

return to: Courtney Winters
STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

**RESTATED AND AMENDED
 DECLARATION OF CONDOMINIUM
 FOR LAKESHORE HARBOUR
 CONDOMINIUMS**

LAKESHORE HARBOR, LLC, a North Carolina limited liability company (herein "Developer" or "Declarant") does hereby make, declare and establish this Restated Declaration of Condominium for Lakeshore Harbour Condominiums (the "Declaration") as the plan of unit ownership of the residential condominium development known as **LAKESHORE HARBOUR CONDOMINIUMS** (the "Condominium" or the "Condominiums").

This Declaration shall serve to fully restate and replace all prior Declarations including Declaration of Condominium for Lakeshore Harbor Condominiums that was recorded on January 25, 2007 in Book 7484, Page 237, Cumberland County Registry (the "Prior Lakeshore Declaration"). In addition, the plat identified as Plate Book 7, Page 160 (the "New Plat") shall fully replace that certain prior plat recorded in Condominium Plat Book 7, Pages 97-101 (the "Prior Plat"). As such, the Declarant declares that this Declaration hereby fully restates and hereby replaces the Prior Lakeshore Declarations, and the new Plat hereby fully restates and hereby replaces the Prior Plat; and the Declarant hereby terminates the Prior Lakeshore Declaration and the Prior Plat and declares that same are null and void.

ARTICLE I
**ESTABLISHMENT OF CONDOMINIUM
 SALE OF BUILDING PADS BY DECLARANT**

A. Developer is the owner in fee simple of certain real property situated in Cumberland County, North Carolina. Such property is all property that is found on the Plat Map recorded with the Cumberland County Register of Deed as Plat Map Book 7, Page 160; except any property that has or will be separated from this map and exists on a subsequently recorded map and is deed to a separate entity. Developer does hereby submit the Property and all improvements located thereon to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina, and hereby declares the same to be a condominium to be known and identified as "Lakeshore Harbour Condominiums". Developer shall have the right to convey any part of the Common area (as hereafter defined) at any time during development in its sole discretion, and the Developer may amend these covenants at any time up and until all Units are conveyed out or until the year 2030, whichever occurs first.

- B. Pursuant to the Act and to establish a plan of condominium ownership for the Condominium, the Declarant does hereby declare that the Property shall contain thirty-six (36) Condominium Units contained within four (4) Condominium buildings. The property will also contain thirty-six (36) Townhome Units which will be constructed on the Property.
- C. The total number of Units in all phases will not exceed seventy-two (72); which shall be comprised of the thirty-six (36) Condominium Units and thirty-six (36) Townhome Units.
- D. The Declarant reserves the right to sell and/or otherwise convey building pads located upon the Property or the Additional Real Estate to third party builders (the "Builders" or the "Builder") for the purpose of constructing the buildings within the Condominium and the Condominium Units. The Declarant shall have no responsibility for the construction with respect to any building or other improvements constructed by any Builder upon the Property or the Additional Real Estate; nor shall the Declarant have any liability or responsibility for any intentional, negligent or other acts or omissions of any, its contractors, subcontractors, employees, agents, or invitees. The Declarant has previously sold to Luxury Condos the first two building pads (and any other acreage) that now comprise Phase One and Phase Two of the Condominium, as described on the Plats and Plans (as defined below). As such, Luxury Condos executes this Declaration, as fee owner and Builder of the building improvements within Phase One and Phase Two, so as to incorporate said Phase One and Phase Two improvements into the Condominium. For additional reservations of Declarant with respect to the sale of building pads upon the Property and the Additional Real Estate to Builders, and the continuing rights and remedies of Declarant with respect thereto.
- E. Notwithstanding anything to the contrary in this Declaration, any reference in this Declaration to the Declarant in the specific context of building, or engaging in, any construction related to the improvements located, or to be located, within the Condominium, shall also refer to, and be equally applicable to any Builder engaging in any such construction, as the case may be, and as the context may require.

ARTICLE II

SURVEY AND DESCRIPTION OF IMPROVEMENTS

A plat of the land and graphic descriptions and plans of the improvements constituting the Association are found on Plat Map Book 7, Page 160. attached hereto and incorporated herein by referenced, said Plat and Plans identifying the Units, Common Areas, Open Space, and Facilities (as said terms are hereinafter defined), to the extent applicable to the Condominium, and their respective locations, approximate dimensions and principal building materials. Each Condominium Unit is identified by specific numerical designation and no Unit bears the same designation as any other Unit.

