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas and facilities are to be maintained, repaired and replaced as necessary, and should any incidental damage be caused to any unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any common areas and facilities, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair, and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a unit owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, or invitees) shall be required to pay such portion of the cost of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. If insurance proceeds are not available then the unit owner responsible for the loss or damage (whether done by the owner or the owner's family, guests or invitees) shall be solely responsible for the costs of repair.

7.9 Unit Owners Maintenance: Every owner shall perform promptly all maintenance and repair work within his unit which, if omitted, would affect the condominium, either in its entirety or in a part belonging to other owners; every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each unit shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water,

light, power, telephone, sewage<sup>BOOK</sup> and sanitary<sup>PAGE</sup> service to his unit. Such owner shall further be responsible and liable for the maintenance, repair, and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of his unit, including painting, decorating, and furnishings, and all other accessories which such owner may desire to place or maintain in his unit. Whenever the maintenance, repair, and replacement of any item for which the owner of a unit is obligated to maintain, replace, or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement except that the owner of such unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. All glass doors, windowframes, panes and screens are a part of the respective units and shall be maintained by the respective unit owners.

7.10 Except as expressly provided herein or in the By-Laws (Exhibit D) N.C.G.S. 47C-3-107 shall govern the procedure to be followed by the Owners Association in the event of damage to a unit or to any common or limited common elements.

7.11 Insurance Acquisition: Commencing not later than at the time of the first conveyance of a unit to a person other than the Declarant, the Association shall maintain, to the extent available: (i) property insurance on the common elements and units insuring against all risk of direct physical loss, commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductible shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and (ii) liability insurance in reasonable amounts, covering all occurrences commonly insured against including death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements. Further, the policies purchased hereunder shall provide that no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy and if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

7.11.1 Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of the Association, as Trustee for all of the unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the units or any of them, and the policies shall provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner;

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk

covered by the policy, the association's policy provides primary insurance.

Each unit owner may obtain insurance, at his own expense, affording coverage upon his unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

7.11.2 Notice of Non-Coverage: If the insurance described in Section 6.10.1 above is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to all unit owners. The Association may carry any other insurance it deems appropriate to protect the Association or the unit owners.

7.11.3 Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and each and every unit owner and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The Board of the Association is hereby irrevocably appointed agent for each unit owner and his mortgagee as their interests may appear for the purpose of adjusting, compromising and settling claims arising under insurance policies purchased by the Board for the benefit of the Association and the unit owners. Said Board or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board's duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purposes elsewhere stated herein or in the By-Laws, for the benefit of the Association and the unit owners, their mortgagees and lienholders, as their interests may appear.

7.11.4 Distribution of Insurance Proceeds: The insurance proceeds payable under any policy purchased hereunder shall be payable to the Association as Trustee, or its designee. The Association as Trustee, or its designee, shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions set forth hereinafter, the proceeds shall be disbursed first for the repair or restoration of the damaged property and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.

7.11.5 Insurance Policies: An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon their request, to any unit owner, mortgagee or beneficiary under a Deed of Trust. The insurer issuing the policy may not cancel or refuse to renew a policy until thirty (30) days after notice of the proposed cancellation or renewal has been mailed to the Association, each unit owner and each mortgagee or beneficiary under a Deed of Trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

7.11.6 Damage, Reconstruction or Repair: Any portion of the Condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Association 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%) vote, including one hundred percent (100%) approval of owners of units not to be rebuilt or owners assigned to any limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds