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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

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

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DECLARATION OF CONDOMINIUM
WATERWAY CONDOMINIUM
PHASE I

WATERWAY, LTD., a N. C. Limited Partnership with its principal place of business in New Hanover County, North Carolina, hereinafter called "DECLARANT", being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act", and to that end does hereby publish and declare that all of the said property to be known as "WATERWAY CONDOMINIUM, PHASE I" is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following conditions, covenants, restrictions, uses, limitations and objections, all of which shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DEFINITIONS. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

A. "Act" or "North Carolina Condominium Act" means the statutory provisions set forth in Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act, under which the condominium is established.

B. "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

C. "Association" means the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.

D. "Board of Directors" or "Board" means the Board of Directors of the Association, and "Director" means a member of the Board.

E. "By-Laws" means the By-Laws for the government of the condominium as they exist from time to time. A copy of the initial By-Laws are hereto attached as Exhibit "E" and made a part hereof by reference.

F. "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the property.

G. "Common Areas and Facilities" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in Paragraph 5.

H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

I. "Common Profits" means the balance of all revenue of the Association remaining after deduction of common expenses.

J. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided

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interests in the common elements are vested in the unit owners.

K. "Condominium Documents" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

L. "Declarant" means WATERWAY, LTD., its successors, and assigns.

M. "Declaration" means this instrument as it may be from time to time amended or supplemented.

N. "Development rights" means any right or combination of rights reserved by a 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; or to withdraw real estate from a condominium.

O. "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

P. "Limited Common Areas and Facilities" means and includes those common areas and facilities which are reserved for the use of a certain unit or units, to the exclusion of other units, as more specifically defined herein.

Q. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

R. "Plans" shall mean and refer to the plans and specifications of the condominium prepared by STUART BENSON, Registered Land Surveyor, and JOHN STIREWALT, Registered Architect, recorded under the name of the condominiums in the Unit Ownership file in the Office of the Register of Deeds of New Hanover County, in Condominium Plat Book 8 at Pages 14 through and attached hereto as Exhibit "B" sheets 1 through 3 and incorporated herein by reference.

S. "Property" means and includes the land described in Article 2 of this Declaration together with any buildings and improvements located thereon.

T. "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the Declaration (Section 47C-2-109); to exercise any development right (Section 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (Section 47C-2-115); to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116); to make the condominium part of a larger condominium (Section 47C-2-121); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (Section 47C-3-103(d)).

U. "Unit" or "Condominium Unit" means a part of the property which is to be subject to private ownership, as designated on the Exhibits attached to this Declaration and as further defined in the Act.

V. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, who owns a unit, including the Declarant.

2. DESCRIPTION OF PROPERTY. All of that certain tract or parcel of land with the building and improvement thereon erected,

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or to be erected, situate, lying and being in the County of New Hanover, State of North Carolina, and being more particularly described in Exhibit "A" attached hereto and incorporated by reference hereby as though fully incorporated herein.

Declarant submits only that portion of the land described in Exhibit "A" attached hereto upon which Phase I of WATERWAY CONDOMINIUM is currently constructed. The property hereby submitted is more particularly described by that Condominium Plat recorded in the New Hanover County Registry in Condominium Plat Book 8 at Pages 14 through . Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "F" to the coverage of this Declaration. If Declarant chooses to expand the property dedicated to Condominium ownership, the expansion will contain a maximum of twenty-four (24) units in addition to those in Phase I, making the total maximum allowed units in the condominium project be forty-seven (47).

Declarant also reserves the right to expand the parking area beyond that shown on the map recorded in the Condominium Plat Book in New Hanover County as previously mentioned.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary condominium plats as required by law. Each amendment to the Declaration shall be called a "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

3. EXPANSION OF CONDOMINIUM.

A. The right and option of Declarant described in Paragraph 2 hereof shall terminate on December 31, 1992, and shall be subject to the conditions, restrictions and limitations set forth in Paragraph 2 and this Paragraph.

B. The Declarant makes no statement, nor guarantee, that all buildings containing units built on any of the expansion phases and made subject to this Declaration shall be similar to in construction and appearance, the buildings previously constructed in Phase I. In the event project is expanded into Phase II, the building constructed as a part of Phase II may be physically attached to the building consisting of units contained in Phase I, and the necessary changes shall be made to the structure of the building containing units consisting of Phase I shall be modified as appropriate, and at the sole discretion of the Declarant.

