

RETURNED TO

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Y9/YAUPON/1

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

SEP 10 1 40 PM '85

DECLARATION OF CONDOMINIUM
FOR
YAUPON PLACE

THIS DECLARATION OF CONDOMINIUM made this 9th day of September 1985, by YAUPON DEVELOPERS, a North Carolina General Partnership with a Certificate recorded in Book 1265 at Page 774 of the New Hanover County Registry, with its principal place of business in New Hanover County, North Carolina, hereinafter referred to as "Declarant".

WITNESSETH

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PREMISE

THAT WHEREAS, Declarant is the owner, in fee simple, of certain real property, together with all improvements thereon, and appurtenances thereto, heretofore constructed or hereinafter constructed on this real property, located in New Hanover County, State of North Carolina, which real property is more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference; and,

WHEREAS, it is the desire and intention of Declarant, by the filing and recording of this Declaration of Condominium in the Office of the Register of Deeds of New Hanover County, North Carolina, to submit this real property and all improvements, located thereon, and appurtenances thereto, to a plan of condominium unit ownership under the provisions of Chapter 47A of the North Carolina General Statutes and to submit this condominium project to the provisions of Chapter 47A of the North Carolina General Statutes.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the real property described in Exhibit "A", together with all improvements, and all appurtenances thereto, heretofore constructed or hereafter constructed thereon, is and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth hereinafter, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and all of which shall be deemed to run with the land and shall be a burden to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the real property and improvements described herein, or any subdivision thereof, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I

SUBMISSION OF PROPERTY
TO CHAPTER 47A OF THE NORTH CAROLINA GENERAL STATUTES

The Declarant, pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, does hereby submit all of the said real property, together with all improvements thereon and described herein, described in said Exhibit "A" to the provisions of the Unit Ownership Act as set out in Chapter 47A of the North Carolina General Statutes.

ARTICLE II

DEFINITIONS

As used herein and in the By-Laws attached hereto and in all amendments hereto, unless the context requires otherwise or changed by an amendment:

A. ACT means the Unit Ownership Act set forth in Chapter 47A of the North Carolina General Statutes, as such may be supplemented or amended from time to time.

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 YAUPON PLACE HOMEOWNERS' ASSOCIATION, INC., its successors or assigns.

D. BOARD OF DIRECTORS OR BOARD means the Board of Directors of the Association and "Director" means a member of said Board of Directors.

E. BUILDING means the multi-unit building which the Declarant has constructed upon the property to be used for residential purposes, as herein provided. Attached hereto and made a part hereof by reference is Exhibit "C", which describes in detail the buildings drawn by Dennis A. Lennert, Architect, N. C. Registration #3494.

F. BY-LAWS means the By-Laws for the government of the condominium as they exist from time to time.

G. COMMON AREAS AND FACILITIES means the portion of the condominium property owned, in undivided interest, by all the owners, as more specifically set forth herein.

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 areas 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 revenues of the Association remaining after deduction of the common expenses.

J. CONDOMINIUM DOCUMENTS means this Declaration, the By-Laws, Articles of Incorporation, the Rules and Regulations promulgated by the Board of Directors of the Association, and all other exhibits attached thereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended or supplemented from time to time.

K. DECLARANT means YAUPON DEVELOPERS, a North Carolina Partnership, its successors and assigns.

L. DECLARATION means this instrument as it may be from time to time amended or supplemented.

M. 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 any other unit or units, as more specifically defined herein.

N. PROPERTY means and includes the lands described in Exhibit "A" attached hereto and incorporated herein by reference together with any buildings and improvements located thereon.

O. UNIT OWNER or OWNER means a person or entity, or any combination thereof, who owns a unit.

P. UNIT OR CONDOMINIUM UNIT means a part of the Property which is to be subject to private ownership and use, as designated on the exhibits attached to this "Declaration" and as further defined in the Act. The word "apartment", if used herein, is synonymous with the word "Unit" as defined herein.

Q. SINGULAR, PLURAL GENDER means whenever the context so permits the use of the plural shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

ARTICLE III

DESCRIPTION OF PROPERTY AND NAME OF PROJECT

All that certain lot, parcel, piece or plat of land with the buildings and improvements thereon erected or to be erected situated, lying land being the City of Wilmington, County of New Hanover, State of North Carolina, and more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference.

