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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION OF CONDOMINIUM
FOR
PORTER'S NECK BUSINESS PARK CONDOMINIUMS**

(A Land-Only Condominium)

Prepared by and return to: A. A. Saffo

THIS DECLARATION OF CONDOMINIUM for Porter's Neck Business Park Condominiums (this "Declaration") is made this 25th day of January, 2007, by **WBP, LLC**, a North Carolina limited liability company (the "Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

BACKGROUND STATEMENT

Rosemarie M. Williams and Eivind Egenberg, as Trustees of the Fur Flying Realty Trust (herein referred to as the "Trustees"), are the owner of a certain tract of real property containing, in the aggregate, approximately 3.15 acres, located in New Hanover County, North Carolina, and more particularly described in Exhibit "A" which is attached hereto (the "Land"). A memorandum of the Fur Flying Realty Trust is recorded in Book 4335, Page 355, of the New Hanover County Registry. Located on the Land are an existing building, a small out building, driveways, parking area, sidewalks, and landscaping.

The Trustees intend to convey the Land to WBP, LLC, a North Carolina limited liability company (who is referred to herein as the "Declarant"). The Trustees and the Declarant have jointly executed a map entitled Condominium Plat of Porter's Neck Business Park Condominiums, a Condominium, which has been recorded in Condominium Map Book 16, Page 322, of the New Hanover County Registry. The Trustees and the Declarant desire to

submit the Land and the improvements located on the Land to the terms and provisions of the North Carolina Condominium Act (hereafter the "Condominium Act"). Following the recordation of both this instrument and the conveyance to the Declarant, the Declarant shall have, possess, and enjoy all the rights of a "Declarant" with respect to the Land, including without limitation all development rights and special declarant rights, as provided in this instrument and under the Condominium Act.

In addition, in accordance with the Condominium Act, the Declarant has created a nonprofit, incorporated owners' association to which are delegated and assigned powers of maintaining and administering the common areas and facilities on the property, of administering and enforcing the covenants and restrictions created in this Declaration, and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium Units within the Land and to promote the business, health, safety, and welfare of the Unit Owners.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant and the Trustees hereby declare that all of the Property (as "Property" is defined in Section 1.1y hereof) shall be held, transferred, sold, conveyed, encumbered, occupied, developed and used 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 establishment of the Property as a condominium, pursuant to the Condominium Act, and which shall run with the land and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assignees, and shall all inure to the benefit of each Owner of any interest therein.

ARTICLE 1

DEFINITIONS

Section 1.1. Definitions. As used in the Condominium Documents, unless it is plainly evident from the context that a different meaning is intended, the following words, terms, and phrases shall have the following meanings:

a. "*Allocated Interests*" means the undivided interest in the Common Elements and Common Expense liability, and votes in the Association, allocated to Units in the Condominium. The Allocated Interests are described in Article 7 of this Declaration and are shown on Exhibit "B".

b. "*Association*" means "**Porter's Neck Business Park Condominium Owners Association, Inc.**", a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

c. “*Building*” or “*Buildings*” means the existing building that is located upon Unit 1 as shown in the Plats and Plans, and any buildings which are hereafter constructed upon the other Units shown in the Plats and Plans.

d. “*Bylaws*” means the bylaws of the Association, as they may be amended from time to time.

e. “*Common Elements*” means all portions of the Condominium other than the Units, including without limitation, all property located outside of the Unit footprints, landscaping islands, parking area, common area lighting, trash containers, driveways and sidewalks, as depicted on the Plats and Plans, and as more particularly described in Article 3 of this Declaration.

f. “*Common Expenses*” means the expenses and expenditures made by, and the financial liabilities of, the Association for the operation of the Condominium. These include without limitation:

- (i) expenses of administration, maintenance, repair or replacement of the Common Elements;
- (ii) expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;
- (iii) expenses agreed upon as Common Expenses by the Association; and
- (iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

g. “*Condominium*” means and refers to Porter’s Neck Business Park Condominiums, as established by the submission of the real property described in Exhibit “A” to the terms of the Condominium Act by this Declaration.

h. “*Condominium Documents*” means this Declaration, the Plats and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of that Condominium Document.

i. “*Declarant*” means WBP, LLC or its successors, as defined in Section 47C- 1-103(9) of the Condominium Act.

j. “*Declarant Control Period*” means the period commencing on the date hereof and continuing until the earlier of:

