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FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
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INSTRUMENT # 2004047883

DECLARATION OF

Waterfronte Villas Clubhouse Condominium

**DECLARANT:
ELLSWORTH-SLOANE, LLC
A North Carolina Limited Liability Company**

Prepared By:

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DECLARATION OF
Waterfronte Villas Clubhouse Condominium

THIS DECLARATION OF Waterfronte Villas Clubhouse Condominium (hereinafter referred to as the "Declaration"), made this the 31st day of ~~June, 2003~~ ^{AUGUST, 2004}, by Ellsworth-Sloane, a North Carolina limited liability company (hereinafter referred to as "Declarant") pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina (sometimes hereinafter referred to as the "Condominium Act" or the "Act") to All Prospective Purchasers or Owners of property described herein;

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate located in the City of Carolina Beach, New Hanover County, North Carolina, said real estate being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, Declarant has constructed on the property described on Exhibit "A" a two-story building with a crawl space and appurtenant facilities to be used for residential, business and commercial purposes; and,

WHEREAS, it is the desire of the Declarant to submit the property described on Exhibit "A," together with the improvements thereon constructed, to the provisions of the Condominium Act to provide for the condominium form of ownership; and,

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of Condominium Units and the co-ownership by individual and separate owners thereof, as tenants in common, of all of the remaining property in the Condominium (all portions of the Condominium except the Units hereinafter being referred to as "Common Elements").

NOW, THEREFORE, Declarant does hereby declare that the property described in Exhibit "A" attached hereto and incorporated herein by reference shall be held, conveyed, encumbered, used, occupied, improved, sold, mortgaged, and otherwise conveyed subject to the rules, regulations, restrictions, covenants, conditions, uses and obligations set forth in this Declaration. All such rules, regulations, restrictions, covenants, conditions, uses and obligations are declared and agreed to be in furtherance of a plan for the improvement of the Condominium and the creation thereon of Condominium Units and shall be deemed to run with the land and be a burden on and a benefit to the Declarant, his heirs, successors and assigns, and on and to any person acquiring or owning any interest in the real property in the Condominium and any improvements thereto, and such parties', grantees, successors, heirs, assigns, executors, administrators and devisees. Individual Unit Owners, their employees, guests, tenants and all persons using or possessing any property within the Condominium are subject to the provisions of this Declaration.

I
ESTABLISHMENT OF CONDOMINIUM

On that property described on Exhibit "A" attached hereto and incorporated herein by reference, there exists a two-story building containing a total of two (2) Condominium Units, and other appurtenant improvements. Declarant does hereby submit the above-described property and improvements lying within the land area described on Exhibit "A" to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Waterfronte Villas Clubhouse Condominium." The maximum number of Condominium Units which the Declarant reserves the right to create is two (2). The Condominium is located in New Hanover County.

II
SURVEY AND DESCRIPTION OF IMPROVEMENTS

A survey of the land and plat and plans of the improvements constituting the Condominium, identifying the Condominium Units, the Common Elements and the Limited Common Elements as said terms are herein defined, and containing the information required by N.C.G.S. 47C-2-109(b) and (c) are recorded in the Unit Ownership Map Book as specified in Exhibit "B," said survey and plat and plans being incorporated herein by reference. Said survey and plat and plans are sometimes collectively referred to herein as Exhibit "B." Each Condominium Unit is identified by a specific number on said Exhibit "B," and no Condominium Unit bears the same number as any other Condominium Unit. The Condominium Units are numbered 101 and 201 as shown on Exhibit "B."

III
DEFINITIONS

As used in this Declaration, the Bylaws and the exhibits attached hereto, and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

A. "Association" shall mean the Unit Owners association organized pursuant to the Condominium Act and shall be Waterfronte Villas Owners' Association, Inc., an association of Unit Owners incorporated under Chapter 55A of the General Statutes of North Carolina, and its successor.

B. "Common Elements" shall mean and comprise all of the real property, improvements and facilities of the Condominium, including all personal property held and maintained for the joint use and enjoyment of all the Owners of Condominium Units, excluding however the Condominium Units as herein defined.

C. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

D. "Condominium" shall mean the property described on Exhibit "A" which is hereby submitted to condominium ownership.

E. "Condominium Units" or "Units," as such terms are used herein, shall mean a physical portion of the Condominium designated for separate ownership, the boundaries of which are hereinafter defined. There are two (2) Condominium Units in the Condominium which are the separate numbered units designated as 101 and 201 as shown on Exhibit "B."

The boundaries of the Units are as follows:

The walls, floors, and ceilings of the Units hereby are designated as the boundaries of each respective Unit provided, all exterior doors, door frames, windows, window frames, porches, panes and screens shall be Limited Common Elements. Interior walls and partitions may be added to the Units by Declarant or by the respective Unit Owners and such interior walls and partitions shall be part of the respective Condominium Units. In addition, all betterments and improvements added to the Limited Common Elements as hereinafter set forth in Article XIV shall be a part of the respective Condominium Units.

