

93/6

BOOK PAGE

1293 0290

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

JUN 28 2 26 PM '85

INDEX

TO

DECLARATION

SPINNAKER POINTE CONDOMINIUM

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
1.	Submission of Property	1
2.	Survey and Description of Improvements	1
3.	Plan of Development and Scope of Declaration	2
4.	Dwellings, and Common Element	3
5.	The Nature and Incidents of Unit Ownership	4
6.	Restrictions Against Time Sharing	5
7.	Condominium Subject to Restrictions, Etc.	5
8.	Easements	5
9.	Restrain Upon Separation and Partition of Common Elements	6
10.	Easement for Air Space	7
11.	Administration of Spinnaker Pointe Unit Owners Association, Inc.	7
12.	Residential Use Restriction Applicable to Dwellings	7
13.	Use of Common Elements Subject to Rules of Association	7
14.	Condominium To Be Used For Lawful Purposes, Restriction Against Nuisances, Etc.	7
15.	Right to Entry into Dwellings in Emergency	8
16.	Right of Entry for Maintenance of Common Elements.	8
17.	Limitation Upon Right of Owners to Alter and Modify Dwellings	8
18.	Right of Association to Alter and Improve Common Elements and Assessment Therefor	8
19.	Maintenance and Repair by Owners of Dwellings	9
20.	Maintenance and Repair of Common Elements	9

E 91

RETURNED TO Jim MacDonald, Atty.

21.	Reserves for Replacement	9
22.	Working Capital	10
23.	Personal Liability and Risk of Loss of Owner of Dwelling and Separate Insurance Coverage, Etc.	10
24.	Insurance Coverage To Be Maintained by Association: Insurance Trustee, Appointment and Duties: Approval of Insurers By Institu- tional Lender: Use and Distribution of Insurance Proceeds, Etc.	10
25.	Apportionment of Tax or Special Assess- ment If Levied and Assessed Against the Condominium as a Whole.	14
26.	Association to Maintain Registry of Owners and Mortgagees.	15
27.	Mortgagee's Rights.	15
28.	Assessments: Liability, Lien and Enforcement.	16
29.	Termination of Contracts.	20
30.	Termination.	20
31.	Amendment of Declaration.	20
32.	Remedies in Event of Default.	21
33.	Use or Acquisition of Interest in The Condominium to Render User or Acquirer Subject to Provisions of Declaration, Rules and Regulations.	22
34.	Right of Declarant to Sell or Lease Dwellings Owned by It: And Right of Declarant to Representation on Board of Directors of Association.	22
35.	Severability.	23
36.	Liberal Construction and Adoption of Pro- visions of Condominium Act.	23
37.	Declaration Binding Upon Developer Grantor or Declarant, Its Successors and Assigns, and Subsequent Owners.	23
38.	Definitions.	23

3. Plan of Development and Scope of Declaration - The name by which this entire condominium project shall henceforth be known is SPINNAKER POINTE. The Declarant has caused to be constructed upon the real property described on Exhibit "A" hereto attached three (3) multi-unit buildings, containing fifty-four (54) units as well as the common areas and facilities of both the buildings and the real property, all as defined herein and as shown upon the plans contained in Exhibit "C" attached hereto and made a part hereof by reference. The units of the buildings together with their privileges and appurtenances shall be offered for sale to the public by the Declarant as condominium units pursuant to the provisions of Chapter 47A of the General Statutes of the State of North Carolina, subject to the covenants, conditions, restrictions and obligations stated in the Articles of this Declaration, the Articles of Incorporation of the Association, its duly adopted By-Laws and its Rules and Regulations.