- (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the maximum number of Units which may be created to Unit Owners other than Declarant; or
- (ii) two years after Declarant has 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 not exercised.

k. “*Declaration*” means and refers to this Declaration of Condominium for Porter’s Neck Business Park Condominiums, a condominium, as it may be amended from time to time.

l. “*Development Rights*” means any rights reserved by the Declarant under Article 6 of this Declaration to create or alter Units, subdivide Units, combine Units, create Common Elements, and create Limited Common Elements within the Condominium, and to add or withdraw real estate from the Condominium.

m. “*Director*” means a member of the Executive Board.

n. “*Eligible Mortgagee*” means an institutional lender holding a first mortgage or first deed of trust (“*First Mortgage*”) encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article 16 only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

o. “*Executive Board*” means the board of Directors from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws, and the Condominium Act.

p. “*Improvements*” means the Buildings, any construction, structure, fixture or facilities existing or to be constructed on the Land included in the Condominium, including but not limited to, buildings, outbuildings, trees and shrubbery planted by the Declarant or the Association, paving, walkways, utility lines, pipes, drainage ditches, storm water drains, lines, and retention facilities, and light poles.

q. “*Land*” means the real property subject to this Declaration, exclusive of any Improvements located thereon or incorporated therein, which is more particularly described in Exhibit “A” attached hereto.

r. “*Limited Common Elements*” means those portions of the Common Elements allocated for the exclusive use and benefit of one or more, but fewer than all, of the Units by the

Declaration or by operation of Section 47C-2-102(2) or (4) of the Condominium Act. The Limited Common Elements in the Condominium are described in Article 3 of this Declaration and are depicted in the Plats and Plans.

s. *"Majority or Majority of Unit Owners"*. At any time that there exist only four (4) Units, a "Majority" or "Majority of Unit Owners" shall mean the Owners of at least seventy-five percent (75%) of the votes in the Association. At any time that there exist more than four (4) Units, a "Majority" or "Majority of Unit Owners" shall mean the Owners of at least sixty percent (60%) of the votes, rounded to the nearest whole number, in the Association.

t. *"Manager"* means a person, firm or corporation employed or engaged to perform management services for the Condominium and the Association.

u. *"Notice and Comment"* means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration,

v. *"Notice and Hearing"* means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

w. *"Person"* means an individual, corporation, company, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, government subdivision or agency, or other legal or commercial entity.

x. *"Plats and Plans"* means the Plats and Plans recorded simultaneously with this Declaration in Condominium Map Book 16, Pages 322, constituting a part hereof, as the same may be amended from time to time in compliance with the Condominium Act.

y. *"Property"* means the Land, all Improvements, Buildings, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

z. *"Rules and Regulations"* means Rules and Regulations for the use of Units and Common Elements and for the conduct of Persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.

aa. *"Security Interest"* means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

bb. *"Special Declarant Rights"* means the rights reserved for the benefit of the Declarant in Section 6.4 hereof.

cc. “*Trustee*” means the Association, as trustee for the Unit Owners and/or Eligible Mortgagees, for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws.

dd. “*Unit*” means and refers to those portions of the Property in the Condominium designated for separate ownership or occupancy, and the boundaries of which are more particularly described in Section 2.6 of this Declaration, and which are designated as Units in the Plats and Plans.

ee. “*Unit Owner*” and “*Owner*” means the Declarant or other Person who is/are the record owner of fee simple title to any Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Units created by this Declaration with the exception of Unit 1 which is retained by the Trustees. The term Unit Owner and Owner may be used in this Declaration interchangeably.

Any word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in N.C. Gen. Stat. 47C-1-103.

ARTICLE 2

THE PROPERTY, BUILDINGS, AND UNITS

Section 2.1. The Property. The Property is located entirely in New Hanover County, North Carolina, contains approximately 3.15 total acres, and is more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. The Property is hereby subjected to the terms of the Condominium Act by this Declaration. The name of the Condominium is PORTER’S NECK BUSINESS PARK CONDOMINIUMS.

Section 2.2. Additional Property; Phasing. (Not Applicable)

Section 2.3. The Buildings. Presently the Property includes one (1) existing Building situated on Unit 1. This Building and its location and dimension is more particularly described in the Plats and Plans. The Plats and Plans were prepared by Danford and Bristow Land Surveying, P.C., and contain a certification by Patrick C. Bristow, P.L.S., a North Carolina Registered Land Surveyor, that the Plats and Plans contain all the information required by N.C. Gen Stat. Section 47C-2-109.