C. If any or all of the units contemplated in the proposed expansion to Phase II, are added to and made subject to the Declaration, the percentages of the undivided interest in the common areas and facilities of all units shall be determined by a ratio formulated by dividing the number one by the total number of units in WATERWAY CONDOMINIUM, Unit Number 1 shall be treated as six (6) units, and multiplying by the number one hundred; which computation gives you the percentage of the undivided interest in each unit in WATERWAY CONDOMINIUM, except that Unit Number 1 as divided shall have a share or shares computed by dividing the number six (6) by the total number of units in WATERWAY CONDOMINIUM, previously mentioned.

D. Declarant also reserves the right to expand the parking area beyond that shown on the map recorded in the Condominium Plat Book in New Hanover County as previously mentioned.

E. Declarant makes no statement concerning proposed schedule for commencement of additional phases in WATERWAY CONDOMINIUM. It

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is expected and projected that construction on expansion phases will commence at, or shortly thereafter, completion and sale of all units in the next preceding phase.

F. Every unit owner in WATERWAY CONDOMINIUMS by accepting a deed to a unit, therein, thereby agrees for himself and his heirs, successors and assigns, to any expansion of the Property subject to this Declaration in accordance with the provisions of this Paragraph 3 and Paragraph 2 of this Declaration.

G. Notwithstanding the provisions of Section 2 of this Declaration and this Section 3, this Condominium regime may not be amended or merged without the prior written approval of the Veterans Administration, if Veterans Administration approval of the Condominium Documents is obtained by developer, or their successors and assigns.

4. DESCRIPTION OF BUILDING: There has been constructed upon the property described in Exhibit "A" attached hereto, one (1) multi-unit building to be used for residential and lodging accommodation purposes and other purposes as herein provided for. A plat or survey of the property showing the location of the building is attached hereto and made a part hereof as Exhibit "B". The building is more particularly described in the plans thereof, a copy of which plans are attached hereto as Exhibit "C" and made a part hereof, showing all particulars of the building as required by law.

In general, the building has two stories built on concrete and cinder block foundation and is constructed primarily of block frame with brick exterior. The building contains twenty-three units, twenty-two of which contain approximately 300 square feet of enclosed area and one of which contains approximately 1800 square feet of area. The 300 square foot units consist of a great room and a bathroom; the 1800 square foot unit will consist of either three bedrooms, three bathrooms, a great room, living room/kitchen or one bedroom, one bathroom, a great room, living room, dining room and an office space.

In addition, the building will have parking spaces, walkways, stairs, landscaped areas, a swimming pool, and other appurtenances and facilities.

5. UNIT DESIGNATION AND DESCRIPTION.

A. DESIGNATION. The unit designation of each unit, its location and dimensions, is set forth in Exhibit "C" hereto attached and made a part hereof. Each unit is identified by a phase number and unit number.

B. DESCRIPTION. The legal description of each unit shall consist of the Phase number and unit number which identifies such unit as shown on the plats hereto attached as Exhibit "C". Each unit is bounded both as to horizontal and vertical boundaries by the interior surface 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 the building, or by permissible repairs, construction or alteration.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided interest in the common areas and facilities. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be as set forth in Exhibit "D" attached hereto and made a part hereof. The percentage of undivided interest in the common areas and facilities that is appurtenant to each unit has been determined by dividing the number one by the total number of units,

7. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are as follows:

A. All non-load bearing walls located entirely within the unit.

B. All materials, including but not limited to, studs, sheet-rock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on the inside surfaces of perimeter walls, floors and ceilings of the unit.

C. All doors, windows, screens, ventilation fans and vents located entirely within the unit or extending into the unit from the perimeter walls, floors or ceilings thereof.

D. All air handling units, ducts and components and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

E. The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

8. USE. The building and each of the units, except Unit 1 and Unit 100, shall be used for residential and lodging accommodation purposes only. Residential and lodging purposes shall include the rental of any units by the owner(s) thereof for residential and lodging accommodations pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings and by persons owning or occupying such units. Unit 1 and Unit 100, or any part of them, may be used for commercial purposes unless prohibited by land use ordinances and zoning applicable to the condominium project. Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her unit and such right shall be appurtenant to and run with his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The uses contemplated by this paragraph cannot be changed, amended or modified without the written consent of the owners of all units. So long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales or rental offices, models or other usage for the purpose of selling or renting units within the Condominium.

The Declarant reserves the right to maintain a sales office, management office and/or model in units or on common elements in the condominium. The use by Declarant as such shall not be a violation of the use restrictions contained in the Declaration, Rules and Regulations, or other condominium documents. Declarant reserves the right to use any unsold unit for such purposes in its sole discretion.

