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**DECLARATION OF CONDOMINIUM**

**SEAGATE VILLAGE, A CONDOMINIUM, PHASE 1**

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**NORTH CAROLINA  
NEW HANOVER COUNTY**

**DECLARATION OF CONDOMINIUM  
FOR  
SEAGATE VILLAGE, A CONDOMINIUM, PHASE 1**

**THIS DECLARATION** and the exhibits which are attached hereto and made a part hereto by this reference are made and executed this 21<sup>st</sup> day of May, 2002, by **JOSHUA HOLDINGS, LLC**, a North Carolina Limited Liability Company, and **STAR-RIDE, LLC**, a North Carolina Limited Liability Company, hereinafter collectively called the "Declarant", for themselves, their successors, grantees and assigns, pursuant to the provisions of the North Carolina Condominium Act (N.C.G.S. Chapter 47C)(the "Act").

WITNESSETH:

**WHEREAS**, the Declarant is the owner in fee simple of a certain tract of real property (the "Property") situated in New Hanover County, North Carolina, more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property; and

**WHEREAS**, the Declarant desires to submit all of the property described on Exhibit "A" to the Act.

**NOW, THEREFORE**, the Declarant, as the owner of the property, hereby declares as follows:

**ARTICLE I**

**DEFINITIONS**

When used herein the following terms shall have the following meanings:

1.1 **Act.** The North Carolina Condominium Act (N.C.G.S. Chapter 47C).

1.2 **Affiliate of a Declarant.** Any person who controls, is controlled by or is under common control with the Declarant. A person "controls" the Declarant if the person (i) is a member or manager of the Declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the Declarant. A person "is controlled by" the Declarant

if the Declarant (i) is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20 %) of the voting interests in the persons; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

**1.3 Allocated interests.** The undivided interests in the common elements, the common expense liability and votes in the association allocated to each unit.

**1.4 Association or Unit Owners' Association.** As used herein it shall mean and refer to SEAGATE VILLAGE OWNERS ASSOCIATION, INC., a North Carolina Nonprofit Corporation, which was organized under N.C.G.S. Section 47C-3-101.

**1.5 Common Elements.** All portions of the Condominium not encompassed and included within the Condominium Units. Limited Common Elements are Common Elements.

**1.6 Common Expenses.** Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**1.7 Common Expense Liability.** The liability for common expenses allocated to each Unit pursuant to N.C.G.S. Section 47C-2-107.

**1.8 Condominium.** The condominium created by this Declaration.

**1.9 Declarant.** Any person or group of persons acting in concert who (i) as part of a common promotional plan offers to dispose of his or its interest in a unit not previously disposed of or (ii) reserves or succeeds to any special declarant right. As used herein, the term "Declarant" shall mean and refer to **JOSHUA HOLDINGS, LLC**, and **STARRIDE, LLC**, their successors and assigns, as the owners of the property. The rights of a person or entity as Declarant under this Declaration of Condominium and By-Laws of the Association shall be subject to all limitations and consents as shall be hereinafter set out in this Declaration.

**1.10 Declaration.** The Declaration of Condominium for **SEAGATE VILLAGE, A CONDOMINIUM, PHASE 1**, and any and all amendments hereto.

**1.11 Development Rights.** Any right or combination of rights reserved by the Declarant in this Declaration to create Units, Common Elements or Limited Common Elements within the condominium; to subdivide Units or convert Units into Common Elements; or to add or withdraw real estate from the condominium.

1.12 **Dispose or Disposition.** A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but not a transfer or release of a security interest.

1.13 **Executive Board.** The body, regardless of name, designated in the Declaration to act on behalf of the Association. It shall be designated herein as the "Board of Directors" or "Board".

1.14 **Identifying Number.** A symbol or address that identifies only one Unit in the Condominium.

1.15 **Institutional Lender.** Banks, savings and loan associations, mortgage companies, mortgage insurers, mortgage guarantors, insurance companies, other firms or entities customarily affording loans secured by first liens on residences, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and eligible insurers and governmental guarantors.

1.16 **Lessees.** The party entitled to present possession of a leased Unit whether a lessee, sublessee or assignee.