Section 2.4 The Units. The Condominium is a “land-only” condominium, in that the Units are actually parcels, or lots, which have been designated for separate ownership and occupancy and upon which a Unit Owner may construct a Building and other Improvements. Any Building and Improvements constructed upon a Unit shall become and thereafter be a part of the Unit. The location of the Units, and their configuration and dimensions, are shown on the Plats and Plans. There are presently a total of eight (8) Units within the Property. The Units are designated by Unit number on the Plats and Plans, and in Exhibit “B” attached hereto and

incorporated by reference. Because the Condominium is a land-only condominium, an engineer or architect certification is not required.

Section 2.5 Maximum Number of Units.

a. The Condominium may contain up to a maximum of eight (8) Units and no more. The Declarant reserves the right to reduce the number of Units and to create additional Units up to the stated maximum of eight (8) Units by the exercise of its Development Rights as described in Article 6 of this Declaration. Units created by the exercise of Development Rights may or may not have the same dimensions as the Units existing at the time of the creation of the Condominium.

b. Notwithstanding the immediately preceding Section 2.5(a), if additional property is added to the Condominium and subjected to the Declaration pursuant to the exercise of Development Rights, the Condominium may then contain up to a maximum of thirty (30) Units and no more.

Section 2.6. Unit Boundaries. The boundaries of each Unit created by this Declaration are shown on the Plats and Plans as numbered Units with their identifying number and are described as follows:

a. *Upper Boundaries:* The horizontal or sloping plane or planes of the topgrade of the soil extended to an intersection with the vertical perimeter boundaries.

b. *Lower Boundary:* The lower portion of that certain real estate as described in Exhibit "A" and recorded in Condominium Map Book 16, Page 322, of the New Hanover County Registry.

c. *Vertical Perimeter Boundary:* The metes and bound description of each parcel or lot as shown in the Plats and Plans.

d. *Inclusions:* A Unit is comprised of the lot or parcel of land upon which a Building is presently located or upon which a Building may be constructed in the future. Any Building and other Improvements constructed upon a Unit are a part of the Unit. Included in the definition of Unit shall be all heating, ventilation and air-conditioning (HVAC) systems which serve exclusively such Unit, whether located within the Unit or beyond the perimeter boundaries of such Unit, and whether or not contiguous. If one or more Buildings constructed on adjacent Units abut each other such that there is a party wall, one half (1/2) of such party wall shall belong to each Unit.

e. *Exclusions:* Except when specifically included by other provisions of this Section 2.6, the following are excluded from each Unit: the spaces and Improvements lying outside of the Unit boundaries described in Sections 2.6 a., b., and c., above, and all chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within any Unit for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. *Non-Contiguous Portions:* Certain Units may include special portions, pieces or equipment such as outbuildings, heat pumps, air conditioning compressors, meter boxes, utility connection structures and storage areas that serve only a particular Unit or Units, but which are located outside of the perimeter boundaries of the Unit. Such special portions, pieces or equipment and storage portions are a part of the Unit notwithstanding their non-contiguity with the Unit.

g. *Inconsistency with Plats and Plans:* If this definition of a Unit or Units is inconsistent with the Plats and Plans, then this definition will control.

h. Annexed hereto and made a part hereof as Exhibit "B" is a list of all Units presently located in the Condominium. The Unit designation, location, dimension, Common Elements and Limited Common Elements are shown on the Plats and Plans which have been certified to be true and correct by Patrick C. Bristow, P.L.S.

i. The Declarant reserves the right to alter the perimeter boundaries of Units so long as the Declarant owns the Units so altered. Any such change shall be reflected by an amendment to the Declaration and to the Plats and Plans, which may be executed by the Declarant alone. Notwithstanding this procedure, no such change shall increase the maximum number of Units stated in Section 2.5.

Section 2.7. Nature of Interest in Unit. Every Unit, together with its Allocated Interest 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. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his or her Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, Rules and Regulations set forth in the Condominium Documents, or adopted by the Executive Board of the Association.

ARTICLE 3

COMMON ELEMENTS

Section 3.1. Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

a. All portions of, and Improvements located on, the Land outside of the perimeter boundaries of the Units, including without limitation all paved areas and all landscaped areas.

b. All conduits, ducts, plumbing, wiring and other facilities located on the Property (even if within a Unit) that furnish utility and/or other services to the Common Elements.

c. The Limited Common Elements described in Section 3.2 below.

d. Any public connection and meters for utility services that are not owned by the public utility or municipal agency providing such services.