The name by which this condominium project shall henceforth be known is YAUPON PLACE CONDOMINIUMS (hereinafter referred to as "Yaupon Place").

ARTICLE IVDESCRIPTION OF BUILDING

The Declarant has constructed or will construct, upon the property described in Exhibit "A" attached hereto, one (1) multi-unit building to be used for residential and lodging accommodation purposes as hereinafter provided. A plat of survey of the property by John A. Benson, Jr., R.L.S., dated March 1985, showing the location of said building is attached hereto as Exhibit "B" and made a part hereof by this reference, which plat designates each unit in the building.

This multi-unit building has two stories of living space, the lower story being ground level, together with an upper story, and is constructed principally of brick veneer and siding. This building (Units 1-7) has approximately 5844.80 square feet of enclosed area (including storage). The total gross square footage for this building is divided into seven (7) individual dwelling units described as follows:

Unit 1:	832.0 square feet
Unit 2:	832.0 square feet
Unit 3:	832.0 square feet
Unit 4:	832.0 square feet
Unit 5:	832.0 square feet
Unit 6:	842.4 square feet
Unit 7:	842.4 square feet

In addition, the buildings have common outside parking areas, walkways, landscaped areas and the appurtenances and facilities and limited common areas.

This multi-unit building is more particularly described in the plans of said buildings, a copy of which said plans is attached hereto and made a part hereof as Exhibit "C", consisting of 2 pages.

ARTICLE VUNIT DESIGNATION

The unit designation of each dwelling unit, its location, approximate area, and immediate common areas and facilities to which it has access and other data necessary for its property identification are set forth in said Exhibit "C", which is attached hereto.

Each unit is bounded both as to horizontal and vertical boundaries by the interior finished surfaces of its perimeter walls, ceilings and floors which are shown on said plans, subject to easements reserved herein for such encroachments as are contained in each building, 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 alterations.

ARTICLE VICOMMON AREAS AND FACILITIES

A. The common areas and facilities generally shall mean and refer to all of the real property, described on Exhibit "A", and all of the improvements and facilities thereon which are not units, as defined herein, 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. The land on which the buildings are erected and lands surrounding the buildings as is more fully described in Article III above.

2. All common foundations, columns, girders, beams, supports, roof, load bearing walls [including all exterior walls and all interior walls (except non-load bearing partition walls wholly within a unit)] and other structural members.

3. All yards, roads, driveways, parking areas, sidewalks, walkways and paths.

4. All central and appurtenant installations, apparatus and equipment for utility services, including, but not limited to, power, light, gas, refrigeration, water, heating, air conditioning, telephone, cable T.V., sewer, mail, irrigation, and trash disposal, if any, supplied for the use and convenience of the unit owners, and which are not defined as part of the units as defined herein.

5. All other parts of the Property and all apparatus and installations existing in the building or upon the Property for common use or necessary or convenient to the enjoyment, existence, maintenance or safety of the Property, including, but not limited to the concrete walkways and fencing, if any.

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

ARTICLE VIILIMITED COMMON AREAS AND FACILITIES

A. The limited common areas and facilities appurtenant to each unit are as follows:

1. The surface areas of the front porch (and stoop) and rear patio adjacent to each Unit. Reference is made to Exhibits "B" and "C" for such porches and patios.

2. The post or fencing on the porch, patios, or other outside entry area at ground level.

B. 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. Subject to the limitations contained herein, the owners of any unit(s) shall have exclusive (100%) use, possession and control of the limited common areas and facilities appurtenant to such unit.

ARTICLE VIII

PROPERTY RIGHTS
USE AND RESTRICTIONS ON USE

A. Restrictions on Use are as follows:

1. Each unit is hereby restricted to single-family residential use by the owner thereof, his immediate family, guests, invitees and lessees.

2. No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas or limited common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas or limited common areas and facilities, which will increase the rate of insurance on the unit, or which will obstruct or interfere with the rights of other occupants of the other units 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 unit or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

3. The use of common areas, limited common areas and facilities, by the owner of a unit or units or owners of all 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.