ARTICLE III

DEFINITIONS

The Condominium consists of Condominium Units, Townhome Units, Common Area

and Facilities as said terms are hereinafter defined:

"Condominium Units" (alternately referred to as "Condo Unit") as defined herein shall comprise the separate alphabetically identified dwelling Units which are designated on attached Plats and Plans (and any subsequent additions), excluding all spaces and improvements lying:

- (1) Beneath the wood sub flooring material of all floors excluding concrete slab on 1st floor;
- (2) Behind the interior sheet rock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
- (3) Above the interior sheet rock, wallboard or panel surfacing material of the ceilings; and further, excluding all pipes, ducts, wires, AC condensation tubes, dryer vents, conduits and other facilities for the furnishing of utilities and other services to Condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, AC condensation tubes, dryer vents, and conduits through the interior sheet rock, wallboard or panel surfacing material for walls and ceilings and sub flooring surfacing material for floors. All pipes, ducts, wires, AC condensation tubes, dryer vents, conduits and other such facilities within the referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panels and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Association as hereinafter defined.
- (4) The Declarant reserves the unilateral right to modify the definition of a Condominium Unit, as may be appropriate in the Declarant's sole discretion, for purposes of any Townhome-style or Carriage-style Units that Declarant may construct as part of any additional phases of the Condominium.

B. Common Areas and Facilities, sometimes referred to herein as "Common Property", "Common Areas" or "Common Area", and "Open Space" shall mean and comprise all portions of the Condominium other than the Units, including all of the real property, improvements, facilities, clubhouse, swimming pool, gazebo, lake pier, elevators, security card-key devices, sprinkler systems (including sprinkler heads), irrigation systems, signage, postal boxes, retaining walls, personal property (held and maintained for the use and enjoyment of all Owners), and all other improvements, fixtures, mechanical and plumbing systems, sewer and related pump/grinder systems, and other items, or areas maintained by the Association for the benefit of the Condominium other than the Units. Limited Common Areas are Common Areas.

C. Limited Common Areas are a portion of the Common Areas allocated by this Declaration or by operation of N.C.G.S. Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units. As used herein, the term "Limited Common Areas" or "Limited Common Elements" shall also mean and refer to the following:

- (I) The patios, porches, balconies, and/or decks, as applicable, which may be located

immediately adjacent to each Unit, access to which shall be only through a Unit. The use of each patio, porch, balcony, and/or deck shall be limited to the Unit Owner or occupant whose Unit affords interior access to them.

- (2) The walks, halls and hallways located in each building which are reserved for the use of the Unit Owners in those buildings, their families, guests, invitees and lessees.
- (3) Any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, with any such portion thereof serving only the designated Unit being a Limited Common Area allocated exclusively to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Areas being a part of the Common Areas.
- (4) Such other Limited Common Areas as may be shown on the Plats and Plans, including optional Garage Units and/or Storage Units assigned as a Limited Common Area to a specific Unit.

D. Townhome Units shall include all units not contained within one of the Condominium Buildings and shall comprise the side by side multi-level homes sharing at least one Shared "Party Wall" with other homes in the community

E. The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Condo Unit" or "Condominium Unit", "Townhome Unit," "Unit Designation" and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Section 1-103 of Chapter 47C of the General Statutes of North Carolina, as that statute exists as of the date of filing of this Declaration. The term "Plats and Plans" shall also include the survey of land and graphic descriptions and plans of the improvements constituting additional phases of the Condominiums as they are annexed into the Condominiums in accordance with this Declaration.

F. When the term "Unit" is used, it shall refer to both the condominium units and the townhome units collectively.

ARTICLE IV OWNERSHIP OF UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY

Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each shall also own, as an appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. All Units shall maintain an equal, undivided interest in the common areas and common elements of the community. Each Unit shall also include the right to use Limited Common Areas as they are defined in Article III and as they are shown on the Plats and Plans recorded and applicable to each Unit. Every Unit Owner may transfer its interest in said Owner's Unit ownership free of any right of first refusal reserved by the Declarant.

ARTICLE V
THE CONDOMINIUM
SUBJECT TO RESTRICTIONS

The Condominium Units, Townhome Units, Common Property and Limited Common Areas shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Townhome Units, Common Property and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Property; and said Condominium Units, Common Property and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominium. Each Unit owner will be subject to all rights and duties as set out herein; and when Declarant or any Builder, as the case may be, is the owner of any unsold Units in the Condominium, it will enjoy the same rights of the Unit Owners and assume the same duties of the Unit Owners as they relate to each individual Unit.

ARTICLE VI
RESTRICTIONS ON USE OF UNITS
RESTRICTIONS AGAINST SIGNAGE

Owners are prohibited from maintaining fires of any kind including but not limited to charcoal grills, gas grills or hibachis on any structure including but not limited to decks, patios, porches, hallways, balconies or other appurtenant structures. If grills are provided and/or used in designated Common Areas, Owners may use such grills in a safe manner and Owners will thereby assume sole and exclusive responsibility and liability for the use and operation of such grills. Owners assume sole and exclusive responsibility for all utilities serving their Units.