The Declarant, by this Declaration, submits only the real property described on Exhibit "A" together with the improvements thereon, to the Act and hereinafter this submission shall be referred to as SPINNAKER POINTE, PHASE I. Nevertheless, the Declarant hereby reserves to itself the exclusive right and option, but not the obligation, to add to or expand the property subject to this Declaration by the addition of all or any portion or portions of the real property described on Exhibit "B" hereto attached, incorporated herein, and made a part hereof by reference in one or more additional phases of SPINNAKER POINTE upon the following terms and in the following manner:

A. Any addition of real property subject to this Declaration, if any, shall occur only by the registration in the Office of the Register of Deeds of New Hanover County, North Carolina, of one or more supplements to this Declaration, which shall be executed only by the Declarant. The addition to or expansion of the real property subject to this Declaration shall be at the sole discretion of the Declarant without consultation with or consent of any unit owner. Every unit owner in SPINNAKER POINTE, all phases, by accepting a deed for a unit therein, shall be deemed to have agreed for himself, his heirs, devisees, successors and assigns to such addition to or expansion of the property subject to this Declaration in accordance with the provisions of this Article; and

B. The right and option as described hereinabove shall terminate on the 1st day of September 2000; and

C. In the event the Declarant adds to the real property subject to this Declaration all of the real property described in this ARTICLE, the Declarant covenants and agrees that no more than a total of 318 units will be added to the 54 units in SPINNAKER POINTE, PHASE I; and

D. The Declarant covenants and agrees that all buildings containing units built upon the real property which may be subjected to this Declaration under this Article shall be no more than four (4) stories in height above ground level situated upon finished grade and shall be constructed with materials like or substantially similar to those used in SPINNAKER POINTE, PHASE I; and

E. It is understood and declared that the undivided fractional or percentage interest owned by each unit owner of units in SPINNAKER POINTE, PHASE I, in the common areas and facilities of SPINNAKER POINTE, PHASE I, is as stated in Exhibit "E" hereunder. However, it is further declared that in the event the Declarant, pursuant to the provisions of this Article, adds to or expands the property, and therefore the number of units, unit owners, and common areas and facilities subject to this Declaration and the jurisdiction of the Association, then consequently the fractional or percentage interest owned by each unit owner of units in SPINNAKER POINTE, all phases, in the expanded common areas and facilities of SPINNAKER POINTE, all phases, shall necessarily have to change from that as established in Exhibit "E"

hereunder. It is further understood that the Act provides that the fractional or percentage undivided interest of each unit owner in the common areas and facilities as expressed in any Declaration shall have a permanent character and shall not be altered except with the unanimous consent of all unit owners expressed in an amended Declaration duly recorded. Therefore, in the event the Declarant adds to or expands the property subject to this Declaration pursuant to this Article, then every unit owner of units in SPINNAKER POINTE, any phase, by the acceptance of the deed for his unit shall be deemed to have specifically agreed for himself, his heirs, devisees, successors and/or assigns that the Declarant shall have the exclusive right and power, as attorney-in-fact for every unit owner, to establish the undivided fractional or percentage interest of each such unit owner in the expanded common areas and facilities of SPINNAKER POINTE, all phases, as well as the right and power to establish the undivided fractional or percentage interest in the expanded common areas and facilities of SPINNAKER POINTE, all phases, to be appurtenant to additional units of SPINNAKER POINTE, and, therefore, (a) the liability of each unit owner for common expenses, not specifically assessed, (b) the interest of each unit owner in any common surplus, and (c) the voting rights in the Association of each unit owner; which such undivided fractional or percentage interests shall be stated in any supplement to this Declaration required to be executed and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in order to expand or add to the property subject to this Declaration as is provided for hereinabove. It is hereby declared and agreed that if and when each additional Phase is added the Declarant shall establish an undivided interest without prior consultation with or consent of any unit owner of any unit in SPINNAKER POINTE, as follows:

(a) All two bedroom Condominium units that do not contain a den shall be assigned a statutory value of \$90,900.00, all two bedroom units with a den or three bedroom units, if any, shall be assigned the value of \$97,122.22 and all one bedroom units, if any, shall be assigned the value of \$84,677.78.