1.17 **Limited Common Elements.** A portion of the common elements allocated by this Declaration or by operation of N.C.G.S. Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units. As used herein, the term "Limited Common Elements" shall also mean and refer to the following:

- A. Limited Common Elements as may be shown on the Plats and Plans recorded in Condominium Plat Book 12, Pages 346 et seq., New Hanover County Registry, or as shown on Exhibit "B" to this Declaration or otherwise by the Declarant.

1.18 **Occupant.** Any person or persons in possession of a Unit including unit owners, the family members, lessees, guests and invitees of such person or person and family members of such guests and invitees of such lessees.

1.19 **Person.** A natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.20 **Property.** The real estate described on Exhibit "A" hereto attached, and the real estate described on Exhibit "A-1" hereto attached, if added by the Declarant pursuant hereto, together with all improvements now or hereafter constructed or locate thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.21 **Purchaser.** 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 years, or (ii) as security for an obligation.

1.21 **Residential purposes.** Use for dwelling or recreational purposes, or both.

1.22 **Security for an Obligation.** The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, purchaser's interest under a Sheriff's certificate of sale during the period of redemption or the holder's interest in a lien.

1.23 **Security Holder.** Any person owning a Security for an obligation in a Unit.

1.24 **Special Declarant Rights.** Rights reserved herein and in the By-Laws for the benefit of the Declarant to complete improvements indicated on Plats and Plans filed with the Declaration (N.C.G.S. Section 47C-2-109); to exercise any development right (N.C.G.S. Section 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (N.C.G.S. Section 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 (N.C.G.S. Section 47C-2-116); to make the condominium part of a larger condominium (N.C.G.S. 47C-2-121); or to appoint or remove any officer of the Association or any executive board member during any period of declarant control (N.C.G.S. Section 47C-3-103 (d)).

1.25 **Unit.** A physical portion of the Condominium designed for separate ownership or occupancy, together with its percentage of undivided interest in the Common Elements as set forth in Exhibit "C". Each Unit is designated and delineated in the Plats and Plans. All Units shall be used for residential purposes as herein defined.

1.26 **Unit Boundaries.** Except for those Units containing additional unenclosed areas for the optional future construction of garages, decks, or patios, the boundaries of each Unit, both as to vertical and horizontal planes, as shown on the plats and plans, are the undecorated surfaces of the perimeter walls, unfinished and unscreened surfaces of the screened walls of the porches, exterior doors and exterior windows facing the interior of the Unit, the undecorated surface of the ceiling facing the interior of the Unit, and the topmost surfaces of the sub-flooring. The Unit shall accordingly include the decoration on all such interior and topmost surfaces, including, without limitation, all of the paneling, tiles, wallpaper, paint, finished flooring, screening on the porches, and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and all fixtures and improvements within the Unit boundaries as defined in the first sentence of this Paragraph 1.26. The delineation between items which are part of the Unit and items which are part of the Common Elements shall be as set out in N.C.G.S. Section 47C-2-102. For those Units containing additional unenclosed

areas for the optional future construction of garages, decks, or patios, the additional un-enclosed areas of the Unit shall extend from the surface of the area within the perimeters of the additional areas of the Unit as shown on the aforesaid plat up to and including a cubical of space twenty (20) feet above the surface and perpendicular to the boundaries of the additional areas of the Unit extended upward to form a square or rectangular cube of enclosed space. Any garage, deck, patio, or any other structure constructed within the confines of the said additional areas shall be and become an integral part of the said Unit. If such structures are constructed as herein provided, the unit boundary shall then be the undecorated surfaces of the perimeter walls, unfinished and unscreened surfaces of the screened walls of the porches, exterior doors and exterior windows facing the interior of the Unit, the undecorated surface of the ceiling facing the interior of the Unit, and the topmost surfaces of the sub-flooring or concrete.

**1.27 Unit Owner.** The Declarant or other person who owns a Unit in fee simple, but does not include a person having an interest in a Unit solely as security for an obligation.

## ARTICLE II

### SUBMISSION OF PROPERTY TO THE ACT

**2.1 Submission.** Declarant hereby submits the Property to the Act.

**2.2 Name.** The Property shall hereafter be known as **SEAGATE VILLAGE, A CONDOMINIUM, PHASE 1.**

**2.3 Division of Property into Separately Owned Units.** Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into four (4) units as shown on the Plats and Plans and does hereby designate all such Units for separate ownership.

