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

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DECLARATION CREATING UNIT OWNERSHIP
PURSUANT TO THE PROVISIONS OF NCGS 47C, THE NORTH CAROLINA
CONDOMINIUM ACT, FOR THE COLONY CLUB AT LANDFALL, A CONDOMINIUM

THIS DECLARATION, made this 13th day of February 1987, by SMITH and SCOTT, A Partnership, of New Hanover County, North Carolina, hereinafter referred to as the "DECLARANT", pursuant to the provisions of Chapter 47C, North Carolina General Statutes, entitled "North Carolina Condominium Act"; and ROBERT BRIDGERS, Trustee and UNITED CAROLINA BANK, the secured construction lender.

W I T N E S S E T H:

THAT WHEREAS, Declarant is the owner of a certain tract or parcel of land located in the County of New Hanover, State of North Carolina, as more particularly described in EXHIBIT A attached hereto and incorporated herein by reference, the same being also described on a plat or map of the premises, a copy of which is filed of record in Condominium Plat Book 8 at Page 1 in the Office of the Register of Deeds of New Hanover County.

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AND WHEREAS, Declarant desires and intends to divide said real property, and other improvements thereon into fifty (50) Condominium Units as defined under the provisions of the North Carolina Condominium Act, and to sell and convey the same to various purchasers subject to the covenants, conditions, restrictions, limitations, and obligations herein contained to be kept and performed in the manner provided for by and not inconsistent with the North Carolina Condominium Act;

AND WHEREAS, the name of said real property, improvements, building, and condominium units, collectively referred to as the "Project" is to be and shall be known as "THE COLONY CLUB AT LANDFALL, A CONDOMINIUM".

AND WHEREAS, Declarant desires and intends, by the filing of this Declaration, to submit the above-described real property, improvements, and appurtenances thereunto belonging and therein

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contained to Condominium Ownership pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes;

NOW, THEREFORE, Declarant does hereby publish and declare that all of the property described above, in Exhibit A, and in paragraph 3 below, is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, users, limitations, and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of a division of said property into condominium units, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the said real property and improvements, their grantees, successors, heirs, devisees, executors, administrators and assigns.

1. **DEFINITIONS:** Certain terms and provisions as used in this Declaration with its attached and incorporated exhibits shall be defined as follows, unless the context clearly requires and indicates a different meaning:

- (a) "Allocated Interest" shall mean the undivided interests in the common elements, the common expense liability, and votes in the association allocated to each unit.
- (b) "Association of Unit Owners" or "Association" is as defined in the North Carolina Condominium Act and shall mean all of the Unit Owners acting as a group in accordance with this Declaration and the articles of incorporation and bylaws under the name "THE COLONY CLUB AT LANDFALL Homeowners Association, Inc."
- (c) "Board of Directors" or "Executive Board" shall mean the governing body from time to time of THE COLONY CLUB AT LANDFALL Homeowners Association, Inc., a non-profit corporation whose purpose and function is to manage, maintain, operate, provide, care for, and

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administer THE COLONY CLUB AT LANDFALL, A Condominium.

- (d) "Building" shall mean all structures and improvements now or hereafter erected upon the premises.
- (e) "Bylaws" shall mean the Bylaws of THE COLONY CLUB AT LANDFALL Homeowners Association, Inc.
- (f) "Common Areas and Facilities" or "Common Elements" shall have the meaning as set forth in the North Carolina Condominium Act and as more fully described in Paragraph 8 below.
- (g) "Common Expenses" shall mean and include:
 - 1. All sums assessed against the unit owners by the Association;
 - 2. Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;
 - 3. Expenses of heating and cooling the common area and facilities;
 - 4. Expenses agreed upon as common expenses by the Association;
 - 5. Expenses declared as common expenses by the provisions of the North Carolina Condominium Act, by this Declaration, or the Bylaws;
 - 6. Hazard insurance premiums, including fire, flood and extended coverage insurance on the real property and insurance covering the common areas and facilities.
- (h) "Common Interest" shall mean the aggregate of the undivided interests of the unit owners in the common areas and facilities.
- (i) "Condominium" shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by, or on behalf of, the owners of those

portions; provided that real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;

- (j) "Condominium Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations governing the use of the property, as amended from time to time, and all attachments thereto;
- (k) "Declarant" shall mean any person or group of persons acting in concert who (i) as part of a common promotional plan, offer to dispose of interests in a unit or units not previously disposed of, or (ii) reserve or succeed to any special declarant rights;
- (l) "Development rights" shall mean any right or combination of rights reserved by the declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements, and to withdraw real estate from the condominium.
- (m) "Limited Common Element" or "Limited Common Areas or Facilities" shall mean a portion of the common elements allocated by this declaration or by operation of law for the exclusive use of one or more but fewer than all of the units.
- (n) "Mortgage" shall mean a deed of trust as well as a mortgage constituting a lien on a unit together with its undivided percentage interest in the common areas and facilities.
- (o) "Mortgagee" shall mean a beneficiary under a mortgage.
- (p) "Owner" or "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, having an ownership interest of record in a unit within the property, other than a mortgagee or trustee of a deed

of trust.