(b) The undivided fractional or percentage interest of each unit contained in Phase I of SPINNAKER POINTE has been determined as reflected on Exhibit "E" by totaling the value of all units, as established for statutory purposes in Paragraph (a) above, and dividing the per unit value by the total value. Therefore to determine the undivided fractional or percentage interest of any unit contained in any and all additional Phases apply the statutory values of Paragraph (a) above to each one, two or three bedroom unit contained in the additional Phases, total the values of all units contained in all Phases and divide the per unit value by the total value to determine the fractional or percentage interest of each unit.

F. Nothing herein shall be deemed to limit or alter the DECLARANT'S right, hereby reserved, to vary the internal layout, size, or configurations of any units hereafter constructed so long as the Declarant substantially conforms with the provisions of this Article.

G. Prior to the submission of any additional Phases to the development on portions of the real estate described in Exhibit "B" attached hereto, the Declarant shall obtain written consent of the holder of any Deed of Trust or Mortgage covering such additional property.

4. Dwellings, and Common Elements - The Condominium consists of Dwellings, Common Elements, and Limited Common Elements as said terms are hereinafter defined.

Dwellings, as the term is used herein, shall mean and comprise Phase I containing 3 buildings, each of which contain eighteen (18) separate and numbered dwelling units for a total of fifty four (54) units as are designated in Exhibit "C" attached to this Declaration, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and

above the undecorated and/or unfinished inner surfaces of the ceilings of each Dwelling Units, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of all interior load bearing walls and/or unfinished bearing partitions, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to Dwellings, Common Elements and Limited Common Elements.

Common Elements, as the term is used herein, shall mean and comprise all of the real property, improvements, and facilities other than the Dwellings, as same are hereinabove defined, and as are reflected on the plat of Phase I in Exhibit "C" attached hereto and subsequent Phases as they shall be added to the Project. In addition, the Declarant shall construct a boardwalk facility extending from the Eastern portion of the Spinnaker Pointe tract in an easterly direction across the marshes to provide beach access to the Atlantic Ocean and said boardwalk facility shall constitute a common element of the entire Project. Furthermore, common elements shall include easements through dwellings for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility service to Dwellings, Common Elements and Limited Common Elements and easements of support in every portion of a dwelling which contributes to the support of the improvements, and shall further include all personal property held and maintained for the joint use and enjoyment of all of the owners of all such dwellings.

5. The Nature and Incidents of Unit Ownership -

A. 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 SPINNAKER POINTE, PHASE I, and future phases, if any. The undivided interest in the common areas and facilities of SPINNAKER POINTE, PHASE I, appurtenant to each of the 54 units of SPINNAKER POINTE, PHASE I, is as shown upon Exhibit "E" hereto attached.

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

B. No unit may be divided or subdivided into a smaller unit or units than as shown on Exhibit "C" hereto, nor shall any unit or portion thereof be added to or incorporated into any other unit unless written approval is first obtained from the Board of Directors of the Association as provided herein. 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 describes said unit by the letter/numerical designation 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 prohibiting tenants in common, joint tenants, or as tenants by the entirety.

C. 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 SPINNAKER POINTE, all phases, 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. Notwithstanding anything above provided in this Article, the Association shall have the exclusive right to establish rules and regulations pursuant to which the owner of any unit, his family, guests and invitees, may be entitled to use the common areas and facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof, and the use of recreation areas.

D. Recognizing that the proper use of a unit by an owner or owners is dependent upon the use and enjoyment of the common areas and facilities in common with the owners of all other units, and that it is in the interest of all owners that the ownership of the common areas and facilities be retained in common by the owners, it is hereby declared that the proportional undivided interest in the common areas and facilities appurtenant to each unit shall remain undivided and no unit owner shall bring or have any right to bring any action for partition or division.

6. Restrictions Against Time Sharing - The dwellings located in Spinnaker Pointe may be owned by an individual, a corporation, a partnership, a joint venture and as tenants in common. No condominium unit shall be offered for sale by any owner or the Declarant on a time sharing basis as defined by the statutes of the State of North Carolina.

