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2007 MAY 23 11:29:50 AM
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INSTRUMENT # 2007026189

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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM FOR THE
COURTYARD AT MASONBORO TOWNHOMES
CONDOMINIUM
PHASE I

Masonboro Ventures LLC, a North Carolina Limited Liability Company with place of business located at 3317 Masonboro Loop Road, Suite 150, City of Wilmington, New Hanover County, North Carolina 28409 (hereinafter defined as "Declarant"), does hereby make, declare and establish this Declaration of Condominium as, and for, the plan of ownership of THE COURTYARD AT MASONBORO TOWNHOMES CONDOMINIUM, being the property and improvements hereinafter described.

WITNESSETH:

WHEREAS, the Declarant is the Owner of certain real property in New Hanover County, North Carolina, more particularly described and defined in Exhibit A attached hereto and made a part hereof and as further shown upon those maps or plats prepared by Michael Underwood and Associates, and recorded in Condominium Plat Book 17 at Pages 38 through 40 in the Office of the Register of Deeds of New Hanover County (hereinafter called "Property").

WHEREAS, Declarant has constructed on the Property, a condominium development which shall initially consist of four (4) residential Units (subject to Declarant's right to combine Units and other reserved Declarant rights) established in accordance with the provisions of the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and wishes to sell and convey said Units to purchasers subject to the covenants, conditions and restrictions herein reserved.

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, uses, limitations, and obligations in furtherance of a plan for the division of the Property into Condominium Units and which shall be deemed to run with the land and be binding on all parties having any rights, title, or interest in the land or any part thereof, their heirs, successors and assigns.

1.

ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

1.01 Submission. Declarant does hereby submit the Property and the improvements and appurtenances thereto to condominium ownership pursuant to the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) as the same now exists or may be hereafter amended, and hereby declares that the Property shall be subject to the uses, restrictions, covenants, easements, limitations, obligations, and governing authority set forth in the Declaration of Condominium and as the same may be hereafter amended.

1.02 Name. The Property and improvements thereof shall be known as The Courtyard at Masonboro Townhomes Condominium (hereinafter referred to as the "Condominium"). The Initial Phase created hereunder shall be known as Phase I. The name of the Association shall be Courtyard at Masonboro Condominium Association, Inc. (hereinafter referred to as the "Association").

1.03 Division of Property into Separately Owned Units. Declarant, pursuant to the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into four (4) Units and does hereby designate such Units for separate ownership, subject, however to the provisions of this Declaration.

2.

DESCRIPTION OF PROPERTY AND IMPROVEMENTS

2.01 Property. The legal description of the Property on which the buildings and improvements are to be located is set forth in Exhibit A to this Declaration.

The Unit designation of the Condominium Unit, location, floor plan and typical description are set forth in the Plans (as hereafter defined) for this condominium filed in the New Hanover County Register of Deeds in Condominium Plat Book 17 at Pages 38 through 40. The Unit designation is further set forth on Exhibit B, attached hereto and incorporated by reference herein.

2.02 Other Descriptions. Actual building locations, Limited Common Areas, utility lines, easements, ground elevations, building elevations, and other land and construction information is shown on a plat prepared by Michael Underwood and Associates and recorded in Condominium Plat Book 17, at Pages 38 through 40 in the Office of the Register of Deeds of New Hanover County.

2.03 Additional Properties. The Plat depicts three (3) additional pads which are designated as "Future Development" Tracts Two, Three and Four. These Tracts are specifically excluded from the Declaration at this time and are reserved to Declarant, its successors and assigns. Declarant anticipates that a building shall be constructed upon each of the Future Development tracts which shall be substantially similar to the building constructed upon this Phase I. Declarant further anticipates that Units shall be established within each building which are substantially similar in construction and design to the Units created hereunder. Furthermore, Declarant has identified additional real property upon Exhibit C which may be annexed to this Declaration. Declarant makes no representation as to the size or nature of the buildings which may be constructed upon the Exhibit C property. The maximum number of Units to be constructed and annexed to this Declaration shall be forty-one (41).

The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the Condominium form of ownership, or (ii) imposing conditions or requirements upon a Condominium which are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to G.S. 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

3. DEFINITIONS

THE FOLLOWING SHALL BE DEFINITIONS APPLICABLE TO THIS DECLARATION:

3.01 "Allocated Interest" means the undivided interests in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit.