4. No owner of a unit shall permit any structural modification or alteration to be made to such 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 its sole discretion, that such structural modification or alterations would adversely effect or in any way endanger the condominium in part, or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium (including painting or other decoration or the installation of awnings, or the installation of electrical wiring, television or radio antenna or any other objects,

machines or air conditioning units which may protrude through the walls or roof of the unit or condominium) or in any manner alter the appearance of the exterior portion of any building without the prior written consent of the Association. No unit owner shall cause any object to be fixed to the common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the prior written consent of the Association.

5. No advertising, signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, including but not limited to the individual units or common or limited common areas, nor shall the property or any part of it be used in any way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any resident thereof. No business activity of any kind whatever shall be conducted at any building or on any portion of the property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns, during the construction and sale period.

6. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property; provided, however, the Board of Directors may allow the owners to possess household pets.

7. The exterior of the units shall not be decorated by the individual unit owners in any manner without the prior written consent of the Board of Directors of the Association.

8. No trailer of any sort, tent, barn, storage camper, shed, garage or other similar out building or structure shall be placed on the property at any time, either temporarily or permanently.

9. No structure of a temporary character shall be placed upon the property at any time, provided, however, that this provision shall not apply to shelters and sheds used by the Contractor during the construction of the multi-unit building or common area improvements or other necessary construction, it being clearly understood that these latter temporary structures may not, at any time, be used as residences or permitted to remain on the building site after completion of construction.

10. All garbage and refuse from the individual units shall be deposited with care in garbage containers or receptacles intended for such purpose, said containers or receptacles to be kept at all times in the space provided therefor.

11. It shall be the responsibility of each unit owner, and the Board of Directors of the Association, to prevent the development of any

unclean or unsightly or unkept conditions of the limited and general common areas.

12. So long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales offices, models or other usage for the purpose of selling units with said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease.

13. The use of the condominium or any units therein may be further restricted under the By-Laws of the Association, its Rules and Regulations.

B. Duration of Declaration. All restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for an indefinite period, unless an instrument signed by the then owners of condominium units affected by such restrictions and obligations has been recorded agreeing to change such restrictions and obligations in whole or in part. Notwithstanding the above, all unit owners are required to terminate unit ownership in accordance with N.C.G.S. §47A-16.

C. Remedies for Breach or Violation of Declaration. In the event of a violation or breach of any of these restrictions, or of any other covenants of this Declaration, by any property owner, or agent thereof, the owners of other units or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel the compliance of the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Board of Directors of the Association shall have the right whenever there shall have been any violation of these restrictions to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected or removed by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or conditions contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The remedies set out herein for such violation or breach are cumulative with any other legal or equitable rights available to any entity or person. The invalidation by any court of any restrictions or obligations in this Declaration shall in no way affect any of the other restrictions, which shall remain in full force and effect.

D. Binding Effect of Declaration. All present and future owners, tenants and occupants of units now in existence or to be constructed shall be subject to, and shall comply with the provisions of this Declaration. The By-Laws and any Rules and Regulations as may be adopted in accordance with the By-Laws; said Declaration, By-Laws, Rules and Regulations 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 unit shall constitute an agreement that the provisions of this Declaration, By-Laws and any Rules and Regulations which may be adopted 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 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.

E. Limitation of Modification of Restrictions Affecting Use. The uses contemplated by this Article, and the restrictions on use as set forth in this Article cannot be changed, amended, or modified without the written consent of the owners of all units, except as may be provided elsewhere in this Declaration.

ARTICLE IX

DESIGNATION OF PROCESS AGENT

John C. Bullock, Jr. is hereby designated to receive Service of Process in any action which may be brought against or in relation to these condominium units. This person's residence or place of business is 1907 Tradd Court, Wilmington, North Carolina, 28401, which is within the city and the county in which the property is located. The Board of Directors may change the person designated to receive service of process by filing the appropriate information with the office of the Register of Deeds for New Hanover County and the Secretary of State of North Carolina, if required by law.

ARTICLE X

EASEMENTS

A. In addition to easements and rights established and/or reserved elsewhere in this Declaration, the easements and rights set out hereinbelow under Paragraph A through G of this Article are hereby established as covenants, encumbrances and burdens running with the real property and the improvements thereon.