7. Condominium Subject to Restrictions, Etc. The dwellings and common elements located on the real property described in Exhibit "A" shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein, governing the use of said dwellings and common elements, and setting forth the obligations and responsibilities incident to ownership of each dwelling and its appurtenant undivided interest in the common elements, and said dwelling and common elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the condominium. The dwellings and common elements located upon real property described in Exhibit "B" shall not be subject to the terms and restrictions of this Declaration until such property becomes a part of the Condominium by dedication of the Declarant in accordance with the terms of this Declaration.

8. 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:

A. In case of any emergency originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, 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.

B. 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 violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the buildings.

C. 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 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.

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

E. The Declarant hereby reserves unto itself the right to grant and relocate easements over any of the common areas and facilities of this phase of SPINNAKER POINTE, to be used for, by, or in connection with any other phases of SPINNAKER POINTE, which may hereafter be erected on the property described in Exhibit "B" hereof, pursuant to this Declaration, as may become necessary for the purpose of the Declarant, its grantee, lessee, successor, or assigns, servicing such adjacent phases with utility services, drainage and easements for ingress and egress and regress.

F. 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 exists 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.

9. Restrain Upon Separation and Partition of Common Elements. It is declared that the percentage of the undivided interest in the common element appurtenant to each dwelling shall remain undivided and no owner of any dwelling shall bring or have any right to bring any action for partition or division. Provided, however, that the co-owners interest in the common elements may be diminished by the addition of future phases as set forth in Paragraph 3 herein.

10. Easement for Air Space. The owner of each dwelling shall have an exclusive easement for the use of the air space occupied by said dwelling as it exists at any particular time and as said dwelling may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

11. Administration of Spinnaker Pointe Unit Owners Association, Inc. To efficiently and effectively provide for the administration of a condominium by the owners of dwellings, a non-profit North Carolina corporation, known and designated as Spinnaker Pointe Unit Owners Association, Inc. shall be organized, and said corporation shall administer the operation and management of the condominium and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions and conditions of this Declaration, and in accordance with the terms of the Articles of Incorporation of Spinnaker Pointe Unit Owners Association, Inc., hereinafter referred to as the Association, and the by-laws of said corporation. A true copy of By-Laws of said Association are annexed hereto and expressly made a part hereof as Exhibit D. The owner or owners of each dwelling shall automatically become members of the Association upon his, their or its acquisition of an ownership interest in title to any dwelling and its appurtenant undivided interest in common elements, and the membership of such owner or owners shall terminate automatically upon each owner or owners being divested of such ownership interest in the title of such dwelling, regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any dwelling shall be entitled, by virtue of such lien, mortgage, or other encumbrance, to membership in the Association, or to any of the rights or privileges of such membership. In the administration of the operation and management of the condominium, said association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, levy and collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the dwellings and common elements, as the Board of Directors of the Association may deem to be in the best interests of the condominium. The Association shall have all powers granted to it as stated in the Articles of Incorporation. The Association shall indemnify the individual members of the Board of Directors of the Association against any claim, action or judgment filed against him as a result of any action taken by the Board of Directors in the administration of the Association.

12. Residential Use Restriction Applicable to Dwellings. Each dwelling is hereby restricted to single family residential use by the owner or owners thereof, their immediate families, guests and invitees; provided, however, that so long as Spinnaker Pointe Ltd., shall retain any interest in the condominium, it may utilize a dwelling or dwellings of its choice from time to time for sales offices or other usage for the purpose of selling dwelling in said condominium. Further still, Spinnaker Pointe Ltd. may assign this commercial usage, right to such other person or entities it may choose; provided, however, that when all dwellings have been conveyed, this right of commercial usage shall immediately cease.

13. Use of Common Elements Subject to Rules of Association. The use of common elements by their owner or owners of all dwellings and all other parties authorized to use the same shall be at all times subject to such reasonable rules and regulations it may hereafter be prescribed and established by the association.