3.02. "Association" or "Unit Owners' Association" means that non-profit corporation, the name of which shall be Courtyard at Masonboro Condominium Association, Inc. and which shall manage the Common Elements of the Condominium as specified in this Declaration and its corporate By-laws.

3.03 "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the directors of the Association, and on behalf of the Association, as prescribed in its By-laws.

3.04 "Building" means a structure constructed or erected on the Property which contains one or more Condominium Units.

3.05 "By-laws" means the By-laws of the Association as they now or hereafter exist.

3.06 "Common Elements" shall mean and comprise all portions of the Condominium except Units, but excluding any heating or air-conditioning equipment serving only an individual Unit, and excluding all outdoor light fixtures affixed to the exterior walls of a Unit.

3.07 "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including, but not limited to:

- (1) All sums lawfully assessed against the Unit Owners by the Association;
- (2) Expenses of administration, maintenance, repair, or replacement of the Common Elements;
- (3) Expenses agreed upon as Common Expenses by the Association;
- (4) Expenses declared to be Common Expenses by the provisions of the North Carolina Condominium Act, by the Declaration or by the By-laws;
- (5) Hazard, and such other insurance premiums as the Declaration and/or By-laws may require the Association to purchase;
- (6) Taxes and public assessments levied against the Common Elements not otherwise assessed against the Units;
- (7) Any utilities which are Common Expenses as determined by the Association.
- (8) Assessments levied against the Property by the Courtyard at Masonboro Owners Association pursuant to the Declaration of Easements, Covenants, Conditions and Restrictions for Courtyard at Masonboro recorded in Book 5185 at Page 2752 in the Office of the Register of Deeds of New Hanover County (the "Declaration") as the same may be amended from time in accordance with the Declaration.

3.08 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit.

3.09 "Common Profits" means the balance of all income, rents, profits, and revenues from the Common Elements remaining after the deduction of the Common Expenses or reserves therefore.

3.10 "Common Surplus" means all funds and other assets of the Association, including excess receipts of the Association from assessments, rents, profits and revenues from whatever source in excess of the Common Expenses.

3.11 "Condominium" shall mean all Condominium Units, the Common Elements and any Limited Common Elements, as said terms are hereinafter defined, and all appurtenances, all comprising the Property located on Exhibit A attached hereto.

3.12 "Condominium Unit" or "Unit", as the term is used herein shall mean and comprise the numerically identified Unit which is designated in Exhibit B attached hereto and which shall be the physical portion of the Condominium designated on that Exhibit for separate ownership or occupancy. Mechanical equipment, stairways and appurtenances located within any Unit and designed to serve only that Unit, such as appliances, heating and air-conditioning units, cabinets, fixtures and the like shall be part of the Unit.

3.13 "Declarant" means the named Declarant on page one (1) hereof, and its successors and assigns to whom any of its rights hereunder are expressly transferred, in whole or in part, or who succeeds to any Special Declarant Right.

3.14 "Declarant Control Period" or "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of (i) two (2) years after the Declarant has ceased to offer all Units (including any Units which may be created pursuant to Special Declarant Rights) for sale in the ordinary course of business, or (ii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the Units (including any Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than the Declarant.

3.15 "Declaration" means this instrument, as amended and duly recorded, by which the Property is submitted to the provisions of the North Carolina Condominium Act, and as it, from time to time, may be amended.

3.16 "Development Rights" means those rights reserved by Declarant herein to create Units, Common Elements, Limited Common Elements within the Condominium, to annex additional units and properties or other rights as may be provided in the North Carolina Condominium Act.

3.17 "Lessee" means any person entitled to present possession of a leased Unit, whether lessee, sublessee or assignee.

3.18 "Limited Common Elements" means those Common Elements allocated for the exclusive use of one but fewer than all of the Units by this Declaration including, but not limited to, the following:

(a) Any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside of the designated boundaries of a Unit and serving only that Unit. If such structures serve more than one Unit, or the Common Elements, they are Common Elements. Subject to the preceding sentence, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(b) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve as single Unit but located outside the Unit's boundaries.