**2.4 Limited Common Elements.** The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit as described in Section 1.17.

**2.5 Plats and Plans.** The plat of the Condominium is recorded in Condominium Plat Book 12 at Pages 346 et seq., New Hanover County Registry. The plat complies with N.C.G.S. Section 47C-2-109.

**2.6 Encumbrances.** The liens, defects and encumbrances on the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit "D" attached hereto.

**2.7 Condominium Ordinance.** The Condominium is not subject to any zoning, subdivision, building code, or other real estate use law, ordinance or regulation (ii) imposing conditions or requirements upon a condominium that are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to N.C.G.S. Section 47C-1-106 for the purpose of providing marketable title to the Units in the Condominium.

**2.8 Declarant's Right to Add Additional Real Estate.** Declarant expressly reserves the right to add the additional real estate to the Condominium, and in connection therewith to reallocate the allocated interests in the common elements to each Unit. All or part of the additional real estate identified and described on Exhibit "A-1" may be added to the Condominium at different times and in different phases but no later than December 31, 2009. No assurances are made in regard to the order in which such portions may be added. Declarant shall have no duty or obligation of any kind to add any or all of the additional real estate. The method of adding the additional real estate to the Condominium shall be pursuant to N.C.G.S. Section 47C-2-110.

### ARTICLE III

#### THE MANAGEMENT OF THE CONDOMINIUM

**3.1 Organization of Unit Owners' Association.** A unit owners' association known as **SEAGATE VILLAGE OWNERS ASSOCIATION, INC.**, a North Carolina Nonprofit Corporation, has been organized to manage the Condominium. The Association is hereby granted the authority to enforce the provisions of this Declaration, to levy and collect assessments as hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and the Common Elements as the Board of Directors of the Association deems in the best interests of the Association.

**3.2 Powers of Unit Owners Association.** The Association shall have the powers set forth in N.C.G.S. Section 47C-3-102, subject to the restrictions set forth in N.C.G.S. Section 47C-3-102(b).

**3.3 Board of Directors and Officers.** Except as provided in the By-Laws, the members of the Board of Directors and the Officers shall be governed by the terms and conditions set forth in N.C.G.S. Section 47C-3-103.

**3.4 Management Agreements.** Any management agreement between the Declarant or the Association and a professional manager or any other agreement providing for services of the developer, sponsor, or Declarant shall not exceed a term of three (3) years and shall be subject to renewal by the consent of both parties and shall be consistent with Section 17.12 of this Declaration.

## ARTICLE IV

### EASEMENTS

**4.1 Encroachments.** If, by reason of the construction, reconstruction, rehabilitation or alteration of the improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of any Unit now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each encroachment exists, subject to the terms of N.C.G.S. Section 47C-2-114. However, in no event shall an easement for such encroachment be created if the encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

**4.2 Easements Through Walls.** Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

**4.3 Easements in Common Elements.** The Common Elements shall be, and the same are hereby, declared to be subject to a perpetual non-exclusive easement in favor of all Unit Owners for use by them and their immediate families, guests and invitees for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Unit Owners. Notwithstanding the above, the Association or the Declarant shall have the exclusive right to establish the rules and regulations pursuant to which the Unit Owners may be entitled to use the Common Elements, including the right to make permanent and temporary assignments of unassigned parking spaces and to establish regulations concerning the use thereof. The Declarant and the Association shall have the right to grant permits, licenses and easements over the Common Elements, for utilities, roads and other purposes necessary for the proper operation of the Property.

**4.4 Easements to Repair, Maintain, Restore and Reconstruct.** Wherever in, and whenever by, this Declaration, the By-Laws of the Association, or of the Act, a Unit Owner, the Association, the Board, or any other person is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

**4.5 Declarant's Easement.** Pursuant to N.C.G.S. Section 47C-2-116, Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary to discharge its obligations, exercise Special Declarant Rights and complete the development and construction of the Condominium. The easements shall exist as long as reasonably necessary for such purposes.

**4.6 Utility Easements.** Easements are reserved throughout the condominium property, units, and common elements, as may be required for the installation, maintenance, repair, and replacement of all sewer, water, electrical power and telephone lines, water meters, water distribution machinery, pipes, mains, conduits, poles, transformers, and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility services in order to adequately serve the Units. This Declaration is subject to easements of record.