14. Condominium To Be Used For Lawful Purposes, Restriction Against Nuisances, Etc. No immoral, improper, offensive or unlawful use shall be made of any dwelling or of the common elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the condominium shall be observed. No owner of any dwelling shall permit or suffer anything to be done or kept in this dwelling, or on the common elements, which will

increase the rate of insurance on the condominium, or which will obstruct or interfere with the rights of the other occupants of the building or annoy them by unreasonable noises, nor shall any such owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a dwelling, or which interferes with the peaceful possession and proper use of any other dwelling or the common elements.

15. Right of Entry into Dwellings in Emergencies. In case of any emergency originating in or threatening any dwelling, regardless of whether the owner is present at the time of such emergency, the Board of Directors of Association or any other person authorized by it, or the building Superintendent or Managing Agent, shall have the right to enter such dwelling for the purpose of remedying or abating the cause of such emergency, and such right to entry shall be immediate and to facilitate entry in the event of any such emergency, the owner of each dwelling, if required by the Association, shall deposit under the control of the Association a key to such dwelling.

16. Right of Entry for Maintenance of Common Elements. Whenever it is necessary to enter any dwelling for the purpose of performing any maintenance, alteration or repair to any portion of the common elements, the owner of each dwelling shall permit other owners or their representatives, or the duly constituted and authorized agent of Association, to enter such dwelling, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

17. Limitation Upon Right of Owners to Alter and Modify Dwellings. No owner of a dwelling shall permit there to be made any structural modifications or alterations therein without first obtaining the written consent of Association, which consent may be withheld in the event that a majority of the Board of Directors of said Association determine, in their sole discretion, that such structural modifications or alterations would affect or in any manner endanger the Building in part or in its entirety. If the modification or alteration desired by the owner of any dwelling involves the removal of any permanent interior partition, Association shall have the right to permit such removal so long as the permanent interior partition to be removed is not a load-bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provision of utility services constituting common elements located therein. No owner shall cause the balcony abutting his dwelling to be enclosed, or cause any improvements or changes to be made on the exterior of the building, including painting or other decoration, or the installation of electrical wiring, television antenna, machines, or air conditioning units, which may protrude through the walls or roof of the Building, or in any manner change the appearance of any portion of the building not within the walls of such dwelling, nor shall storm panels or awnings be affixed, without the written consent of the Association being first obtained. Nothing contained herein, however, shall prevent the replacement of the air conditioners with similar air conditioning units as initially installed by the Declarant. Additional shelving and interior partitions may be added by the owner entitled to their use. Window dressing including drapes or blinds shall be of a neutral color matching the style and color as originally installed by the Declarant to provide a uniform exterior appearance. No clothes line, hammock or other amenities shall be installed on the balconies of any dwelling that may be exposed to exterior view. Furthermore, no towels or clothing shall be dried or hung from the balcony railings.

18. Right of Association to Alter and Improve Common Elements and Assessment Therefor. Association shall have the right to make or cause to be made such alterations or improvements to the common elements which do not prejudice the rights of the owner of any dwelling, unless such owner's written consent has been obtained, provided the making of such alterations and improvements are approved by the Board of Directors of such Association, and the cost of such alterations and improvements shall be assessed as common expense to be assessed and collected from all of the owners of

dwellings according to the percentages set out in Exhibit E of the Declaration. However, where any alterations and improvements are exclusively or substantially exclusively for the benefit of the owner or owners of a dwelling or dwellings requesting the same, then the cost of such alterations and improvements shall be assessed against and collected solely from the owner or owners of the dwelling or dwellings exclusively or substantially exclusively benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of Association.

19. Maintenance and Repair By Owners of Dwellings. Every owner must perform promptly all maintenance and repair work within his dwelling which, if omitted, would affect the condominium in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each dwelling 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 and sanitary service to his dwelling and which may now or hereafter be situated in his dwelling. Such owner shall further be responsible and liable for maintenance, repair and replacement of any and all window glass, wall, ceiling and floor exterior surfaces, painting, decorating and furnishings, and all other accessories which such owner may desire to place or maintain in his dwelling. Wherever the maintenance, repair and replacement of any items for which the owner of a dwelling is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by Association, the proceeds of the insurance received by Association, or the Insurance Trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair or replacement, except that the owner of such dwelling 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. The balcony floor, walls facing the balcony, and balcony railings attached to his dwelling shall be maintained by the owner at his expense. Provided, however, said owner shall take no action that will alter the exterior appearance of the building. Should the owner fail to provide the maintenance and/or repairs as required, the Association shall have the right to enter the dwelling to accomplish same at the sole cost and expense of the owner and said cost and expense shall be charged against the owner and shall become a lien on his dwelling in like manner as a monthly assessment.