(c) Any other area designated on the Plans as Limited Common Elements, specifically including patios and porches adjacent to a Unit as shown on the Plans.

(d) All heating and air conditioning equipment serving a Unit, but located Outside the Unit's boundaries.

The cost of maintenance and repair of the Limited Common Elements shall be the responsibility of the Owner, or if more than one, Owners of the Unit or Units to which it is allocated on an equal basis.

A Limited Common Element may not be altered or reallocated without the unanimous consent of all Unit Owners whose Units are affected. Any Unit Owners who reallocate a Limited Common Elements among themselves shall first seek and obtain approval from the Board of Directors. Any reallocation of a Limited Common Element, upon approval by the Board, shall be evidenced by an amendment to this Declaration executed by the Unit Owners affected and evidencing executed approval by the Board, shall be evidenced by an amendment to this Declaration executed by the Unit Owners affected and evidencing executed approval by the Association which amendment shall be recorded before it shall become effective. The Unit Owners affected by the reallocation shall pay the cost and expense of preparation of the amendment and the recording thereof; however, the form and substance of the amendment shall be first approved by the Board of Directors or the counsel for the Association.

Common Elements not designated or allocated as Limited Common Elements may not be so allocated to Unit Owners except upon written consent of sixty percent (60%) of the Unit Owners in the condominium. Any such allocation shall be evidenced by an amendment as set forth above.

3.19 "Majority" or "Majority of Unit Owners" means the Owners of more than fifty percent (50%) of the aggregate allocated interests in the Common Elements, as established by this Declaration, assembled at a duly called meeting of the members of the Association.

3.20 "Mortgage" means a mortgage or deed of trust.

3.21 "Mortgagee" means a mortgagee or the owner and holder of a promissory note or other evidence of indebtedness and deed of trust or mortgage which described a Unit or Units as the security property.

3.22 "North Carolina Condominium Act" means the provisions of Chapter 47C of the North Carolina General Statutes as the same now exists or may hereafter be amended, or any new

enactment in substitution or replacement thereof as the same by law may be applied to this Condominium.

3.23 "**Persons**" means any individual, corporation, partnership, Association, business trust, estate, trust, joint venture, government or any subdivision or agency thereof, or other legal or commercial entity.

3.24 "**Plans**" means the plats and plans of the Buildings and Property prepared by Michael Underwood and Associates filed with this Declaration and recorded in Condominium Plat Book 17 at Pages 38 through 40 in the Office of the Register of Deeds of New Hanover County showing thereon graphically all particulars of the buildings and the Units.

3.25 "**Property**" means the real estate described on Exhibit A, together with all buildings and 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 estate.

3.26 "**Unit Boundaries**" means the boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, are the walls, floors and ceiling.

3.27 "**Special Declarant Rights**" means those rights, including Development Rights, permitted by the North Carolina Condominium Act and specified in Article 5 herein.

3.28 "**Unit Designation**" means the identifying number, letter, symbol or combination thereof designating a Condominium Unit and set forth in this Declaration and the Plans.

3.29 "**Unit Owner**" or "**Owner**" means Declarant or any other person, or any combination thereof, who owns a Condominium Unit, but excludes any person having an interest in a Unit solely for security purposes.

4. OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT ALLOCATED INTEREST IN COMMON ELEMENTS

4.01 **Ownership Interest.** Each Condominium Unit shall be held, conveyed and treated as an individual 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 Condominium Unit, an allocated individual interest in the Common Elements. The undivided allocated interest appurtenant to each Condominium Unit shall be as set out in Exhibit B attached hereto and made a part hereof. The Allocated Interest in the Common Elements that is appurtenant to each Condominium Unit is the percentage the area of each Unit bears to the area of all Units. The ownership interest will be modified and amended as the Future Development Tracts are annexed as provided herein.

4.02 **Change in Allocated Interests.** Changes in the allocated ownership interest shall occur in the case of condemnation as set forth in Article 36 herein, as may result from a casualty loss as

specified in Article 21 hereof, as may occur because of exercise of Development Rights reserved by Declarant herein including but not limited to the right to annex additional Units as hereinafter provided, or as otherwise permitted by this Declaration. It is specifically provided that upon annexation and the addition of other Units to this Declaration, the undivided interest shall be reduced to the end that each Unit then subjected to this Declaration shall have the Allocated Interest in the Common Area which is equal to the percentage its area bears to the total area of all Units. For example, if a Unit contains 1,000 square feet and the remaining Units collectively contain 9,000 square feet, the Unit has a 1/10th Allocated Interest in the Common Area.