9. PROCESS AGENT. J. B. Gerald, 1312 Airlie Road, Wilmington, New Hanover, North Carolina 28403, is hereby designated as the person to receive service of process in any action provided for in the Act. The Board of Directors may change the process agent by filing a Declaration of Change in the Office of the Register of Deeds of New Hanover County.

with the Unit 1 treated as six (6) units, and multiplying the resulting number by one hundred, to arrive at the percentage interest for all units other than the Unit 1. The percentage ownership of the common area of the Unit 1 is derived by dividing the number six (6) by the total number of units, as above, and multiplying by one hundred. Except as provided in Paragraph 27 below, the percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

6. COMMON AREAS AND FACILITIES.

A. The common areas and facilities generally shall mean and refer to all of the real property, described in Article 2, and all of the improvements and facilities thereon which are not units, as hereinabove defined, and which are not items of personal property owned, held and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

(1) All of the real property more particularly described in Article 2 of this Declaration.

(2) All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except non-load bearing partition walls wholly within a unit) of the building.

(3) All stairways, stairwells and stairs and their components, if any, which give access to more than one unit.

(4) All yard and garden areas, parking and drive areas, sidewalks, and any other amenities.

(5) All installations of and facilities, apparatus, conduits, and equipment for the provisions of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, and cable television, if any, supplied for the common use and convenience of the unit owners, and which are not defined as part of the units, hereinbelow; provided, however, that as and when each unit is served by its own telephone service, the telephone equipment within each unit shall be the personal property of the owner(s) of such unit.

(6) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.

B. (1) The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

(2) A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

C. The undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit "D" and is attached hereto and made a part hereof.

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10. MAINTENANCE.

A. All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the owner. Any replacement or substitution of such fixtures and equipment shall be compatible with any common areas and facilities effected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment.

B. All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the underwriters of the insurance carrier for the common areas and facilities when so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the Condominium Documents or a determination by the Board of its designated agent that such failure will endanger or impair the value of the common areas and facilities or any unit, or the limited common areas and facilities belonging to another owner, may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association at the expense of the unit owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

11. EASEMENTS.

A. Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Association shall have the right to be exercised by the Board of Directors or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the condominium to inspect the same, to remove violation therefrom and to maintain, repair or replace the common facilities, if any, contained therein or elsewhere in the building.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subject to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common areas and facilities, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common areas; each unit owner hereby grants to the Board, or its designee, an irrevocable power of attorney to execute, acknowledge, and record, for and in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon any other unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or

may be caused or created by existing construction, settlement or movement of the building, or by permissible repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or common elements so encroaching so long as all or any part of the building containing such unit or common elements so encroaching shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the common elements if such encroachment occurred due to the willful conduct of said owner or owners.

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

F. Declarant reserves, for himself, his agents, successors and assigns, an easement in the common areas as may reasonably be necessary for the Declarant to expand the Condominium as set forth herein.

G. In case of any emergency originating in or threatening any unit or the common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

H. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any other owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

12. PARTITIONING. The common area and facilities shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof, unless the property has been removed from the provisions of the Act. Nothing herein contained, however, shall be deemed to prevent ownership of a dwelling unit by the entireties, jointly, or in common, or in any other form permitted by law.

13. COMMON EXPENSES, COMMON PROFITS. The unit owners are bound to contribute pro rata, in the percentages computed according to Chapter 47C of North Carolina General Statute which percentages are set forth in Exhibit "D" hereto attached, toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. No unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common area and facilities or by the abandonment of the unit belonging to him.

Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the unit or units to which that limited common element is assigned, pro rata.

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Any Common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited, pro rata.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonable necessary and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the Condominium Documents, shall be distributed among the unit owners according to the percentages for each unit set forth in Exhibit "D".

14. TAXES. If there is any unit owner other than a Declarant, each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "D" hereto attached, shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to, ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

15. LIENS.

A. With the exception of liens which may result from the purchase of, or the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the consent of the owners of eighty percent of all units and the holders, if any, of prior liens thereon. No liens or encumbrances affecting the common elements shall deprive any unit of its rights of access or support.

B. Except as otherwise provided by law, no labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Board, in which event, same may be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

C. Except as otherwise provided by law, in the event a lien against one or more condominium units becomes effective, each owner thereof may relieve his condominium unit of the lien by paying the proportionate amount attributable to his condominium unit. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium unit.

D. Assessments against unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed the maximum rate allowed by law, and shall create a lien to the extent of such assessment, together with interest thereon, in favor of the Association against the unit of the defaulting owner and shall be enforced as provided by the North Carolina Condominium Act.