20. Maintenance and Repair of Common Elements. Except as set out below, Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the common elements, including those portions thereof which contribute to the support of the building, but excluding exterior glass and all conduits, ducts, plumbing, wiring and other facilities located in the common elements for the furnishing of utility services to the dwellings and said common elements, and should any incidental damage be caused to any dwelling by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any common elements, the said Association shall, at its expense, repair such incidental damage. The interior surface of walls and floors, and the doors located within the common elements shall be repaired and maintained by the owners of the dwellings to which the exclusive use is reserved, although this shall not include replacement or repair following a fire or other catastrophe or happening for which the Association carries insurance and in such case the insurance proceeds shall be used to replace or repair pursuant to the Article dealing with insurance and damage to common elements.

21. Reserves for Replacement - The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the common areas and those limited

common areas which the Association may be obligated to maintain. The fund shall be maintained out of regular assessments for common expenses.

22. Working Capital - A Working Capital Fund shall be required for the initial months of the Project's operation equal to at least two (2) months assessment for each unit. Each unit's share of the Working Capital Fund will be collected and transferred to the Association at the time of closing of the sale of each unit and maintained in an account for the use and benefit of the Association. (The purpose of the Fund shall be to insure that the Association's Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the Fund are not to be considered as advance payment of regular assessments.)

23. Personal Liability and Risk of Loss of Owner of Dwelling and Separate Insurance Coverage, Etc. The owner of each dwelling may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects and other personal property belonging to such owner and may, at his own expense and option, obtain insurance coverage against personal liability for injury to the person or property of another while within such owner's dwelling or upon the common elements. All such insurance obtained by the owner of each dwelling shall, wherever such provision shall be available, provided that the insurer waives its right of subrogation as to any claims against other owners of dwellings, Association, and the respective servants, agents and guests of said other owners and Association, and such other insurance coverage should be, but is not required to be, obtained from the insurance company from which Association obtains coverage against the same risk, liability or peril, if said Association has such coverage. Risk of loss of or damage to any furniture, furnishings, personal effects and other personal property (other than such furniture, furnishings and personal property constituting a portion of the common elements) belonging to or carried on the person of the owner of each dwelling, or which maybe stored in any dwelling, or in, to or upon common elements shall be borne by the owner of each such dwelling. All furniture, furnishings and personal property constituting a portion of the common elements and held for the joint use and benefit of all owners of all dwellings shall be covered by such insurance as shall be maintained in force and effect by Association as hereinafter provided. The owner of a dwelling shall have no personal liability for any damages caused by the Association or in connection with the use of the common elements. The owner of a dwelling shall be liable for injuries or damage resulting from an accident in his own dwelling, including the balcony, to the same extent and degree that the owner of a house would be liable for an accident occurring within the house. Any rental, sales or management entity utilizing any portion of the common elements shall hold the Association harmless from any claims or demands for property damage or personal injury arising by reason of the acts or negligence of such entity, its employees, servants or agents.

24. Insurance Coverage To Be Maintained By Association: Insurance Trustee, Appointment and Duties: Approval of Insurers By Institutional Lender: Use and Distribution of Insurance Proceeds, Etc. The following insurance coverage shall be maintained in full force and effect by Association covering the operation and management of the Condominium and the said Condominium, meaning the dwellings and common elements, to-wit:

(a) Casualty insurance covering all of the dwellings and common elements, in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the insurance carrier, such coverage to afford protection against (i) loss or damage by fire or other hazards covered by the standard extended coverage or other perils endorsements; and (ii) such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings similar in construction, location and use to the Condominium, including but not limited to vandalism, malicious mischief, wind storm, water damage and war risk insurance, if available.

the renewal of any policy or policies of casualty insurance, nor for the sufficiency of coverage, nor for the form or content of the policies, nor for the failure to collect any insurance proceeds.