B. In case of emergency originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the managing agent, if any, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right shall be immediate.

C. Each unit and all common areas and facilities and limited common areas and facilities are hereby subjected 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.

D. 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 any other common areas and facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use pipes, ducts, cables, wires, conduits, public utility lines and any other common areas and facilities serving such other units and located in such unit. The Board or its designee shall have the right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common facilities contained therein or elsewhere.

E. The initial and subsequent Boards may grant or assume easements, leases or licenses 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 units, and/or common areas and facilities and limited common areas and facilities; and each unit owner hereby grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge and record for or in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

F. In the event 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 buildings, or by permissible repairs, construction or alterations, a valid cross easement for any such encroachment or encroachments, and maintenance of same is hereby created.

G. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, 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, their guests, families, invitees, lessees, the Association, and the Declarant, its successors and assigns.

ARTICLE XII

OWNER'S RESPONSIBILITY REGARDING MAINTENANCE

A. Without limiting any insurance voluntarily carried by the Association on limited common areas and facilities, all limited common areas and facilities, as described in Article VII hereof, shall be maintained (and, if owner desires, insured) by the owner. Any replacements or substitution of such limited common areas and facilities shall be compatible with any common areas and facilities affected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such limited common areas and facilities.

B. The owner of the dwelling unit to which a patio and stoop appurtenant shall be responsible for the upkeep, repair and maintenance of the surface floor area, and any fencing thereof, of the patio and stoop. No change in color, material or finish shall be made, and no additions or fixtures shall be made without express written approval of the Board of Directors, based on actual samples and drawings acceptable to the Board of the proposed change. All remaining structural portions of said patio and deck, if any, shall be considered common areas and facilities as provided for in the remaining sections of this Declaration including specifically the maintenance, repair and upkeep of same.

C. 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 insurance underwriters of the insurance 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 or 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.

ARTICLE XIII

THE ASSOCIATION

A. Creation of Association. To provide for the administration and maintenance of Yaupon Place, and future construction, if any, by the unit owners, a nonprofit North Carolina Corporation known and designated as YAUPON PLACE HOMEOWNERS' ASSOCIATION, INC. (hereinafter the "Association"), has been organized, a true copy of its Articles of Incorporation having been recorded in Book 1301 at Page 0662 in the Office of the Register of Deeds of New Hanover County, North Carolina and the provisions thereof are incorporated herein by reference. The Association shall administer the operation and management of the condominium, Yaupon Place, as well as any units which are constructed in the future, if any, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and its duly adopted By-Laws. A true copy of the original By-Laws are attached hereto as Exhibit "E" and incorporated herein by reference.

B. Management of Association. Declarant shall be solely responsible and have all rights and control of the management of the Association, as herein described, for a period of time not to exceed ninety (90) days after seventy-five (75) percent of the units in the condominium project have been conveyed to the unit purchasers. Within ninety (90) days after conveyance of

Seventy-five (75) percent of the unit estates of the condominium project to the unit estate purchasers, or three years following the date of conveyance of the first conveyance in the condominium project, whichever first occurs, Declarant shall transfer the right and responsibility for management of the Association to the unit owners to be exercised through the Association. Such transfer of the rights and responsibility for management of the Association will not preclude or prevent Declarant from exercising continued influence in the management of the Association through such votes as are allocated to Declarant through the ownership of units.

C. Duties and Rights of Initial Board of Directors. Until transfer of the rights and responsibility for management of the Association occurs, as set forth in the above paragraph, the Board of Directors of the Association shall consist of those three individuals as are appointed by the Declarant to the initial Board of Directors of the Association as stated in the Articles of Incorporation for the Association or the successors or replacements for such Directors as named by Declarant. The Board of Directors as described herein shall have the exclusive control and responsibility for the operation and management of the Association exercising all powers, duties and obligations, free from interference or control of the purchasers of the unit estates.