No satellite and/or radio receiving dishes, devices, or antennae shall be permitted, except as shall be approved by the Association. No personal belongings are allowed upon the balconies or in any other Limited Common Areas such that they are visible to other residents in the Condominium, including, but not limited to, bicycles, recreational equipment, and any other personal belongings; such items shall be kept hidden from view in the Owner's storage closet or within the Unit. Notwithstanding the above, plants and patio furniture may be kept on balconies. Owners are prohibited from cutting holes in the ceiling or walls of any Unit to install audio, visual or other equipment; the purpose of this restriction is to ensure the integrity of the firewall between the Units and to avoid unintended sound transference between Units.

Owners shall be prohibited from placing signs in the windows or otherwise on the outside of any Unit (or Garage Unit or Storage Unit), or upon any of the Common Areas or other areas of the Condominium, advertising that any Unit (or Garage Unit, Storage Unit or other personal item) is "for rent" or "for sale". For those Owners wishing to sell or lease their Unit (or any Garage Unit or Storage Unit), the Association shall keep a current registry of all such Units (or appurtenances) for sale or for lease for the benefit of the Owner, prospective buyers, tenants and real estate brokers/ agents. The Declarant and any Builder are exempted from this prohibition during the Period of Declarant Control.

In addition, any and all other signs (political signs, yard sale signs, or any other signs) shall not be permitted in the windows or on the outside of any Unit (or upon any Garage Unit or Storage Unit).

Further, no signs shall be permitted in or about the Common Areas or other areas of the Condominium except those erected by or authorized by the Association for the benefit of the Condominium or those erected by the Declarant or any Builder, as the case may be, advertising the Condominium. For purposes of this provision, a "political sign" means a sign that attempt to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

The purpose of this signage prohibition is to maintain an upscale and orderly appearance for the benefit of the Condominium and its Unit Owners.

ARTICLE VII EASEMENTS

- A. Perpetual Non-Exclusive Easement in Common Property. The Common Property shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Units in the Condominium for their use and the use of their immediate families, guests, invitees and lessees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. The Common Property shall be subject, also, to an easement of ingress, egress, and regress, and an easement for utilities, in favor of Developer, their representatives, employees, and designees for the purpose of construction of succeeding phases, and for the purposes of any other on-going responsibilities of Developer. Notwithstanding anything above provided in this Article, the Association as hereinafter defined shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Unit, his/her family, guests and invitees, may be entitled to use the Common Property, including the right to make permanent and temporary assignments of parking spaces (said parking to be in compliance with local ordinances, if any), and to establish regulations concerning the use thereof.
- B. Easement for Unintentional and Non-Negligent Encroachments. In the event that any Unit shall encroach upon any Common Property, or any other Unit for any reason not caused by the purposeful or negligent act of the Unit Owner, or agents of such Owners, then an easement appurtenant to such Unit shall exist for the continuance and maintenance of such encroachment upon the Common Property or upon a Unit for as long as such encroachment shall naturally exist; and in the event that any portion of the Common Property shall encroach upon any Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Property upon any Unit for as long as such encroachment shall naturally exist. If any Unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Property, there exists encroachments of portions of the Common Property upon any Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the continuation and maintenance thereof shall exist so long as such encroachments shall naturally remain.
- C. Rights of ingress and Egress for Unit Owners. Every Unit Owner shall have a perpetual right of ingress to and egress from its Unit over the Common Areas, such right being appurtenant to the right of Unit Ownership. Such right of ingress to and egress from

its Unit over the Common Areas, as well as easement rights over the Common Areas for utility services, cannot be suspended by the Association for violations of the covenants and non-payment of assessments as described in this Declaration; however, the Association may suspend privileges to use the pool and other recreational Common Areas for violations of the covenants and non-payment of assessments as described in this Declaration.

- D. Easement to Local Municipality. All Common Areas that are external to any condominium building are hereby made subject to an easement to any local municipality as the same may be shown on the Plats and Plans.
- E. Reservation of Easement in Favor of Developer. The Developer hereby reserves for the benefit of itself and its successors and assigns an easement of ingress, egress, and regress, as well as an easement for utilities and storm drainage, across the Common Areas for purposes of the future development of all real estate as shown on the New Plat, and for purposes of providing a means of ingress and egress for the benefit of any purchasers of any residential homes related to such future development, their lenders, tenants, invitees, and guests, regardless of whether such future development is annexed into the Condominium by Developer or its successors and assigns. If such future development is not annexed into the Condominium, such future development shall not be entitled to the use of any recreational amenities within the Condominium and shall be responsible for its pro rata share of the maintenance and expenses of Starboard Way.

ARTICLE VIII
**RESTRAINT UPON SEPARATION, PARTITION,
& LEASE OF COMMON PROPERTY**

Recognizing that the proper use of the Units by an Owner or Owners is dependent upon the use and enjoyment of the Common Property in common with the Owners of all other Units, and that it is in the interest of all owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property appurtenant to each Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void, unless the Unit to which that interest is allocated is also transferred. Further, no part of the Common Areas shall be subject to a lease between the Unit Owners (or the Association) and another party.