The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold same in trust for the purposes herein stated, and for the benefit of Association and the owners of all dwellings and their respective mortgagees, such insurance proceeds to be disbursed and paid by the Insurance Trustee as hereinafter provided. Association, as a common expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Wherever the Insurance Trustee may be required to make distribution of insurance proceeds to owners of dwellings and their mortgagees, as their respective interests may appear, the Insurance Trustee may rely upon a Certificate of the President and Secretary of the Association, executed under oath, and which Certificate will be provided to said Insurance Trustee upon request of said Insurance Trustee made to Association, such Certificate to certify unto said Insurance Trustee the name or names of the owners of each dwelling, the name or names of the Mortgagee or Mortgagees who may hold a mortgage or mortgages encumbering each dwelling, and the respective percentages of any distribution which may be required to be made to the owner or owners of any dwelling or dwellings, and his or their respective Mortgagee or Mortgagees, as their respective interests may appear. Where any insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder or holders of any mortgage or mortgages encumbering a dwelling shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage, and shall not have the right to elect to apply insurance proceeds to the reduction of any mortgage or mortgages, unless such insurance proceeds represent a distribution to the owner or owners of any dwelling or dwellings, and their respective mortgagees, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the owner or owners of any dwelling or dwellings and their respective mortgagee or mortgagees, by reason of loss of or damage to personal property constituting a part of common elements and as to which a determination is made not to repair, replace or restore such personal property. So long as Lenders shall have the right to approve the amount and/or have the right to approve the company or companies with whom said casualty insurance coverage is placed, Lenders shall also have the right to approve the amount of such insurance coverage to be maintained provided, however, said coverage shall be limited to the replacement value of any building.

In the event of the loss of or damage only to common elements, real or personal property, which loss or damage is covered by the casualty insurance, the proceeds paid to the Insurance Trustee to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such common elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the owners of all of the dwellings and their respective mortgagees, the distribution to be separately made to the owner of each dwelling and his respective mortgagee or mortgagees, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the owner of each dwelling and his said mortgagee or mortgagees, if any, shall bear the same ratio to the total excess insurance proceeds as does the undivided interest in common elements appurtenant to each dwelling bear to the total undivided interests in common elements appurtenant to all dwellings. If it appears that the insurance proceeds covering the casualty loss or damage payable to the Insurance Trustee are not sufficient to pay

(b) Public liability and property damage insurance in such amounts and in such form as shall be required by Association to protect said Association and the owners of all dwellings, including but not limited to, water damage, legal liability, hired automobile, nonowned automobile and off premises employee coverage. In no event shall the property damage insurance be less than 100% of the replacement value of the buildings in the Project nor shall the public liability insurance coverage be less than \$1,000,000.00 per bodily injury.

(c) Workmen's Compensation insurance to meet the requirements of law.

(d) Such other insurance coverage, other than title insurance, as the Board of Directors of Association, in its sole discretion may determine from time to time to be in the best interests of Association and the owners of all of the dwellings or as an institutional type lender may reasonably require so long as it is the owner of a mortgage on any dwelling.

All liability insurance maintained by association shall contain cross liability endorsements to cover liability of all owners of dwellings as a group to each dwelling owner.

All insurance coverage authorized to be purchased shall be purchased by Association for itself and for the benefit of all of the owners of the dwellings. The cost of obtaining the insurance coverage authorized above is declared to be a common expense, as are any other fees and expenses incurred which may be necessary or incidental to carrying out the provisions hereof.