D. Membership and Voting Rights. Membership and voting right in the Association shall be as provided in Article IV of the Articles of Incorporation referred to and incorporated herein as stated hereinabove subject to the Declarant's rights of management control of the Association as set out above. Membership shall be mandatory for all unit owners of all units at Yaupon Place, including units constructed at a future date, if any.

E. Powers. The Association shall have all powers granted to it as stated in Article III of said Articles of Incorporation.

F. Common Expenses. The common expenses of the Association shall be shared by the unit owners in amounts determined by applying each unit owner's proportionate share of ownership in the common areas and facilities to the total common expenses of the Association, and as assessed against the unit owners, and their units as provided for hereinafter.

G. Management and Maintenance.

1. The Association, as common expenses, shall be responsible for the maintenance, repair and replacement of all of the common areas and facilities, including those portions thereof which contribute to the support of the building or buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas and facilities, and should any incidental damage be caused to any 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 areas and facilities, the Association shall, at its expense, repair such incidental damage. Whenever the Association incurs expenses in the maintenance, replacement or repair of common areas or facilities

and such expense is occasioned by any act of a unit owner, his immediate family, 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 by his family, guest, or invitees) shall be required to pay such portion of the cost of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provisions of such insurance, exceed the amount of the available insurance proceeds.

2. The Association shall have the right to make or cause to be made such alterations or improvements to the common areas and facilities which do not prejudice the rights of the owner of any unit in the use and enjoyment of his unit, provided the making of such alterations or improvements is 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 units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of a certain unit and certain unit or units requested the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the owner or owners of the unit or units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

3. The Declarant may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract or lease shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract or lease. Except, however, any such contract or lease shall contain a provision allowing the Association to terminate such contract or lease, without justification or penalty after Transfer of Management by Declarant to the Association as provided above.

H. Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for injury or damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

I. Insurance.

1. Acquisitions. Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association, as Trustee for the unit owners and their respective mortgages as their respective mortgages as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the units or any of them, and if the companies writing such policies will

agree, the policies shall provide that the insurer waives its right of subrogation as to any claims against the unit owners, the Association and their respective servants, agents and guests. Each unit owner may obtain insurance, at his own expense, affording coverage upon his unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

2. Coverage. All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs. Such coverage shall afford protection against (a) loss or damage by fire or other hazards covered by a standard extended coverage endorsement, and (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the real property, including but not limited to, vandalism and malicious mischief.

3. Public Liability Insurance. Public liability insurance shall be secured by the Association in such amount and with such coverage as shall be deemed necessary by the Board of Directors, but in no event in an amount less than One Million Dollars, including, but not limited to, an endorsement to cover liability of the unit owners as a group or to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Directors or manager shall determine from time to time be desirable or necessary.

4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and chargeable to the Association as a common expense.

5. Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The Board of Directors of the Association is hereby irrevocably appointed agent for each unit owner and his mortgagee as their interest may appear for the purpose of compromising and settling claims arising under insurance policies purchased by the Board of Directors for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear; said Board of Directors or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board of Directors' duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purposes elsewhere stated herein or in the By-Laws for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear.

6. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be payable to the Board of Directors of YAUPON PLACE HOMEOWNERS' ASSOCIATION, INC., as insurance trustee and shall be

distributed to or for the benefit of the beneficial owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provision made therefor, if any;

(b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as determined in Paragraph J of this Article. Any proceeds remaining after defraying such cost shall be distributed as surpluses to the beneficial owners of the damaged units pursuant to Article XIV hereof;

(c) Failure to Reconstruct or Repair. If it is determined as provided in Paragraph J of this Article, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed as surpluses to the beneficial owners of the damaged units thereof pursuant to Article XIII hereof;

(d) Mortgages. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired.

J. DAMAGE AND DESTRUCTION.

1. Determination to Reconstruct or Repair. If any part of the condominium property shall be damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

(a) Common Areas and Facilities. If the damaged improvement is a common area or facility, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

(b) Units.

(i) Partial Destruction. If the damaged improvement is a unit, and if termination as provided in subparagraph (b) below does not take place, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium shall be terminated.

(ii) Total Destruction. If more than two-thirds (2/3) of the units are destroyed and owners of three-fourths (3/4) of the units in the building should determine not to proceed with the repair or restoration, then the procedure set forth in