**4.7 Easements for Emergency Vehicles.** All lawful agencies of the City of Wilmington, New Hanover County, the State of North Carolina, and the United States Government shall have a perpetual nonexclusive easement to enter upon all roadways and driveways for purposes of maintaining the safety, health, welfare, police and fire protection of the citizens of the City of Wilmington, New Hanover County, and the State of North Carolina, including the residents of the Condominium.

**4.8 Easement to Run With Land.** All easements and rights described in this Article are appurtenant easements running with the land and, except as otherwise expressly provided in this Article, shall be perpetually in full force and effect and shall inure to the benefit of and be binding upon the Declarant, the Association, Unit Owners, Occupants, Security Holders and any other persons having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all of the easements and rights described in this Article, whether or not specifically mentioned in any such conveyance or encumbrance.

## ARTICLE V

### EMERGENCY RIGHT OF ENTRY

5.1 In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is then present, the Board of Directors of the Association, or any other person authorized by it, or the Managing Agent, shall have the right to immediately enter the Unit to remedy or abate the cause of the emergency.

## ARTICLE VI

### RESTRICTIONS

**6.1 Compliance Requirements.** Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the By-Laws, and the rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit owner or any person adversely affected for recovery of damages, injunction or other relief.

## 6.2 Use Restrictions.

(a) **Residential Purposes only.** The Units shall be occupied and used By Unit Owners and Occupants for residential purposes only.

(b) **Signs.**

(1) **By Unit Owners.** No “For Sale” or “For Rent” signs or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board.

(2) **By Declarant.** Declarant may maintain signs on the Common Elements advertising the Condominium until all Units have been conveyed to owners other than Declarant. Declarant shall remove all signs not later than thirty (30) days after all of the Units have been conveyed to owners other than Declarant and shall repair all damage done by removal of such signs. All such signs must comply with all applicable federal, state and local laws and ordinances.

(c) **Obstruction of Ways.**

(1) Common sidewalks, driveways, entrances or passageways shall not be obstructed or used by any Unit Owner for any purpose other than ingress to and egress from the Units.

(2) Unit Owners, members of their families, their guests, residents, tenants and/or lessees shall not use sidewalks, driveways, entrances or passageways as play areas.

(d) **Personal Property in Common Elements.** Except as to the areas termed Limited Common Elements, no article of personal property shall be placed on or in any of the Common Elements except for those articles of personal property which are the common property of all of the Unit Owners.

(e) **Parking of Vehicles.** No vehicle belonging to or being under the control of a Unit Owner or a member of the family or a guest, tenant, lessee or employee of a Unit Owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exit from a building. Vehicles shall only be parked in marked parking spaces and not on any grassed or landscaped areas.

- (f) **Disturbances.** Unit Owners and Occupants shall exercise reasonable care to avoid making or permitting to be made loud, disturbing or objectionable noises and in using, playing, or permitting to be used or played musical instruments, radios, phonographs, television sets, amplifiers and any other instruments or devices in such manner as may disturb or tend to disturb Unit Owners, tenants or Occupants of other Units.
- (g) **No Liability for Storage of Articles.** The Association assumes no liability for, nor shall it be liable for, any loss or damage to articles stored in the Common Elements or other storage areas.
- (h) **Plants.** No Unit Owner shall remove plants of any description from the Property without the prior written consent of the Board of Directors. Any Unit Owner wishing to plant flowers, trees, or shrubs outside of his limited common area must obtain written permission from the Association.
- (i) **No Subdivision of Units.** Except for the subdivision of Units by Declarant pursuant to N.C.G.S. Section 47C-2-110, no Unit may be subdivided into a smaller dwelling unit or added to or incorporated into any other Unit except with the unanimous written approval of all members of the Association. Any such permitted subdivision of Units shall be pursuant to N.C.G.S. Section 47C-2-113.
- (j) **Allocation of Common Elements, Interests, Votes and Common Expense Liabilities.** The allocation of Common Elements, Interests, Votes and Common Expenses liabilities shall be pursuant to N.C.G.S. Section 47C-3-107 and as set forth on Exhibit "C" attached hereto and incorporated herein by reference. Each Unit in the Condominium shall have appurtenant thereto an Allocated Interest in the Common Elements and Common Expense Liability equal to the share of every other Unit, except for minor deviations due to rounding off of percentages. Each Residential Unit will have one vote in the Association. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entireties. The Allocated Interests are subject to reallocation as provided in Section 18 below.
- (k) **Conveyance or Encumbrance of Common Elements.** Any conveyance or encumbrance of the Common Elements shall be pursuant to N.C.G.S. Section 47C-3-112.