All policies of casualty insurance covering the Condominium shall provide for the insurance proceeds covering any loss to be payable to the Insurance Trustee named as hereinafter provided, or to its successor, and the insurance proceeds from any casualty loss shall be held for the use and benefit of Association and all of the owners of all dwellings and their respective Mortgagees, as their interests may appear, and such insurance proceeds shall be applied or distributed in the manner herein provided. Association is hereby declared to be and appointed as Authorized Agent for all of the owners of all dwellings for the purpose of negotiating and agreeing to a settlement as to the value and extent of any loss which may be covered under any policy of casualty insurance, and is granted full right and authority to execute in favor of any insurer a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

So long as any lender or its assignee of its rights in this Declaration (which assignment shall be evidenced by a recordable document, a certified copy of which shall be furnished the Association), hereinafter referred to as lenders, is the holder of a mortgage on any dwelling in the Condominium, said lenders shall have the right to approve the company or companies with whom Association shall place its casualty insurance coverage, and such casualty insurance coverage shall only be placed by Association with such company or companies as are approved by such lenders. At such time as lenders shall not hold a mortgage on any dwellings, then the company or companies, with whom such casualty insurance may be placed shall be selected by Association, and all parties beneficially interested in such insurance coverage shall be bound by such selection of insurance company or companies made by Association.

The Association shall have the right to designate the Insurance Trustee and all parties beneficially interested in such insurance coverage shall be bound thereby.

The Insurance Trustee shall be a banking institution having trust powers and doing business in the State of North Carolina. The Insurance Trustee shall not be liable for the payment of premiums nor for

for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then Association shall deposit with the Insurance Trustee a sum which, together with the insurance proceeds received or to be received, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be deposited by Association with the Insurance Trustee, in said latter event, may be paid by Association out of its Reserve for Replacements Fund, and if the amount in such Reserve for Replacements Fund is not sufficient, then Association shall levy and collect an assessment against the owners of all dwellings and said dwellings in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

In the event of the loss of or damage to more than seventy five (75%) per cent of the dwellings contained in the Condominium which loss or damages is covered by casualty insurance a called meeting of the unit owners shall be held by the Board of Directors and a determination shall be made by a majority vote of the unit owners as to whether or not the common elements and dwellings shall be repaired or replaced or reconstructed and in the event that the unit owners determine that the repairs shall not be made the proceeds of said insurance shall be first applied to any outstanding mortgages on any dwelling or common element and paid on a pro-rata basis to the unit owners in accordance with their percentages of ownership. In the event of the loss of or damage to less than seventy five (75%) per cent of the common elements and any dwellings which loss or damages covered by casualty insurance the proceeds paid to the Insurance Trustee to cover such loss or damage shall be first applied to the repair, replacement or reconstruction, as the case may be, of common elements, real or personal, and then any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any dwelling or dwellings which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the common elements, and the insurance proceeds shall be paid and distributed by the Insurance Trustee to the owners of all dwellings, and to their mortgagee or mortgagees, as their respective interests may appear, such distribution to be made in the manner and in the proportions as are provided hereinbefore. If it appears that the insurance proceeds covering the casualty loss or damage payable to the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Board of Directors of Association shall, based upon reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the common elements and the dwelling or dwellings, sustaining any loss or damage. If the proceeds of said casualty insurance are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to common elements, but should the same not be sufficient to repair, replace or reconstruct any loss of or damage to any dwelling or dwellings, then Association shall levy and collect an assessment from the owner or owners of the dwelling or dwellings sustaining any loss or damage, and the assessment so collected from said owner or owners shall be deposited with said Insurance Trustee so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all common elements, and dwelling or dwellings. In said latter event, the assessment to be levied and collected from the owner or owners of each dwelling or dwellings sustaining loss or damage shall be apportioned between such owner or owners in such manner that the assessment levied against each owner of a dwelling and his dwelling shall bear the same proportion to the total assessment levied against all of said owners of dwellings sustaining loss or damage as does the cost of repair, replacement or reconstruction of each owner's dwelling bear to the cost applicable to all of said dwellings sustaining loss or damage. If the casualty insurance proceeds payable to the Insurance Trustee in the event of the loss of or damage to common elements, and dwelling or dwellings is not in an amount which will pay for the complete repair, replacement or