4.03 No Division of Common Elements. The Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements by an Owner made without the Condominium Unit to which that interest is allocated is void.

5.

SPECIAL DECLARANT RIGHTS RESERVED

The Declarant reserves the following Special Declarant Rights with respect to the Condominium:

(A) The right to complete the Condominium in accordance with the Plans filed contemporaneously with this Declaration.

(B) Declarant may maintain models, management offices, and sales offices for management of the Condominium or sales of Units as follows:

(1) Any Unit or number of Units may be used as models and/or management of sales offices.

(2) Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sale or management offices or models.

(3) Declarant may also maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to a Unit Owner other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

(4) Notwithstanding any other provisions of this Declaration of the By-laws, the Association may maintain an office in the Condominium for management of the Condominium both before and after the sale of all Units to someone other than the Declarant, and both during and after the Declarant Control Period.

(C) The right of access, ingress and egress through the Common Elements for the purpose of discharging Declarant's obligations and all portions thereof, as now or hereafter constituted, or exercising Special Declarant Rights. Without limiting the foregoing, Declarant specifically reserves the right and a lienable easement for itself, its successors and assigns, to go upon the Common Elements for the purpose of constructing improvements upon the pads described in Paragraph 2.01 and the Future Development Tract described in **Exhibit C**.

(D) The right to elect or name persons to the Board of Directors and to name and appoint officers of the Association and to otherwise control the activities of the Board and Association until the rights of Declarant terminate, all as specified in the By-laws or this Declaration during Declarant Control Period.

(E) Subject to the provisions of the North Carolina Condominium Act (the "Act"), Declarant retains and reserves the right to unilaterally alter Unit Boundaries, combine Units, allocate and reallocate ownership interests in the Common Elements and the Limited Common Elements and the Common Expense Liability and change Unit Designations; provided, however, any and all such alterations and changes shall be applicable only to Units owned by the Declarant and shall not change the Unit Boundaries, Allocated Interest, Common Expense Liability or Unit Designations of Units theretofore conveyed by Declarant.

(F) Subject to the provisions of the Act, Declarant reserves the right to annex the Additional Properties to this Declaration in accordance with Article 7 hereof. Notwithstanding the foregoing, the maximum number of Units created shall not exceed forty-one (41).

6.

SUBDIVIDING AND RELOCATING BOUNDARIES OF ADJOINING CONDOMINIUM UNITS; SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS PROHIBITED

6.01(A) Recombination of Condominiums. A Unit may be recombined subject to the restrictions of all relevant codes, ordinances, and regulations of all regulatory and governmental bodies having jurisdiction over the condominium. However, no unit shall have a square footage of less than 1,000 square feet.

The Association, at the expense of the Unit Owners, shall prepare, execute, and record an amendment to the Declaration, including the Plans, recombining said Units.

The amendment to the Declaration must be executed by the Owners of the Units to be recombined, assign identifying numbers to each of the Units created, and reallocate the Allocated Interest formerly allocated to the recombined Units to the new units in any reasonable manner prescribed by the Owner of the recombined Units and permitted by law.

6.01(B) Relocation of Unit Boundaries. The boundaries of Units may be relocated by the affected Unit Owners upon application to, and approval by, the Board of Directors. Any such application must be in such form and contain such data as the Board may require detailing the relocation of the boundaries of the affected Units and the reallocation of their respective Allocated Interest. Such application shall be accompanied by a plat prepared by an engineer or architect registered under N.C.G.S. Chapter 83 or 89C showing the relocation. The Board in its discretion may determine the relocation to be unreasonable. If the Board shall approve the application, or if within thirty (30) days after filing the application with the Board, the Board has not denied the application as being unreasonable, then the Board, at the expense of the Owners affected, shall have prepared an amendment to the Declaration including plats or plans necessary to show the altered boundaries between the adjoining units and their dimensions and identifying numbers and such other information as the applicable statute (presently G.S. 47C-2-112) shall require, and the same be filed of record at which time the relocation shall be effective.