ARTICLE IX
**ADMINISTRATION OF THE CONDOMINIUM
BY LAKESHORE HARBOUR OF FAYETTEVILLE
HOMEOWNERS ASSOCIATION, INC.**

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known and designated as "Lakeshore Harbour of Fayetteville Homeowners Association, Inc." (the "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation (the "Articles of Incorporation") and bylaws (the "Bylaws"). The Owner or Owners of each Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, and such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Unit, regardless of how such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration (any individual Unit Owner shall also have said right), to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Property as its board of directors (the "Board of Directors") may deem to be in its best interest. Any Unit Owner, as the same is defined herein, is granted a right of action against the Association for failure to comply with the provisions of this Declaration or with decisions of the Association which are made pursuant to authority granted the Association. The Association may not be dissolved (except pursuant to a consolidation or merger) unless the Condominium is properly terminated in accordance with this Declaration.

ARTICLE X
RESIDENTIAL USE RESTRICTIONS
APPLICABLE TO CONDOMINIUM UNITS
EXCEPTIONS TO TITLE

Each Condominium Unit is hereby restricted to residential use by its Owner, his/her immediate family, guests, invites and lessees. Any leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. No Owner of any Condominium Unit shall permit the use of his Unit for transient hotel or for commercial purposes. There shall be no more than four (4) persons residing in any two bedroom unit, and no more than five (5) persons residing in a three bedroom unit, subject to the discretion of the Board of Directors of the Association. Any corporate or partnership members, other than the Developer, shall permit the use of a Condominium Unit owned by it only by its principal officers, directors or partners, or other guests or lessees. Such corporate or partnership member shall annually, or as changes necessitate, sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Condominium

Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration of Condominium, and with the rules and regulations which may be promulgated by the Association from time to time; and acknowledging that the party's right to use such Condominium Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate or partnership member to remove a party for failure to comply with the terms and provisions of the Declaration of Condominium, and/or the rules and regulations of the Association, or for any other reason, the corporate or partnership member shall forthwith cause such party to be removed; failing which, the Association, as agent of the Owner, shall take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner, who shall reimburse the Association therefore upon demand, together with such reasonable attorneys' fees as the Association may have incurred in the process of removal.

Anything in this Declaration to the contrary, Developer shall have the right to maintain a portion (or to allow a Builder to maintain a portion) of the clubhouse as a sales office. In addition, the Developer (or a Builder, as the case may be) shall also have the right to utilize Condominium Units owned by the Developer (or Builder) as models and to display advertising signs upon the Common Property during the period of Unit sales. Such right shall terminate when all Units in all phases of the Condominium are sold and transferred by deed. Developer, any Builder, its representatives, employees and designees shall have an easement of ingress, egress and regress, and an easement for utilities, over and upon the Common Property for construction of any succeeding phases, as described in this Declaration, which easement shall terminate (except with respect to any necessary utility easements) when all Units in all phases are completed and sold and transferred by deed.

ARTICLE XI
USE OF COMMON PROPERTY SUBJECT
TO RULES OF ASSOCIATION

The use of Common Property, including the Limited Common Areas and Facilities, by any Owner or Owners of the Condominium Units, and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the Association. Said rules and regulations expressly may include the right of the Association to limit a Unit Owner from leasing his or her Unit for a period of less than six (6) consecutive months. The Association shall have the right to suspend the rights of any Unit Owner (and said Unit Owner's household members, tenants and/or guests, as the case may be) to use recreational facilities located within the Common Property (to the extent that access to and from the pertinent Owner's Unit and utility services related thereto are not impaired) for a period not to exceed sixty (60) days, unless such rights are suspended for failure to pay assessments, in which case such rights may be suspended until the assessments are fully paid.

ARTICLE XII
THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES
RESTRICTION AGAINST NUISANCES

No immoral, improper offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, and all laws, zoning ordinances and

regulations of all government authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance upon the Condominium, or which will interfere with rights of enjoyment of other occupants of the Condominium because of unreasonable noises or other matters; nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

The Board of Directors has the authority to regulate the type, size and number of domestic animals, and all matters related thereto. No animals, livestock, or poultry of any kind shall be kept or maintained in any Unit, except that dogs, cats or other household pets, limited to a total of two (2) such pets, may be kept or maintained provided they are not kept or maintained for commercial purposes and provided that any barking or other pet noises does not constitute a nuisance to other residents. At no time shall any household pet be kept or maintained in any Unit that is commonly considered a vicious or dangerous breed of animal, nor shall any animal be kept that exceeds twenty-five (25) pounds in weight. When any household pet is allowed outside of any Unit, it shall be kept under control on a leash and accompanied by a responsible person at all times, and the Unit Owner shall ultimately be responsible for keeping the Common Areas clear of any animal waste. At no time shall an animal be tied up, chained or otherwise neglected within the Condominium.

ARTICLE XIII

RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES

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

ARTICLE XIV

RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY: RIGHTS OF ASSOCIATION FOR PROPER OPERATION OF PROJECT

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit an agent of Association to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice. The Owner of each Unit further permits the Association and/or the Developer the right to grant permits, licenses, and easements for utilities, road construction and repair and other necessary items for proper operation of the Condominium project.