- (q) "Plans" shall mean and refer to the plans and specifications of the condominium recorded under the name of THE COLONY CLUB AT LANDFALL Condominium in the Office of the Register of Deeds of New Hanover County, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference, the same consisting of 22 pages.
- (r) "Property" or "Real Property" or "Real Estate" shall mean the real property referred to in this Declaration to be divided into condominiums, including the parcel of real estate described in Exhibit A; the buildings and all other improvements and structures thereon; and all articles of personal property intended for common use in connection with same.
- (s) "Special Declarant Rights" shall mean the rights reserved for the benefit of the Declarant to complete improvements indicated on plats and plans filed with this Declaration; to exercise any development rights; to use easements through the common elements for the purpose of making improvements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium; to make the condominium part of a larger condominium; or to appoint or remove any officer of the Association or any executive board member during any period of declarant control.
- (t) "Unit" or "Condominium Unit" shall mean the parts of the property described in paragraph 4 below which are the subject of individual ownership.

The terms "Association", "Building", "Common Areas and Facilities", "Property", "Recordation", "Unit" or "Condominium Unit", "Unit Designation" and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different

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meaning is intended; shall have the meanings as set forth in Section 47 C of the North Carolina Condominium Act.

2. NAME OF CORPORATION: The name by which the property shall be known is "THE COLONY CLUB AT LANDFALL, A Condominium".
3. DESCRIPTION OF PROPERTY ON WHICH THE BUILDING AND IMPROVEMENTS ARE TO BE LOCATED: All of that certain tract or parcel of land with the buildings and improvements thereon erected or hereafter erected, situated and lying in New Hanover County, North Carolina and being more particularly described in a metes and bounds description being attached hereto as Exhibit A.
4. DESCRIPTION OF BUILDING AND UNITS: The Declarant has constructed, or is planning to construct, one of three (3) types of enclosed spaces within the buildings, together with additional areas or space, accompanying the same as defined hereinbelow, and which are intended to or will be sold as dwelling units pursuant to the Act and this Declaration. The deed for any particular unit shall convey such unit by its unit and building designation and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the covenants, conditions restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

The fifteen (15) units are and will be designated by their unit designations, which are units 1-C, 2-C, 3-C, 4-C, 5-B, 6-B, 7-C, 8-B, 9-C, 10-C, 11-C, 12-B, 13-C, 14-B, 15-B. These units and their designations are shown upon the plans of the buildings attached hereto as Exhibit B, which also shows graphically all

particulars of the buildings and its fifteen (15) units, including, but not limited to, the layout, location, ceiling, and floor elevations, dimensions of the units, and the area and location of the common areas and facilities. Reference is hereby made to said plans for the purpose of identifying and locating each unit within the building, as well as identifying its dimensions, approximate areas, and number of rooms. No unit bears the same designation as any other. Any conflict between said plans and this definition shall be resolved by reference to the said plans, which shall control. All units, as well as the additional areas defined as part of each unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the units' perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings and floors of the additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the buildings whether the same now exist or may be caused or created by existing construction, settlement, or movement of the buildings, or by permissible repairs, construction or alteration. All units shall be substantially the same in design, construction and material.

Each unit shall be one of the following models:

UNIT, TYPE A (The Golf Club Residence)

This unit contains 1,800 square feet of heated floor space and occupies a downstairs level only. The downstairs level contains a living room, dining room, kitchen, two bedrooms, two baths and a foyer. In addition, there is a two car carport with storage area.

UNIT, TYPE B (The Honors Residence)

This unit contains 2,220 square feet of heated floor space and occupies a downstairs level only. The downstairs level contains a living room, dining room, kitchen, two bedrooms, a study, two baths; a foyer and an attached storage area. In addition, there is a one car carport.

UNIT, TYPE C (The Oak Tree Residence)

This unit contains 2,600 square feet of heated floor space and occupies the downstairs level and a portion of an upstairs level. The downstairs level contains a living room, dining room, kitchen, two bedrooms, a study, two baths, a foyer and an attached storage area. The upstairs level contains a bedroom and a single bath. In addition, there is a one car carport.

Each unit shall be equipped by the Declarant with and is defined to include its own electrical meter, and a heat pump. The air handling equipment for said heat pump shall be housed within the unit within the storage room designated for said purpose in said plans. The condensing units of said heat pumps shall be housed and stored outside and immediately adjacent to the unit.