6.01(C) The Allocated Interest in the Common Elements declared to be appurtenant to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the Allocated Interest in Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Condominium Unit.

6.02 Instrument of Conveyance. Any conveyance, mortgage or other instruments which purport to grant any title, right, interest or lien in, to or upon a Condominium Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Condominium Unit and its appurtenant Allocated Interest in Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit as then constituted. Any instrument conveying, devising, encumbering, or otherwise dealing with any Condominium Unit, without limitation or exception, shall be deemed or construed to affect the entire Condominium Unit as then constituted and its appurtenant Allocation Interest in the Common Elements.

6.03 Joint Ownership Not Prohibited. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant Allocated Interest in the Common Elements by more than one person as tenants in common, joint tenants, or as tenants by the entirety.

7.

ANNEXATION OF ADDITIONAL PROPERTY

Declarant specifically retains the right to annex the Additional Property to this Declaration. Declarant shall record an Amendment to this Declaration in accordance with the provisions of G.S. 47C-2-110 which shall assign an identifying number to each new Unit created, and must reallocate the Common Elements and Limited Common Elements thereby created; designating the Unit to which any Limited Common Elements are allocated. Declarant reserves the right to annex Additional Properties at such time and in such order as Declarant, in its sole discretion, deems appropriate and no assurances are made as to the timing or order of such Annexation.

Without limiting any other rights or easements contained herein, Declarant reserves to itself and its designees the right and easement to enter upon all Common Areas as is reasonably necessary to access the Additional Properties and to construct improvements thereon as is anticipated hereby.

8.

THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units, Common Elements and Limited Common Elements 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 Condominium Units, Common Elements and Limited Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant Allocated Interest in the Common Elements, and said Condominium Units, Common Elements, and said Condominium Units, Common Elements and Limited 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.

9.

PERPETUAL NON-EXCLUSIVE EASEMENT
IN COMMON EASEMENTS

9.01 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 of the Owners of the Condominium Units in the Condominium, for their use and the use of their employees, servants, guests, invitees and lessees, for all proper and normal purposes, including, but not limited to the right of access, ingress and egress to and from all public streets, and public walkways and over walkways and parking areas within the Common Elements, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. Each Unit Owner specifically shall grant an easement to maintain all components of the heating and air-conditioning system serving his Unit in their present location and as shown on the Plans.

9.02. Rules and Regulations. Notwithstanding anything provided in this Article seemingly to the contrary, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his employees, servants, invitees and lessees, may be entitled to use the Common Elements, including the right to make permanent and temporary assignments of parking spaces.

9.03 Utilities. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all chutes, flues, pipes, wires, ducts, cables, conduits, and public utilities serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the chutes, flues, pipes, ducts, cables, wires, conduits, public utility lines, and other Common Elements serving such other Units and located in such Unit. The Board of Directors, or its agents, shall have a right of access to each Unit from time to time during reasonable hours as may be necessary to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Common Elements contained therein or accessible therefrom, and to make emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units. Each Unit Owner specifically shall have an easement of access through all other Units as may be reasonably necessary to maintain, repair and replace all components of mechanical systems serving his Unit and to maintain, repair, and replace those portions of his Unit or Limited Common Elements within this sphere of responsibility.

9.04 Structural. Every portion of a Unit, such as a bearing column, and a bearing wall, which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Units and for the Common Elements.

10.

EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS

10.01 Present Encroachment. In the event that any Condominium Unit shall encroach upon any Common Element, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agent of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit then an easement appurtenant to such Common Elements for the continuance of such encroachment upon a Unit shall exist for so long as such encroachment shall naturally exist.

10.02 Encroachments on Reconstruction. If any Condominium Unit or Common Elements 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 or Common Elements, there exist encroachments of portions of the Common Elements upon any Condominium

Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

10.03 Encroachments upon Annexation by Declarant. In the event any Condominium Unit hereafter constructed pursuant to Declarant's right to annex additional Units as provided in Article 7 hereof, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit then an easement appurtenant to such Common Elements for the continuance of such encroachment upon a Unit shall exist for so long as such encroachment shall naturally exist.

11.

RESTRAINT UPON SEPARATION AND
PARTITION OF COMMON ELEMENTS

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Elements appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

12.