ARTICLE XV

**LIMITATION UPON RIGHT OF OWNERS TO ALTER
AND MODIFY CONDOMINIUM UNIT: NO RIGHT TO
ALTER COMMON PROPERTY**

No Owners of a Unit shall permit any structural modification or alteration to such Unit without first obtaining the written consent of the Association, and such consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety.

The Association, through the Board of Directors (or its architectural control committee, if any), shall regulate the external design, appearance, use, location and maintenance of the Condominium and of improvements therein, including window treatments and blinds, in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. No Unit Owner shall cause any improvements, alteration, repairs or changes to be made on the exterior of the Condominium (including painting or other decoration; the installation of electrical wiring, television or radio antennae, or any other objects or devices which may protrude through the walls or roof of the Condominium; or the installation of window treatments and blinds that are not white in color), nor shall any Unit Owner alter the other appearance of the exterior portion of any building in any manner without the written consent of the Association (including changing patio carpet or paddle fans). No Unit Owner shall cause any object to be affixed to the Common Property or to any Limited Common Area (including but not limited to the location or construction of fences and the planting of shrubs or any other vegetation) or in any other manner change the growing of flowers, trees, appearance of the Common Property or Limited Common Area, without the written consent of the Association.

Any Unit Owner desiring to make any improvements, alterations or changes as described above shall submit the plans and specifications therefore, showing the nature, kind, shape, height, materials, and location of the same, to the Board of Directors, which shall evaluate such plans and specifications in light of the purpose of this Article as set forth above, and the Board of Directors shall have sole discretion in consenting to or disapproving of any such plans and specifications. The Board of Directors shall use good faith efforts to respond to said Unit Owner with respect to the proposed improvements, alterations or changes within a reasonable period of time. As a condition for the granting of approval of any request made under this Article, the Association may require that the Unit Owner requesting such change be liable for all costs of maintaining, repairing and insuring the approved alteration. If such a condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form, satisfactory to the Association. Thereafter, the Unit Owner, and any subsequent of the Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge for that particular Unit, subject to the lien rights described in said Article.

ARTICLE XVI

**RIGHT OF ASSOCIATION TO ALTER AND IMPROVE
COMMON PROPERTY AND ASSESSMENT THEREFORE**

The Association shall have the right to make or cause to be made such alterations or improvements to Common Property (including the right to grant and establish upon, over and across the Common Property such easements as are necessary or desirable for providing service or utilities to the Units and the Common Property) which do not materially prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations and improvements shall be Common Expenses (as hereinafter defined) 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 certain Units requesting the same, then the cost of making, maintaining, repairing and insuring such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment shall be levied in such proportion as may be determined by the Board of Directors of the Association.

ARTICLE XVII
**MAINTENANCE AND REPAIR BY OWNERS OF
 CONDOMINIUM UNITS**

Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which its failure to do so engenders. The Owner of such Unit shall be liable and responsible for the maintenance, repair and replacement of all heating and air conditioning equipment, regardless of where located, stoves, refrigerators, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair, and replacement of the exterior surfaces of any and all walls, ceilings and floors including but not limited to carpet within his Condominium Unit, including painting, decorating and furnishing, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair or replacement of any item for which the Owner is obligated to maintain or replace at his/her own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association (subject to the right of the Association not to make a claim), then the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement; except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductible provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement (or, all of the cost of such maintenance, repair and replacement, if the Association does not make a claim pursuant to its rights under this Declaration). All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners.

ARTICLE XVIII
**MAINTENANCE AND REPAIR OF COMMON PROPERTY BY
 THE ASSOCIATION**

The Association, at its expense, shall be responsible for the maintenance, repair and replacement

of all the Common Property and Limited Common Area (except where the Owner of a Unit has the exclusive use of any Limited Common Area wherein that unit owner shall maintain such at his own expense) including as part of the Common Area and Limited Common Area those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing (including any pump and grinder units for purposes of sanitary sewer), wiring and other facilities located in the Common Property, and further including the maintenance of all private streets and drives in the common areas. The Association will maintain an adequate reserve fund out of the monthly assessment fees for replacement or improvement of Common Areas and any Limited Common Areas it is obligated to maintain. The Association shall, at its expenses, repair any incidental damage done pursuant to the furnishing of utility, heating and other services to the Condominium Units 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 Property. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Condominium Unit Owner, his/her immediate family, guests, lessees 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 for by his family; guests, lessees 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 provision of such insurance, or by reason of any deductibility provision of such insurance proceeds, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