Except as otherwise modified herein, the provisions of N.C.G.S. 47C-2-102(1), (2), (3), and (4) are incorporated herein by reference.

F. "Declarant" shall mean Ellsworth-Sloane, LLC, and any person who succeeds to any Special Declarant Rights as provided herein or pursuant to the Condominium Act.

G. "Declaration" means this instrument and any amendments thereto.

H. "Director" means a member of the Executive Board of the Association.

I. "Limited Common Elements" shall mean those portions of the Common Elements allocated by operation of N.C.G.S. 47C-2-102 for the exclusive use of one or more but fewer than all of the Units, and those portions of the Common Elements designated as Limited Common Elements or Limited Common Area on Exhibit "B" and listed in Section E. above.

J. "Person" shall mean a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity or any combination thereof.

K. "Property" shall mean 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.

L. "Unit Owner" or "Owner" shall mean any Person owning one or more Units, but shall not include a mortgagee unless such mortgagee has acquired title pursuant to foreclosure or some other process in lieu of foreclosure.

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

IV
OWNERSHIP OF CONDOMINIUM UNITS
AND
APPURTENANT ALLOCATED INTERESTS

Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit also shall own, as an appurtenance to the ownership of said Condominium Unit, an undivided interest in the Common Elements. The undivided interest in the Common Elements appurtenant to each of the Condominium Units shall be as set out in Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Elements that is appurtenant to each Condominium Unit is equal as to all Units, all Units being substantially equal in size.

The portion of the Common Expenses of the Association and the votes in the Association allocated to each Unit shall be as set out in Exhibit " C " attached hereto and made a part hereof. The portion of the Common Expenses of the Association and the votes in the Association allocated to each Unit are equal as to all Units, all Units being substantially equal in size.

V
ALTERATION OF UNITS, RELOCATION OF UNIT BOUNDARIES,
SUBDIVISION OF UNITS AND REALLOCATION OF LIMITED
COMMON ELEMENTS; SEPARATE CONVEYANCE
OF APPURTENANT COMMON PROPERTY PROHIBITED

Subject to the provisions of N.C.G.S. 47C-2-108, 47C-2-111, 47C-2-112 and 47C-2-113, and to the limitations contained in Article XIV of this Declaration, Units may be altered, boundaries between adjoining Units may be relocated, Units may be subdivided, Limited Common Elements may be reallocated, and Common Elements may be allocated as Limited Common Elements.

The undivided interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided 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. Any instrument conveying, devising, encumbering or otherwise dealing with any Condominium Unit, which describes said Condominium Unit by the number designation assigned thereto by the map recorded as aforesaid without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.

VI

CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units and 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 and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Elements, and said Condominium Units 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 and those hereinafter set forth:

A. The Unit on the first floor of the building shall be occupied and utilized only for residential, retail and office uses and purposes. The Unit on the second floor of the building shall be occupied and utilized only for office and residential uses and purposes.

B. Without the consent of the Association having been first obtained, no structure or personal property shall be placed or permitted to remain on any balcony, railing or other portion of the Common Elements or Limited Common Elements.

C. Food preparation, including using exterior or outside cooking equipment, shall not be permitted in any area of the Condominium outside the boundaries of the Units.

D. No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit 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.

E. No Owner of any Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, 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 other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit,

or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Elements.

In addition to the foregoing, the Condominium is subject to those matters affecting the Property set forth on Exhibit "D" attached hereto and incorporated herein by reference.

VII

PERPETUAL EASEMENT IN COMMON ELEMENTS

Subject to the Special Declarant Rights reserved to Declarant in this Declaration and the provisions of N.C.G.S. 47C-3-112, all of the Common Elements, except the Limited 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 Condominium Units in the Condominium for their use and the use of their tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units. For that portion of the Common Elements upon which a particular Unit is located as depicted on Exhibit "B," the easement to so locate a Unit shall be exclusive. Subject to the Special Declarant Rights, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his tenants, guests, invitees and customers, may be entitled to use the Common Elements and to establish regulations concerning the use of said Common Elements.

Each Unit Owner hereby is granted a perpetual easement to locate heating and air conditioning systems upon the Common Elements. When so located, such heating and air conditioning systems, related pipes, ducts, conduits, wires and related facilities that serve only the respective Condominium Unit shall become and be deemed to be a part of the respective Condominium Unit. Prior to installing any heating and air conditioning systems or any related facilities in the Common Elements, the Unit Owner shall obtain the consent of the Association as provided in Article XIV herein. This provision shall not apply to any replacements of heating and air conditioning systems and facilities as located in the Common Elements as of the date of recording this Declaration.