- (1) **No Immoral Purposes.** No immoral, improper, offensive or unlawful use shall be made of any Unit or of the Common Elements, or any part thereof; and all laws, ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed.
- (m) **Units Owned by Corporations.** A Corporate member other than the Declarant shall restrict use of its Units to its principal officers or directors or their guests, or to lessees. Such corporate member shall annually sign and deliver to the Association a written statement naming the parties entitled to use its Units, together with a written covenant of the user agreeing to comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations and acknowledging that the right of use shall exist only so long as the corporation remains a member of the Association. Upon demand by the Association for any reason, the corporate member shall promptly remove the user within ten (10) days of receipt of notice, failing which the Association, as agent of the Unit Owner, may take whatever actions it deems appropriate to remove the user. All costs incident to such action, including court costs and attorney's fees, shall be assessed against the Unit and Unit Owner involved, and shall become a lien against such Unit, to the same extent allowed under Article VII of this Declaration.
- (n) **Alterations/Structural Modifications.** Except as hereinafter provided, without the prior written consent of Declarant or the Association, no Unit Owner shall permit any alteration or structural modification to their Unit. Such consent may be withheld if the Declarant or a majority of the Board of Directors determines, **in their sole and absolute discretion**, that the modification or alteration would in any manner adversely affect the Condominium or any Unit Owner. Except as hereinafter provided, no Unit Owner shall cause any modifications or alterations to be made to the exterior of the Condominium, including painting or other decoration, or the installation of electrical wiring, television or radio antennae, machines or air conditioning units, which may protrude through the walls or roof of the condominium, or in any manner change the appearance of any portion of the building not within the walls of each Condominium Unit. No construction, alteration, or installation may be commenced until the Declarant or the Association approves of the plans and specifications, and the Declarant or the Association shall have the absolute and unqualified right to reject any proposed construction, installation, or alteration which fails to qualify under the specifications contained herein.

As herein provided, and as provided on the plat, the Declarant has established Additional Areas adjacent to some of the Units for the future construction, by the Unit Owner, of garages, decks, and patios. As hereinbefore provided in Paragraph 1.26, the airspace within these additional areas, up to a height of 20 feet, shall be a part of the Unit to which they adjoin. At the option of the Unit Owner, the Unit Owner may construct a garage, deck, patio, or other structure, if approved by the Declarant, or after the expiration of the Declarant Control Period, by the Board of Directors of the Association or an Architectural Control Committee established by the Board of Directors for the purpose of reviewing, approving, or denying such proposed construction. Any construction within the areas contemplated herein shall be subject to the following procedures, criteria, and requirements:

1. Until all units are sold, the Declarant shall have total discretionary review over all proposed alterations or construction. The Unit Owner shall provide for Declarant's review copies of all plans and construction blueprints, site drawings, materials lists, names of the general contractor and any subcontractors, proposed impact on existing utility lines and proposed methods of locating utilities or relocating any existing utility lines, impact on surrounding properties and common areas, construction timetable, and any other information that the Declarant shall request.
2. The Declarant shall have 30 days to review all documentation provided by the Unit Owner, which period shall begin upon Declarant's receipt of all documentation and information requested by Declarant. The Declarant, in its sole and absolute discretion, for any reason whatsoever, may reject, request modifications, or approve the proposed construction.
3. If the construction is approved by the Declarant, the Owner must obtain all building permits required for the construction project. All construction must be performed pursuant to the applicable government building codes and must be properly inspected by the local building inspectors during construction.
4. Any expenses for the location or relocation of utility lines and any costs for any damages caused to the common areas or any units shall be immediately paid by the Unit Owner.
5. All construction shall be performed so as to have minimal impact on the other unit Owners. The Declarant shall have the right to establish allowable hours and times for construction activity and the violation of any requests by Declarant shall be grounds