ARTICLE XIX MAINTENANCE AND REPAIR BY OWNERS OF TOWNHOME UNITS

A. Association's Responsibility.

- i. The Association shall maintain in good repair the landscaping and exterior building surface materials, fixtures, and equipment attached thereto as specifically provided therein. All maintenance of Lots and Dwellings which is not specifically assigned to the Association shall be the responsibility of the Owner.
- ii. The Association shall maintain all landscaping originally installed by Declarant, a Builder, or by the Association. The Association's responsibilities with respect to maintenance of such landscaping shall be limited to cutting of grass, trimming and replacement of trees, shrubs, hedges, bushes, flowers, and other plantings, from time to time as necessary or appropriate as determined in the Board's sole discretion. Owners of Units shall not alter such landscaping or landscaping equipment and shall not interfere with the Association's landscaping activities. Should any landscaping be installed by Owners, the Association shall have no responsibility to maintain such landscaping or have any liability for damage to such landscaping which may occur in the course of performing the Association's duties under this Article.

iii. The Association shall be responsible for cleaning, repairing, and repainting the exterior surface material of each townhome Dwelling, including stucco, wood and trim. Except for windows and doors, the Association shall maintain all exterior building surfaces (e.g., shingles, decking, and other surface roofing materials); provided, all other portions of the roof system and any vents, fans, plumbing stacks, or other items attached to the roof and serving a single Dwelling shall be the maintenance responsibility of the Owner. Doors and windows, except for repainting the exterior surface and trim, shall be the Owner's responsibility.

B. Owner's Responsibility.

i. Except as provided in Section A above, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community Standard and this Declaration. Each Owner shall maintain the routine cleanliness and general upkeep of their Lot, including without limitation, the repair, replacement and maintenance of the following: (a) all landscaped areas within the boundaries of the Lot installed by someone other than the Declarant or the Builder, including, without limitation any harmonious trees, shrubs, flowers and grass planted by an Owner in their rear yard; (b) all portions of an Owner's rear yard; (c) any Limited Common Area (including, but not limited to, patios, decks and porches) serving a single Townhome Unit; (d) screens and screen doors, exteriors doors, exterior glass surfaces, windows, window fixtures and other related hardware. All fixtures and equipment installed with a Townhome Unit commencing at a point where the utility lines, pipes, wires conduits or systems are within the Townhome Unit's exterior walls, including within any courtyards, shall be maintained and kept in repair by its Owner. The Owner shall be responsible for maintaining any fence installed on a Lot, whether installed by the Builder or the Owner, and any yard improvements inside of such fence. An Owner shall not do anything that will impair the structural soundness or integrity of another Lot or Townhome Unit, nor impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect other Lots or their Owners. Nothing shall be done in any Lot or in, on or to the Common Area that will impair the structural integrity of the Property or will structurally change any Townhome building of which a Townhome Unit is a part, except as is otherwise provided in this Declaration. In no event shall interior walls or partitions contributing to the support of any Townhome Unit, Townhome Building or Common Area be altered or removed. Any cost associated with maintenance within the owner's responsibility shall not be an item of Common Expense. No planting or maintenance by an Owner shall reduce the assessment payable by the Owner to the Association.

ii. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the

Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment levied against the Owner and a lien on such Owner's Lot in accordance with the provisions of Article IV hereof.

iii. Party Walls. Each wall which is built as a part of the original construction of a Townhome Building upon the property and placed on a boundary line between Lots, and all reconstruction or extension of such walls, shall constitute party walls. Except as provided in this Article, the general rules of law regarding party walls, lateral support in below-grade construction and liability for property damage due to negligence or willful acts or omissions shall apply to party walls on the Property. The following rules and principles shall also apply to the party walls:

iv. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall or benefit therefrom in proportion to such use and benefit.

v. Construction and reconstruction of Party Wall. The Owner of any Lot may construct, reconstruct, or extend a party wall in any direction (subject to and within the limitation of architectural control and other limitation of the Declaration) with the right to go upon the adjoining Lot to the extent necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition as prevailed before the commencement of such construction as is reasonably practicable.

vi. Weatherproofing. Notwithstanding any other provision of this section, an Owner who, by their negligence or willful act, causes the party wall to be exposed to the elements shall bear whole cost of furnishing the necessary protection against such elements.

vii. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

viii. Certification by Adjoining Lot Owner that No Contribution is Due. If any Owner desires to sell their Lot, they may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this

Article, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed

ix. Dispute Resolution. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Owner covenants and agrees to use good faith efforts to resolve their claims.

ARTICLE XX AUTHORITY TO PURCHASE INSURANCE

Insurance policies upon the Common Property, including Limited Common Areas and Facilities (except title insurance), all as applicable, shall be purchased by the Association, as trustee for the Unit Owners, for the benefit of the Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them; and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Unit Owners, the Association and their respective servants, agents and guests. Said insurance policies shall provide for notice to the respective mortgagees of the Unit Owners at least ten (10) days prior to lapse, material modification or cancellation of said policies. Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his/her Unit, his/her personal property and for his/her personal liability 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.