E. To the extent permitted by law, all liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of said first lien mortgage

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in the Office of the Register of Deeds of New Hanover County, North Carolina.

F. The property is currently subject to easements, rights of ways and deeds of trust as set out with more particularity in the Public Offering Statement required by law to be given to each purchaser in connection with contracting for purchase of a condominium unit.

16. NATURE OF INTEREST IN UNIT.

A. Every unit together with its undivided common interest in the common areas and facilities, shall for all purposes be a separate parcel of real property, and the unit owner thereof shall be entitled to the exclusive ownership and possession of such unit subject only to the Condominium Documents and the covenants, restrictions, easements, regulations, resolutions and decisions adopted pursuant thereto.

B. The owner shall be entitled to use the common areas and facilities in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the owners of other units.

17. INSURANCE.

A. Amount and Scope of Insurance. All insurance policies upon the property (except personal property within a unit and limited common areas and facilities) shall be secured by the Board or by the Managing Agent, if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and for such amounts as the responsible authority shall determine. However, such liability coverage shall be for at least \$500,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas and legal liability arising out of law suits related to employment contracts of the Owners Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities. In obtaining such coverage, the responsible authority shall consider the reasonable requirements of holders of first liens on individual units.

B. Insurance Provisions. The Board of Directors shall make reasonable efforts to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the unit owners and their employees, agents, tenants and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and all mortgagees.

(4) Coverage will not be prejudiced by act or neglect of the unit owners when said act or neglect is not within

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the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

(5) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual unit owners.

(6) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any unit owner or any mortgagee.

(7) Each unit owner shall be an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the Association.

(8) If, at the time of a 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 shall provide primary insurance coverage.

C. Premiums. All insurance premiums on the property and for the benefit of the Association purchased by the Board or the Managing Agent and any deductibles payable by the Association upon loss shall be a common expense.

D. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the By-Laws and for the benefit of the unit owners and their mortgagees, as their interests may appear.

If the entire condominium is not repaired or replaced, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, and/or the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to their lienholders, as their interests may appear, and/or the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's undivided interest is automatically reallocated as if the unit had been condemned, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

In the event a mortgagee endorsement has been issued with respect to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their respective interests may appear.

E. Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "AAA" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the unit owners and their mortgagees as their respective interests may appear, and shall provide that all

proceeds of property insurance shall be payable to the Board of Directors as insurance trustee. The originals of all such policies and the endorsements thereto shall be deposited with the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment or premiums, shall, upon request, be delivered to the unit owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee at any time.

18. DAMAGE AND DESTRUCTION. Except as hereinafter provided, damage to or destruction of the common areas and facilities, and to the extent insurance proceeds are available, limited common areas and facilities, shall be promptly repaired and restored by the Board using the proceeds of any insurance available for those purposes, and the owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities; provided, however, if owners of more than eighty percent (80%) of the units of the condominium project units and one hundred percent (100%) of the units not to be rebuilt resolve not to proceed with reconstruction or restoration, then in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47C-2-118 of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall substantially in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and by eligible holders holding mortgages on units which have at least 51% of the votes of units subject to eligible holder mortgages.

19. EMINENT DOMAIN.

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Unless the condemnor acquires the right to use the unit's interest in common elements, that unit's undivided interests are automatically reallocated to the remaining units in proportion to the respective undivided interests of those units before the taking exclusive of the unit taken, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter common area.

B. Except as provided in subsection (A), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and of its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's undivided interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the Declaration, and (2) the portion of the undivided interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective undivided interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced undivided interests.

C. If part of the common area is acquired by eminent domain, the portion of the award not payable to unit owners under subsection (A) must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common area must be apportioned among

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the owners of the units to which that limited common area was allocated at the time of acquisition.

D. The court decree shall be recorded in every county in which any portion of the condominium is located.

20. RIGHTS OF MORTGAGE HOLDERS. To the extent permitted by law, a mortgage holder, upon written request to the Association, identifying the name and address of the holder, will be entitled to timely written notice of:

A. Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a first mortgage held by such eligible mortgage holder.

B. Any delinquency in payment of assessments or charges owned by an owner of the unit subject to a first mortgage held, by such eligible holder, which remains uncured for a period of sixty (60) days.

C. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners Association.

D. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders.

E. In addition to the foregoing rights, the eligible mortgage holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina Condominium Statutes as they now exist or as they may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to eligible mortgage holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of the holders holding mortgages on all remaining unit estates whether existing in whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to holders of mortgages.