VIII

EASEMENT FOR UNINTENTIONAL AND NON NEGLIGENT ENCROACHMENTS, BEALLS RULE

In the event that any Condominium Unit shall encroach upon any Common Elements, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents 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 naturally shall exist; and, in the event that any portion of the Common Elements shall encroach upon any

Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Condominium Unit for so long as such encroachment naturally shall exist. 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 and/or Common Elements in accordance with Article XX hereof, 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 naturally shall remain.

IX
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 of the Common Elements.

X
ADMINISTRATION OF THE CONDOMINIUM
BY WATERFRONTE VILLAS
OWNERS' ASSOCIATION, INC., AN INCORPORATED
ASSOCIATION OF UNIT OWNERS

To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, an association of all Unit Owners has been incorporated under Chapter 5 5A of the General Statutes of North Carolina known and designated as "Waterfronte Villas Owners' Association, Inc.," (herein sometimes called the "Association") has been organized, and the 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 Bylaws. The Owner or Owners of each Condominium Unit automatically shall become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in 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, firm or association 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. In the administration of the operation and management of the

Condominium, the Association, subject to the provisions of N.C.G.S. 47C-3-105 and 47C-3-112, shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C.G.S. 47C-3-102.

XI
USE OF COMMON ELEMENTS SUBJECT TO RULES
OF ASSOCIATION

The use of Common Elements by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

Limited Common Elements are allocated to the Unit or Units as depicted on Exhibit "B. " The use of Limited Common Elements is restricted to the Owners and Owners' tenants, guests, invitees and customers, of the Unit and/or Units to which the Limited Common Elements are allocated.

XII
RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES

In case of any emergency originating in or threatening any Condominium 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, if any, shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

XIII
RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS
OR OTHER CONDOMINIUM UNITS

Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements or adjacent Condominium Units, the Owner of each Condominium Unit shall permit other Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

XIV
LIMITATION UPON RIGHT OF OWNERS TO
ALTER AND MODIFY CONDOMINIUM UNITS, NO
RIGHT TO ALTER COMMON ELEMENTS; SIGNS

A. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Owner of a Condominium Unit shall permit any structural modification or alteration to be made to a Condominium Unit or any betterment or improvement to the Limited Common Elements appurtenant to a Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications, alterations, betterments or improvements would adversely affect or in any manner endanger the Condominium in part or in its entirety. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Owner shall cause any improvements or changes to be made on the exterior of any Unit or building (including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects, machines or equipment which may protrude through the walls or roof of any Unit or building) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. Such consent shall not be unreasonably withheld. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Unit Owner shall cause any object to be affixed to the Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Association being first obtained. In the event the Association shall grant its consent for such improvements or changes to be made, such improvements, including but not limited to all antennae and other objects, machines or equipment which may protrude through the walls or roof shall become and be deemed to be a part of the Unit to which they are affixed. Notwithstanding the foregoing, Unit Owners of the Units located on the first and second floors of the building shall be entitled to place signage upon the Common Elements or Limited Common Elements adjacent to such Owners Unit or above the main entry door of such Owners Unit and may install painted signs or lettering upon the windows and doors of such Owners Unit without the prior written consent of the Association first being obtained. In the event that the Association should object to the signage placed upon the Common Elements, Limited Common Elements or on the windows and doors of these Units, the Association may require the Unit Owner to remove the same upon a vote of two-thirds of the directors and a vote of two-thirds of the members of the Association. Any permitted signage or lettering applicable to any Unit, either singularly or collectively, shall not exceed a total area of four (4) square feet.

Arbitration of Deadlock. The parties hereby agree that any disputes or controversies relative to the matters herein will be submitted to binding arbitration pursuant to the rules of the American Arbitration Association, and the parties agree to share equally in the cost of said arbitration. Said Arbitration proceedings will be held and administered in Wilmington, North Carolina or such other locale as the parties may hereafter agree in writing. Any dispute arising out of or in connection with these Declarations or the breach thereof shall be submitted to and determined by binding arbitration before a single arbitrator agreeable to all parties. If the parties to

the dispute are unable to agree upon an arbitrator, then the arbitration, including selection of the arbitrator, shall be conducted by the American Arbitration Association and subject to its then-effective Rules of Arbitration of Real Estate. Arbitration is the sole venue for resolution of breach of contract, tort claims or other claims arising hereunder. The final arbitration decision shall be enforceable through the Courts of the State of North Carolina. In the event that this arbitration provision is held unenforceable by any court of competent jurisdiction, then any dispute, action, cause of action, claim or proceeding with respect to the subject matter of this Agreement shall be commenced solely in the courts of the State of North Carolina, New Hanover County, or the federal courts of the United States of America located in the Eastern District of North Carolina.