ARTICLE XXI INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS

- A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Units and Common Property:
 - (1) Casualty insurance covering the buildings and all improvements upon the land, and all personal property included within the Property, or as it may be amended from time to time, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage. Such policy shall contain an "agreed amount endorsement" or "inflation guard endorsement", if available. By the way of illustration and not of limitation, such casualty insurance shall not cover fixtures (comprising a part of the buildings) within each individual Unit (as that term is defined in Article III hereof) in accordance with the original condominium plans and specifications, unless said fixtures are Limited Common Areas or Common Areas. By the way of illustration and not of

limitation, such casualty insurance shall not cover furniture, furnishings, or other household or personal property owned by, used by or in the care, custody or control of a Unit Owner (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Condominium Unit by the Owner thereof at his/her expense. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief. If any buildings or improvements located upon the Property are located in a flood zone, such that flood insurance would be appropriate in the sole discretion of the Association, or required by affected mortgagees, then the Association shall have the authority to purchase flood insurance, and any additional expense related thereto shall be collected from Condominium Unit Owners via an appropriate increase in the monthly assessment authorized by this Declaration.

- (2) A comprehensive policy of public liability insurance insuring the Association in an amount no less than Two Million Dollars (\$2,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage.
- (3) The Board of Directors shall maintain fidelity coverage against dishonest acts by the Association's officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall provide adequate fidelity coverage against dishonest acts, and the existence of such coverage shall satisfy the requirement of this paragraph. If the Association elects to manage its own affairs and directly receive and disburse its own funds (or if in addition to professional management, the officers or Directors of the Association can and do directly receive or disburse the monies of the then the Board of Directors shall provide the coverage set forth in this paragraph. Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least (but not less than) a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and 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 and to any Institutional Lender (as hereinafter defined) who has given the notice required under this Declaration.
- (4) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to an individual Unit Owner.

B. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses (as hereinafter defined) to be assessed and collected from

all of the Owners of Units.

C. All insurance policies purchased by the Association attributable to the Common Property shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of Association, the Condominium Unit Owners and their respective mortgagees as follows:

- (1) Proceeds on account of damage to Common Property shall be held by the Association in undivided shares for each Unit Owner and his/her mortgagee, if any.
- (2) Proceeds on account of damages to Units shall be held in the following undivided shares:
 - (a) If the damage is considered partial destruction when the Condominium is to be restored as set out in this Declaration, proceeds shall be payable to the Owners of damaged Units..
 - (b) In the event a mortgagee endorsement has been issued with respect to a Unit, the share of the Unit Owner shall be held for the mortgagee and the Unit Owner, as their interests may appear.

D. In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied, in accordance with N.C.G.S. Section 47C-1-107.

E. Each Unit Owner shall be deemed to have delegated to the Board of Directors of the Association his/her right to adjust with insurance companies all losses under policies purchased by the Association and to negotiate with governmental authorities with respect to any condemnation claims.

ARTICLE XXII
RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE;
DAMAGE TO COMMON PROPERTY: DAMAGE TO CONDOMINIUM
UNITS

A. If any part of the Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:

- (1) Partial destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) of the Condominium Units untenable. In the event of partial destruction, the Common Property shall be reconstructed or repaired, unless this Declaration is terminated by the unanimous vote of all the Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original Plans and specifications.
- (2) Total destruction shall be deemed to mean destruction which renders two thirds

(2/3) or more of the Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within (30) days after the occurrence of the casualty (or if by such date, the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment), Unit Owners, who in the aggregate own three-fourths (3/4) or more of the Units, vote against reconstruction or repair, which the responsibility for maintenance and repair is that of Unit Owner, the Owner(s) shall be responsible for reconstruction and repair after casualty or condemnation. In all other instances, the responsibility of reconstruction and repair after casualty or condemnation shall be that of Association as follows:

- (II) Immediately after the casualty or condemnation causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty or condemnation. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.
- (2) When the damage is to both Common Property and Units, or to Common Property only, the insurance or condemnation proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Property and the balance to the Condominium Units.
- (3) The Association reserves the right in its fiduciary discretion not to file a claim with the Condominium's insurance carrier when, taking into account the estimated amount of the claim and the Association's reasonable belief in its sole discretion, that such filing of a claim may significantly cause a negative impact upon the Condominium's future insurance premium rate and its ability to maintain ample coverage through its insurance carrier; however, this reservation of rights by the Association shall in no way impair the responsibility of the Association to repair any damage for which it is otherwise responsible pursuant to the terms of this Declaration. The decision of the Association to not file any such insurance claim may not be appealed by any Unit Owner. It is expressly agreed that the Association reserves the absolute right not to file a claim that is estimated to be three thousand, five hundred and no/100 dollars (\$3,500.00) or less; for higher estimated claim amounts, the above mentioned fiduciary discretion and factors shall apply, with the final decision to be determined by the Association in its sole discretion.