(3) If a professional management is ever used to govern the condominium, any decisions to establish self management by the Association shall require the prior consent of owners of unit estates to which at least 67% of the votes of the Association are allocated and the approval of mortgage holders on unit estates which have at least 51% of the votes of unit estates subject to such mortgages.

21. FIDELITY BONDS.

A. General. The Association may maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds may be required of such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

B. Amounts of Coverage. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the

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management agent, as the case may be, at any given time during the term of each bond.

C. Other Requirements. Fidelity bonds required herein should meet the following requirements, so far as practicable:

(1) Fidelity bonds shall name the Association as obligee.

(2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.

(3) The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

(4) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association of a condominium project, to any insurance trustee and each eligible mortgage holder.

22. RECOMMENDATION OF RENTAL AGENTS. At the annual meeting of the Association, or such other meeting of the Association as is designated by the Board, the Board may, upon notice to the owners, recommend for the approval of the Association one or more rental agents for the rental of units during the forthcoming year. Prior to recommending agents for the approval of the Association, the Board shall have authority to require any agent desiring to qualify as an approved agent to submit a copy of the proposed rental agreement to be used by such agent, together with such other information as the Board may reasonably require. The Board may require, as a condition of approval, that all rental agreements incorporate such standard procedures as may be required to minimize problems of security, maintenance, quality and operation of the common areas and facilities of the property. Neither the Association nor the Board shall have, or attempt to impose as a condition of approval, any control over the commission schedule or fees charged by any approved rental agent, or the permissible period of rental, all of which shall be for the sole determination of the approved rental agent and any owner selecting such agent. Each owner shall have the absolute right to enter into any direct rental, lease or sales arrangement with renters, lessees and purchasers which shall be consistent with the Declaration, By-Laws of the Association and such other regulations as may from time to time be promulgated by the Association and/or Board. Nothing herein shall be construed as creating or authorizing any rental pooling or as requiring the rental of a unit by an owner or as restricting the owner's use of his unit. If any court of law, governmental regulatory body having appropriate jurisdiction or approved legal counsel to the Association determine that any portion of this provision is unlawful or would require registration of the offering of any unit as a security, then such portion of this provision shall be invalid until such requirement is eliminated.

23. MANAGEMENT AGENT.

A. Interim Management Agent and Assessments. From the date of the first conveyance of title by the Declarant to a unit owner until the date of the Association's first annual meeting of members, the Declarant or its designee shall serve as the interim Management Agent with responsibility for coordinating all normal management services of the Association. During the period from conveyance of title by Declarant to an owner of a unit until the Association's first annual meeting of members (the time determination by the Association of the new operating budget), the interim

Management Agent shall receive a management fee determined by Declarant.

B. Regular Management Agent and Assessments. Upon selection by the Association of a regular Management Agent and the holding of the Association's first annual meeting, any excess of interim assessments over total, actual Association operating expense shall be deposited by Declarant to the account of the Association. The interim Management Agent shall provide to the regular Management Agent an accounting of operating revenues and expenses. After adoption of the new annual Association budget, at the Association's first meeting, the Declarant shall be subject to regular assessments for any units still owned by Declarant.

C. Time of Payment. Each unit's monthly assessment, as set forth in Exhibit "D" of the common expenses for the month of closing shall be payable at the time of conveyance of title to the owner by the Declarant prorated as of the closing date. Subsequent payments shall be due on the first day of each month. Payments not received when due shall bear interest at the maximum permissible legal rate until paid.

24. WORKING CAPITAL. At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two (2) months' estimated common area assessment. Such funds shall be used solely for initial operating capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities furnishings and equipment, etc. At the time of selection of the regular Management Agent, the interim Management Agent shall pay to the account of the Association all unused funds and shall provide an accounting of all revenue and expenditures. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments.

25. UNITS SUBJECT TO CONDOMINIUM DOCUMENTS. All present and future owners, tenants and occupants of units and their guests or invitees, shall be subject to, and shall comply with the provisions of the Condominium Documents, and as they may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any dwelling unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of the Condominium Documents shall entitle the Association or any other owner to seek legal and/or equitable relief, including costs and reasonable attorney's fees incurred in enforcing such compliance.

26. AMENDMENT OF DECLARATION. This Declaration may be amended by vote of the owners of not less than 67% of all units, cast at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for New Hanover County wherein the property is located. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws.

No amendment shall be allowed which acts to the detriment of the Declarant or any right reserved to Declarant by this Declaration, or any concomitant document drawn in connection with this condominium project, without the express written approval of the Declarant.

No amendment to this Declaration shall be effective until approved by the Veterans' Administration, IF Declarant, or their successors or assigns, obtains VA approval of the condominium project and documents.