Each unit is hereby defined also to include:

1. All non-load bearing partition walls located entirely within the unit;
2. All materials, including, but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the unit; and all window panes, frames, panes and exterior doors (including garage doors);
3. All air handling and condensing units, ducts and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines, located within the unit; provided, however, that the portion of said

lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as defined hereinabove.

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

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as a part of the units is defined hereby as a part of the common areas and facilities of the condominium.

The specifics, such as style, construction, materials, and finishes of the buildings and their units are best described in the plans of the buildings which are shown in Exhibit B, attached hereto and made a part hereof by reference, and which shall control in case of conflict with the provisions hereof. Reference is also made to the plans of the buildings and their units for the models therein.

Declarant reserves development rights and special declarant rights as set forth in paragraphs six (6) and seven (7) below.

The Architect's Certificate given pursuant to N.C.G.S. 47C affirming that the premises, as built, accurately reflects the plans and specifications according to the requirements of the statute and that the plans fully and accurately depict the layout, ceiling and floor elevations, unit numbers, and dimensions of the units as built, as well as the area and

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location of the common areas and the area and location of the facilities affording access to each unit, and that said plans have been filed and approved by the building inspector of New Hanover County, North Carolina. Said architects certification is attached hereto on Exhibit C.

5. UNIT DESIGNATIONS: The unit designations of each condominium and building, its location, its dimensions, approximate area, number of rooms, and common areas and facilities to which it has immediate access, and other data concerning its proper identification are set forth on Exhibit B, attached hereto and in paragraph 4 above. Each unit is bounded both as to horizontal and vertical boundaries by the interior surfaces of its perimeter walls, ceilings, and floors which are shown on said plans, subject to such encroachments as are contained in the building, whether the same now exist or may be caused or created by construction, settlement, or movement of any building, or by permissible repairs, construction or alterations.
6. DEVELOPMENT RIGHTS: The Declarant reserves the following development rights with respect to the condominium:
- (a) To add adjacent real estate to the condominium;
 - (b) To create additional limited common elements;
 - (c) To create additional common elements; and
 - (d) To create additional condominium units; provided that the maximum number of additional condominium units, which the declarant reserves the right to create is thirty five (35) which means that the total number of condominium units shall exceed fifty (50) units.

These development rights, if exercised, must be exercised by the Declarant not later than January 1, 1991.

These development rights may be exercised with respect to different parcels of real estate at different times. The Declarant cannot make any assurances as to the boundaries of these parcels, which may be employed in subsequent phases of the condominium nor can the Declarant make any assurances as to the order in which the subsequent phases will be developed, if at

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all. In addition, if the Declarant exercises its development rights with respect to one or more of the subject subsequent phases, the Declarant shall not be required to exercise those rights with respect to any other phase.

In the event that the Declarant creates additional condominium units, which the Declarant is not obligated to do, the same shall be created on the property described in Exhibit D attached hereto, in phases, with respect to different parcels of real estate, subdivided out of said property at different times.

If the Declarant creates additional condominium units, the same shall be accomplished by the Declarant's filing, with the Office of the Register of Deeds of New Hanover County, North Carolina, an amendment or amendments to this Declaration.

In the event that the Declarant creates additional condominium units, as set forth above and as more particularly described in Exhibit D, attached hereto, the common areas and common facilities will be adjusted and reallocated based upon the relative values assigned by the Declarant solely for this purpose. The value so assigned shall be based upon the approximate relationship that the fair market value of the unit, as of the date of the Amendment to this Declaration bears to the then aggregate fair market value of all of the units, including the newly created units, as of that date; provided, however, that such values may not necessarily reflect or represent the selling price of such units; and no appraisal, sale or market value transaction at a greater or lesser price than the assigned value shall be interpreted as requiring or permitting any change in the percentage undivided interest assigned at that time.

7. SPECIAL DECLARANT RIGHTS: The Declarant reserves the following special declarant rights with respect to the condominium:

- (a) To complete improvements indicated on plats and plans filed with this declaration;
- (b) To exercise any of the development rights stated in

- paragraph six (6) above;
- (c) To use easements through the common elements (common area) of the condominium for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (See Exhibit D, attached hereto);
 - (d) To make the condominium part of a larger condominium; and
 - (e) To appoint or remove any officer of the association or any executive board member during any period of Declarant control.
8. COMMON AREAS AND FACILITIES: The common areas and facilities consist of all of the property other than the units as described in Paragraphs 4 and 5 above and any exhibits attached hereto, including the following:
- (a) All central and appurtenant installations for services such as power and light, water and gas, except the heat pumps, compressors, and their applicable wiring and connections, as limited in paragraph 5 above, and such heating and cooling thermostats as are located within the interior perimeter walls, floors, and ceilings of a unit.
 - (b) All foundation, girders, beams, supports, and other structural members;
 - (c) All roofs and exterior walls, all interior load-bearing columns and weight-supporting walls beneath and outside of the horizontal and vertical boundaries of the interior surfaces of the perimeter walls, ceilings, and floors of the units, as set forth on Exhibit A, the plans of said units;
 - (d) All other areas shown on the plans, Exhibit B, which are not part of the individual units or otherwise designated;
 - (e) All other parts of the property and all apparatus and installations existing in the buildings and upon the property for common use, or which are necessary or

convenient to the existence, maintenance, or safety of the property.