Subject to the Special Declarant Rights reserved to Declarant in this Declaration, the Board of Directors of the Association, in their sole discretion, may require a Unit Owner desiring to add betterments or improvements to the Limited Common Elements appurtenant to his Unit to indemnify the other Unit Owners and the Association against any and all loss, cost and expense that may be occasioned by the addition of such betterments or improvements and further may require such Unit Owner to obtain liability insurance naming the other Unit Owners and the Association as additional insureds in such amounts and upon such terms as the Board of Directors shall determine.

B. Subject to the Special Declarant Rights reserved to Declarant in this Declaration and to other provisions of this Article, the Association may make rules and regulations specifying or limiting the improvements or alterations any Unit Owner may make on the exterior of his Unit and no Unit Owner shall erect any permanent improvement on the exterior of his Unit (excluding maintaining the Unit in its original condition) without the written consent of the Association first being obtained.

XV
RIGHT OF ASSOCIATION TO ALTER AND
IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR

Subject to Declarant's Special Declarant Rights, the 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 Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefitted, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

XVI

MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, and every Owner shall be expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit 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 solely to his Condominium Unit. Such Owner further shall be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of any and all walls, ceilings and floors in the interior of his Unit including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair and replacement of any item for which the Owner of a Condominium is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Condominium Unit 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. Other than maintenance, repair and replacement arising from a casualty loss, Unit Owners shall be responsible and liable for the maintenance, repair and replacement of the glass surfaces of doors and windows, and door and window screens constituting a portion of the Limited Common Elements appurtenant to said Owner's Unit.

XVII

MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION

Subject to Declarant's Special Declarant Rights, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements or in a Condominium Unit for the furnishing of utility and/or other services to the Common Elements or other Condominium Units. If any incidental damage is caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair or replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used

for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair or 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. Whenever the maintenance, repair or replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Unit Owner, his tenants, guests or invitees, and such loss or damage is not covered by any insurance maintained in force by the Association, the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay the cost of such maintenance, repair or replacement. Establishment of liability for damage caused by the Owner of a Unit or the Association is subject to the provisions of N.C.G.S. 47C-3-107(d).

XVIII **AUTHORITY TO PURCHASE INSURANCE**

All required or permitted insurance policies (other than title insurance and insurance on betterments and improvements to the Limited Common Elements, if any) upon the Property (other than the personal property of the Unit Owners) shall be purchased by the Association in the name of the Association, as Trustees for the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or memoranda of insurance to the Association and to any Unit Owner, mortgagee, or beneficiary of a deed of trust. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability as may be permitted or required by law, and such insurance shall, if available, contain a waiver of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests.

XIX **INSURANCE COVERAGE TO BE MAINTAINED, USE** **AND DISTRIBUTION OF INSURANCE PROCEEDS**

A. The following insurance coverage shall be maintained in full force and effect by the Association:

(1) Casualty insurance covering the Common Elements and Units, including all buildings and all improvements upon the land and all personal property included within the Condominium, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to at least eighty percent (80%) of the maximum insurable replacement value thereof (exclusive of land, excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and, (b) such other risks as from time to time customarily shall be covered with respect to buildings

similar in construction, location and use, including, but not limited to, vandalism and malicious mischief. Casualty insurance obtained for the buildings and improvements shall provide such coverage commonly known as "all inclusive building" coverage and/or "completed condominium unit" coverage as such terms are used in the insurance industry.

(2) Public liability and property damage insurance in such reasonable amounts and covering all occurrences commonly insured against including, death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, and in such forms as shall be required by the Association, including, but not limited to, legal liability, hired automobiles, non-owned automobile and off-premises employee coverage. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.

B. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.

C. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear.

D. In the event a mortgage endorsement has been issued for a Condominium Unit, the share of any insurance proceeds of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

E. Proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated except as specified in Article XX.

F. Declarant shall furnish the initial insurance policy required by this Article XIX and shall be reimbursed for the pro rata portion of the cost thereof by each Unit Owner at the time each Unit is conveyed to a Person other than Declarant.

G. Insurance policies carried pursuant to this Article XIX shall provide that:

(1) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;

(2) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household, if applicable;

(3) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

(4) If, at the time of any loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(5) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or endorsements have been issued at their respective last known addresses.

H. The Association shall not be required to maintain insurance coverage for any betterments or improvements to the Units and/or Limited Common Elements added by any Unit Owner and a Unit Owner may be required to maintain such liability coverage as is otherwise provided herein.

I. If the insurance described in this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

J. The Association shall, if applicable, maintain flood insurance on the building and all improvements upon the land, the Common Elements, and all personal property of the Condominium (except personal property of the Condominium Unit Owners).

K. If desired, the Association may maintain fidelity insurance.

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RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

A. Any portion of the Condominium for which insurance is required pursuant to Article XIX which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of all Owners of Units not to be rebuilt or Owners of Units assigned to Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common