- e. Those areas indicated as Common Elements on the Plats and Plans.
- f. All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- g. If this description of the Common Elements is inconsistent with the Plats and Plans, then this definition will control.

Section 3.2. Limited Common Elements. The following portions of the Common Elements are Limited Common Elements composed of the following:

- a. Any utility areas, the use of which is limited to a single Unit as shown on the Plats and Plans, if any.
- b. Storage areas, the use of which is limited to a single Unit as shown on the Plats and Plans, if any.
- c. Those areas indicated as Limited Common Elements on the Plats and Plans.
- d. If this description of the Limited Common Elements is inconsistent with the Plats and Plans, then this definition will control.

Section 3.3. Partitioning. The interest in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are 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 the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's Allocated Interest in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plats and Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its Allocated Interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its Allocated Interest in the Common Elements by more than one Person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

Section 3.4. Conveyance or Encumbrance of Common Elements.

- a. While the Property remains subject to this Declaration and to the provisions of the Condominium Act, the Association shall not convey, grant, or create any conveyance of or create Security Interests or liens of any nature in or against the Common Elements without the prior written consent of a Majority of Unit Owners, and of Eligible Mortgagees of Units to which seventy-five percent (75%) of the total vote is allocated.

b. Notwithstanding Section 3.4 a. above, and in addition thereto, no conveyances of or Security Interests or liens of any nature shall arise or be created against any Limited Common Elements without the prior written consent of all of the Owners of Units to which the affected Limited Common Elements are allocated.

c. When the requisite number of votes or consent as described in Sections 3.4 a. or b. (as the case may be) has been obtained, the consenting Unit Owners and Eligible Mortgagees shall execute an agreement in the same manner as a deed, which agreement shall: (i) state that the requisite number of Unit Owners and Eligible Mortgagees have consented to the conveyance or encumbrance of the Common Elements, and (ii) specify a date after which the agreement will be void unless recorded before that date. The agreement, and all ratifications thereof, must then be recorded in the New Hanover County Registry, and shall be effective only upon recordation.

d. Provided that the provisions of Sections 3.4 a., b., and c. above have been complied with, the Association, on behalf of the Unit Owners, may then contract to convey or encumber Common Elements, and the Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

e. A conveyance or encumbrance of Common Elements pursuant to this Section 3.4 shall not deprive any Unit of its right of access and support.

f. Proceeds of the sale or financing of any Common Element(s), other than a Limited Common Element, shall be an asset of the Association. Distribution of the proceeds of a sale or financing of any Limited Common Element(s) shall be as provided by agreement between the Association and the Unit Owners to which the Limited Common Element(s) in question are allocated.

g. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material finished is subordinated to this Declaration and to the lien of assessment for Common Expenses provided for in Article 13 of this Declaration.

h. Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements is void unless made pursuant to this Section 3.4.

i. If any judgment lien, mechanic's or materialman's lien, or other such lien against the Association becomes effective against more than one Unit, any affected Unit Owner may discharge and release his or her Unit from the lien in the manner described in N.C. Gen. Stat. Section 47C-3-117.

Nothing in this Section 3.4 shall be construed to limit the right of any Owner to convey or to encumber his or her Allocated Interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his or her Unit.

ARTICLE 4

MAINTENANCE, REPAIR AND REPLACEMENT

Section 4.1. Units. Each Unit Owner shall be responsible for the maintenance, repair and replacement, at his or her own expense, of all portions of his or her Unit, including without limitation any Building, structure, and other Improvements located within the Unit and all interior and exterior parts, components and elements of such Building, structure, and Improvements. However, if any exterior portion of a Building, structure, or other Improvement on a Unit becomes deteriorated or unsightly or is inconsistent with conditions of installation, or is inconsistent with the general condition of Buildings located on the other Units, then such deteriorated or unsightly portion of the Building, structure, or Improvement may be removed or repaired by the Association at the Unit Owner's expense as a Common Expense assessment, after Notice and Hearing.