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owners as set forth in Exhibit E, attached hereto and incorporated herein by reference; provided that the percentage of undivided interest allocated to each unit owner in the common areas and facilities is subject to change if the Declarant creates additional condominium units as set forth in paragraph six (6) above. The percentage of undivided interest of each unit owner in the common areas and facilities is appurtenant to the unit owner by each said owner. This appurtenance may not be separated from the unit to which it appertains and such appertenance shall be deemed to be conveyed or encumbered or to otherwise pass with the unit whether or not expressly mentioned or described in a conveyance or other instrument describing the premises.

The percentage of undivided interest in the common areas appurtenant to each unit is based on relative values assigned by the Declarant to each unit solely for this purpose. The value so assigned is based upon the approximate relationship that the fair market value of the unit at the date of this Declaration bears to the then aggregate fair market value of all the units having an interest in the common areas and facilities; provided, however, that such values do not necessarily reflect or represent, appraisal, sale, or market value recited herein shall be interpreted as requiring or permitting any change in the percentage of undivided interest assigned herein, as set forth in Exhibit D.

9. LIMITED COMMON AREAS AND FACILITIES: Limited common areas and facilities shall mean and include those common areas and facilities reserved for use by a certain unit or units to the exclusion of other units, including the privacy areas, patios, decks, porches, storage rooms and driveways appurtenant to each of the units. Each unit owner is hereby granted an exclusive and irrevocable license to use and occupy such limited common areas and facilities as are associated with

such unit owner's unit, said license to exist in favor of said owner, his invitees and guests. The cleanliness and orderliness of the limited common areas and facilities shall be the responsibility of the individual unit owner; but the responsibility for maintenance, painting, repair, and replacement together with control over the exterior decoration and appearance shall remain with the Association.

10. CONDOMINIUM ASSOCIATION: A non-profit North Carolina corporation known and designated as THE COLONY CLUB AT LANDFALL Homeowners' Association, Inc., (the "Association"), has been or will be organized to provide for the administration of the property; and said corporation shall administer the operation and maintenance of the property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Bylaws, a copy of which is attached hereto as Exhibit F. Each unit owner shall automatically become a member of the corporation upon his acquisition of an ownership interest in any unit and its apurtenant undivided interest in the common areas and facilities; and the membership of such unit owner shall terminate automatically upon such unit owner being divested of ownership interest in the title to such unit. In the operation and management of the property, the Board of Directors shall have the power to enforce the provisions of this Declaration; to levy and collect assessments in the manner herein provided; to grant permits, license and easements over the common areas for utility, roads and other purposes reasonably necessary for the proper maintenance and operation of the condominium; and to adopt, promulgate and enforce such rules and regulations governing the use of the units and common areas and facilities as the Board of Directors may deem to be in the best interest of the Association in accordance with the Bylaws.

The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any Officer or Officers of the Association until such time as the first of the

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following events occurs: (i) 60 days after conveyance of 67 percent of the units which may be created to unit owners other than a Declarant; (ii) 2 years after all Declarants have ceased to offer units for sale in the ordinary course of business; (iii) 2 years after any development right to add new units was last exercised; or (iv) Declarant voluntarily surrenders this right, but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the association or executive board, as described in an express Amendment to this Declaration, duly recorded in the New Hanover County Registry, executed by the Declarant, be approved by the Declarant before they become effective.

The above-referenced Declarant control over the Board of Directors is limited as follows: Not later than 60 days after conveyance of the units which may be created to unit owners other than a Declarant, at least one member and not less than 25 percent of the members of the Board of Directors shall be elected by unit owners other than the Declarant. Not later than 60 days after conveyance of 50 percent of the units which may be created to unit owners other than a Declarant, not less than 33 percent of the members of the Board of Directors shall be elected by unit owners other than the Declarant. Further, not later than the termination of any period of Declarant control, the unit owners shall elect a Board of Directors of at least three (3) members and a majority of this Board of Directors must be unit owners.

Whenever the Declarant shall be entitled to designate and select any person or persons to service on the Board of Directors of the association or as officers of the association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the Bylaws of the Association; and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors or as Officers and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Officer so removed for the remainder of the unexpired term of any Director or Officer so removed. Any