CONVEYANCE OR ENCUMBRANCE OF
COMMON ELEMENTS BY ASSOCIATION

12.01 Conveyance or Encumbrance Permitted. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree to that action. Distribution of proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Unit Owners to which it is allocated and the Association. Proceeds of the sale or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association.

12.02 Agreement Required. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratification thereof must be recorded in the county in which the Condominium is situate, and is effective only upon recordation.

12.03 Contract Voidable. The Association, on behalf of the Unit Owners, may contract to convey Common Elements, or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 11.01 and 11.02 above. Thereafter the Association has the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

12.04 Other Conveyance Void. Any purported conveyance, encumbrance, judicial seal or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

12.05 No Limitation of Access or Support. A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Unit of its rights of access and support.

13.

ADMINISTRATION OF THE CONDOMINIUM

13.01 Association. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina corporation (the "Association" as defined above), has been organized (or will be organized before sale of any Unit by Declarant), and said Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-laws.

13.02 Members. The Owner or Owners of each Condominium Unit shall automatically become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant Allocated Interest in the Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Association or to any of the rights or privileges of such membership.

13.03 Authority. In the administration of the operation and management of the Condominium, the Association shall have, and is hereby granted, the authority and power to enforce the provisions of this Declaration of Condominium, to levy and collect assessments in this manner hereinafter provided, to adopt, amend, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Elements as the Board of Directors of said Association may deem to be in the best interest of the Association.

13.04 Records Inspection. The Association shall make available at its office, or through its managing office, during normal business hours, and upon request, copies of the Declaration, By-laws, and Rules and Regulations of the Association to Unit Owners, mortgage lenders, or any Unit insurers, guarantors of such mortgage loans and holders of such mortgage loans, and shall, to the

extent required by law, make available during such time books, records and financial statements for inspection by those persons. The Association may make a reasonable charge for such copies.

14.

OCCUPANCY AND USE RESTRICTIONS

14.01 Zoning. Each Condominium Unit is hereby restricted to use by the owner thereof, his employees, servants, guests, invitees and lessees, for those residential uses and purposes permitted in the zoning district in which the Condominium is located and as limited by the Declaration of Easements, Covenants, Conditions and Restrictions for Courtyard at Masonboro, excluding those uses permitted therein only upon obtaining a special use permit or variance. Provided, however, with the prior written consent of the Association, a Unit Owner may seek a variance or special use permit and upon obtaining the same may engage in those uses of the Unit permitted by such variance or special use permit subject to the further restrictions of this Article. Upon obtaining a special use permit or variance, the Unit Owner shall file a certified copy thereof with the Secretary of the Association.

14.02 Additional Use Restrictions. In addition to the restrictions set forth in Section 13.01 above, the following restrictions shall also apply to the Condominium:

a. Residential Use. Except as otherwise set forth herein, no unit may be used for any purpose other than residential use and other purposes ancillary to such use; provided, however, any Unit may be used for home office purposes by the resident(s) of said Unit, provided that the primary use is residential, no business customers of the resident(s) visit the Unit and the resident(s) does not advertise the address of the Unit as a business address.

b. Leases. A Unit Owner may lease his entire Unit or less than the entire Unit but all leases and subleases must be in writing and be for a term of six (6) months or more. Any lease agreement shall be required to provide: (i) that the terms of the lease shall be subject to the provisions of this Declaration, the By-laws, and the Association's rules and regulations, and (ii) that any failure of a lessee or sublessee to comply with the terms of such documents shall be a condition of default under such lease. All leases and subleases must be filed with the Association, or such information from such leases or subleases as may be prescribed by the Board shall be filed with the Association.

c. Timeshare. No interest in any Unit may be subjected to a timeshare program, as that term is defined in N.C.G.S. Section 93A-41(10).

d. Pets and Animals. No animals, livestock, or poultry of any kind shall be kept or maintained in any Unit except that a maximum of two (2) small common household pets (not to exceed one hundred pounds (100 lbs.) in weight or thirty six (36) inches in height measured at the shoulder) may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes. To the extent pets exceed such size, the Board may approve the keeping and maintaining of said pet upon such terms and conditions as they deem appropriate. No pet shall be permitted upon