Section 4.2. Common Elements. The Association shall be responsible for the maintenance, repair and replacement of all of the Common Elements, except any portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners. The Association shall also be responsible for maintaining all of the grounds and landscaping on the Property, and for removing all snow, leaves and debris from all sidewalks, drives, entrance ways, and other areas of the Common Elements. If any incidental damage is caused to any Unit by virtue of any work done or caused to be done by the Association in the maintenance, repair or replacement of the Common Elements, the Association shall, at its expense, repair such incidental damage.

Section 4.3. Limited Common Elements. The Limited Common Elements shall be maintained, repaired and replaced as follows:

a. The cleanliness, orderliness, and everyday, routine maintenance of any Limited Common Elements shall be the responsibility of the individual Unit Owner or Unit Owners having the exclusive right to the use and enjoyments of such Limited Common Elements.

b. The repair or replacement of the Limited Common Elements shall be the responsibility of the Association; provided however, that the cost of such repair or replacement shall be assessed as a Common Expense to the Unit Owner or Owners of the Unit or Units to which the Limited Common Elements are allocated. If any Limited Common Element is allocated to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is allocated.

Section 4.4. Repairs Resulting from Negligence. Each Unit Owner will reimburse the Association for any damages to any other Unit, to the Common Elements or to the Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing.

Section 4.5. Access. Any Person authorized by the Association or the Executive Board shall have the right of access to all portions of the Property to the extent necessary for the purpose of correcting any condition threatening a Unit, other Units, or the Common Elements, and for the purpose of performing its obligations of maintenance, installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires, and equipment provided that such requests for entry are made to a Unit Owner at least forty-eight (48) hours in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 4.6. Stormwater Permit/Facilities.

a. *Stormwater Permit.* The North Carolina Department of Environment and Natural Resources (DENR), Division of Water Quality, has issued Stormwater Permit No. SW8 051015 in connection with the proposed development of the Property. The Association and each of its Members agree that at anytime after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), and (ii) the Declarant is not prohibited under NC DENR regulations from transferring the Stormwater Permit for the Property to the Association, the Association's officers without any vote or approval of Unit Owners, and within 10 days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association; provided however, that at the time the Declarant requests that the Association accept transfer of the Stormwater Permit, the Declarant has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 45 days before the date of the request, that all stormwater retention systems, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph, the Declarant shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the Stormwater Permit to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the Stormwater Permit.

b. *Stormwater Facilities O & M.* Any stormwater retention systems and related facilities for the Condominium which have or are to be constructed by or on behalf of Declarant constitute Common Elements, and the Association, at its sole cost and expense, is responsible for the operation and maintenance ("O&M") of such facilities. Such O & M shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the Stormwater Permit. The Association shall indemnify and hold harmless the Declarant from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention systems and related facilities.

c. *Damage to Storm Water Facilities.* The Declarant shall, at its sole cost and expense, be responsible for repairing any damage to storm water facilities caused by the Declarant's development activities. The Declarant shall not be responsible for damages to stormwater retention systems and related facilities caused by any other cause whatsoever, including but not limited to construction of Buildings or other activities by Owners, their agents

and contractors, upon their Units, acts of God, and negligence of others. Unit Owners shall be responsible for damages to such stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the storm water plans and specifications for the Property. If the Owner fails to do so within said 30-day period, the Association shall perform the work and the cost of the work shall be added to the Assessment due from the Owner.

ARTICLE 5

SUBSEQUENT ALLOCATION OF LIMITED COMMON ELEMENTS

Section 5.1. Limited Common Elements. A Limited Common Element may be reallocated or reassigned only in the following manner:

a. By the Declarant in the exercise of Development Rights reserved under Article 6 of this Declaration, and only in the manner provided in Article 6; or

b. As part of a relocation of the perimeter boundaries of Units pursuant to Article 12 of this Declaration; or

c. By an amendment to this Declaration executed by all those Unit Owners between or among whose Units the reallocation is made, in which case the amendment shall also be executed by the Association and shall be recorded in the same manner as a deed in the names of the parties and the Association. The parties executing the amendment shall be responsible for preparation of the amendment, and shall reimburse the Association for its reasonable attorney's fees in connection with the review of the amendment and for the recording costs.

d. In all cases other than those described in Sections 5.1 a., b., or c. above, only by the unanimous consent of the Unit Owners whose Units are affected.

Section 5.2. Common Elements. A Common Element not previously allocated as a Limited Common Element may be so allocated only in the following manner:

a. By the Declarant in the exercise of Development Rights reserved under Article 6 of this Declaration, and only in the manner provided in Article 6; or

b. Those portions of the Common Elements now or hereafter improved as parking spaces may be subsequently allocated in whole, in part, or in any number, as Limited Common Elements either by: (i) the Declarant in the exercise of Development Rights, or (ii) by the Association any time after the termination of Development Rights. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be so allocated by the Association. If any parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces not allocated as Limited Common Elements may be designated as general parking for the Unit Owners' customers and other visitors. In lieu of allocating parking spaces to and among Units by designating them as Limited Common Elements, they may be allocated by Rules and

Regulations established by the Declarant or duly adopted by the Executive Board at a meeting of the Unit Owners.

c. In all cases other than those described in Sections 5.2 a. or b. above, only by the unanimous consent of all of the Unit Owners.

Section 5.3. Action by Amendment. Any action taken pursuant to this Article 5 (other than allocating parking spaces by the adoption of Rules and Regulations) shall be by amendment to this Declaration recorded in New Hanover County and indexed in the manner described in N.C. Gen. Stat. Section 47C-2-117(c).

ARTICLE 6

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 6.1. Reservation of Development Rights. The Declarant reserves the following Development Rights:

- a. The right by amendment, with respect to all portions of the Condominium to:
 - (i) create additional Common Elements or Limited Common Elements; and
 - (ii) modify, alter or eliminate Common Elements or Limited Common Elements; provided that any such modification, alteration or elimination does not materially and unreasonably deny, impair, or interfere with a Unit Owners' ownership, use of, or access to, his or her Unit, or otherwise materially deny a Unit Owner the benefit of such amenities and facilities that existed on the Property at the time he or she acquired a Unit; and
 - (iii) create Units, subdivide Units, combine Units, or alter the perimeter boundaries of Units, provided that such subdivision, combination or alteration occurs prior to the conveyance of the Unit(s) to be subdivided combined, or altered to a third-party Owner; and
 - (iv) convert any Unit or Units into Common Elements or Limited Common Elements, provided that such conversion occurs prior to the conveyance of the Unit(s) to be converted, to a third-party Owner; and
 - (v) withdraw real estate from the Condominium in the location shown or labeled "Need Not Be Built", or "May Not Be Developed", or words of similar effect, on the Plats and Plans; and
 - (vi) add and subject additional property to the Condominium, together with all Improvements which may be constructed by Declarant thereon, provided, however, that any property added is property which lies adjacent to the

current Property of the Condominium or is adjacent to any tract or parcel of land that has been added to the Condominium; and

- (vii) to otherwise design, construct, complete, and exercise control over the course of development of any and all Improvements indicated on the Plats and Plans.

b. The right to construct or relocate overhead or underground utility lines, pipes, wires, ducts, conduits and other facilities across the Land anywhere in the Condominium for the purpose of furnishing utilities and other services to any Buildings or Improvements, whether existing or to be constructed. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements for the above- mentioned purposes.

Section 6.2. Limitations on Development Rights. The Development Rights reserved in Section 6.1 are limited as follows:

a. The Development Rights may be exercised at any time but not more than twenty (20) years after the recording of the initial Declaration; and

b. Notwithstanding the immediately preceding Section 6.2a. above, the Development Rights shall terminate with respect to any portion of the Condominium that is conveyed to any Person as a Unit. After the conveyance of a Unit or Units in the Condominium to any Person, the Development Rights shall remain effective over the remaining portion of the Condominium which has not been conveyed as a Unit or Units until the earlier of: (i) such time that the Declarant no longer owns any Unit, or (ii) the date that is twenty (20) years after the recording of the initial Declaration, at which time all Development Rights shall expire, cease to exist, and may no longer be exercised; and

c. The quality of construction of or in any Buildings and Improvements to be created, modified or altered pursuant to Development Rights shall be consistent with the architectural plan and overall scheme of development adopted by the Declarant; and

d. Any Units and Common Elements created pursuant to Development Rights will be restricted to the same general plan of development as the Units and Common Elements created under this Declaration as initially recorded.

Section 6.3. Method of Exercising Development Rights.

a. To the extent a Development Right may be exercised, such rights may be exercised at different times. No assurances are made by the Declarant that it will exercise any or all of the Development Rights, or that the Development Rights will be exercised in any order. If any Development Right is exercised over any portion of the Condominium to which the Development Right is applicable, the Development Right need not be exercised over all or any other portion of the Condominium.