ARTICLE XXIII
ASSOCIATION TO MAINTAIN REGISTER OF
OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of the Owners of all of the Units. In the event of the sale or transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. Further, the Owner of each Unit shall notify the Association of the names of the parties holding any mortgagee or mortgages on any Unit, the amount of such mortgage or mortgage, and the recording information which shall be pertinent to

identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Unit may, if he/she/it so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Unit, and upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto. The Association is required to make this register available for inspection to Unit Owners and any Institutional Lenders as the same are defined herein.

ARTICLE XXIV

ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To administer properly the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Units costs and expenses, which are sometimes herein referred to as "Common Expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make levy and collect assessments and fines against the Unit Owners and their Units. In furtherance of this grant of authority to Association to make, levy and collect assessments and fines to pay the costs and expenses for the operation, management of, and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Units.

1. Unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Association shall be assessed in equal amounts as to all Units in the Association. Assessments provided for herein shall be payable in monthly installments as determined by the Board of Directors of the Association. Unit Owners shall be subject to assessment by the Board of Directors upon acquiring title to their Units. The Declarant or any Builder, as the case may be, shall not be liable for assessments for unsold Units contemplated by this Declaration until such time as said Unit is (i) occupied or used for model, sales or other purposes by the Declarant or any Builder, as the case may be, or (ii) offered and used for rental purposes by the Declarant or any Builder, as the case may be.
 - A. In addition to the monthly assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Unit Owners owning two-thirds (2/3) of the Common Areas and Facilities who are voting in person or by proxy at a meeting duly called for such purposes.
 - B. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence, the Association shall establish a working capital fund (the "Working Capital Fund" or the "Fund"). At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two times (2x) the monthly assessment established by the Association. No such payments made into the Working Capital Fund shall be considered an advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in

accordance with the terms of this Declaration. Once control of the Association is transferred to the Unit Owners, any funds left within the Working Capital Fund will be transferred to a segregated fund. The Developer may not use any funds designated as Working Capital Funds to defray any of its expenses, reserve contributions, or construction costs, or to recoup any budget deficits, while it retains control of the Board of Directors, or at any time thereafter; however, upon the sale of the first Unit by Developer or a Builder, the Developer or a Builder shall have the right to loan money to the Working Capital Fund such that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence. Any such loan shall be reimbursed to Developer or Builder, as the case may be, by the Association once sufficient funds are available in the Working Capital Fund, or the Association otherwise has sufficient cash flow, to meet its operational needs going forward. Any such loan and any such reimbursement shall be clearly documented in the financial records of the Association.

- C. In addition to contributing to the Working Capital Fund (as set forth above), at the time of the closing of the first sale of each Unit, the purchaser thereof shall reimburse to the Developer or any Builder, as the case may be, for the estimated prorata share of Developer's or Builder's out-of-pocket expense for the initial property and liability insurance policy for the Condominium. The amount of said reimbursement to be paid at closing shall be three hundred and twenty-five and no/100 dollars (\$325.00).
- D. The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit) (the "Annual Budget" or the "Budget"). Such Budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and the budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with paragraph "G" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Unit Owner.
- E. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner the maximum monthly assessment shall be one hundred and Ninety and no/100 dollars (\$190.00) per Unit. Any Owner that purchases an appurtenant Garage Unit shall pay an additional estimated \$15.00 assessment per month. Any Owner that purchases an appurtenant Storage Unit shall pay an additional estimated \$5.00 assessment per month. The additional assessment for any Garage Unit and Storage Unit shall be for the purpose of reimbursing the Association for the additional maintenance and insurance therefore. After January 1 of the year immediately following the conveyance of the first Unit to an Owner, the portion of the maximum monthly assessment due to the Association may be increased by the Board of Directors as reasonably necessary in their fiduciary discretion.
- F. The Board of Directors of the Association, in establishing the Annual Budget for

operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of any capital improvements to the Common Property (the "Capital Improvement Fund" or the "Capital Fund"). The Capital Fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors so as to collect and maintain sums reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund attached hereto and the Association shall annually notify each Unit Owner of the amount of his balance in the Capital Improvement Fund account; however, such balance shall not be subject to withdrawal by a Unit Owner.

- I. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominium, the Articles of Incorporation and the Bylaws of the Association. All monies for any assessment that are paid unto the Association by any Owner of a Unit, the same may be commingled with monies paid to the Association by the other Owners of Units. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, and no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit. When the Owner of a Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.
- J. The Association shall have the right from time to time to levy fines against Unit Owners who violate the rules, regulations and restrictive covenants, or who cause any damage to any portion of the Condominium, in such amount as deemed necessary to enforce said rules, regulations and restrictive covenants, or to provide ample reimbursement for any such damage. The Association may publish and maintain at its office a schedule of fines to be levied in accordance with this Declaration.
- K. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the maximum rate charged by the Internal Revenue Service on delinquent taxes as determined at the time

of default until such delinquent assessment or installment thereof, and all interest due thereof, has been paid in full to the Association. All monies owing to the Association shall be due and payable at the main office or preferred mailing address of the Association. It is noted that all Units subject to a VA-guaranteed loan may not be subject to delinquent assessments in excess of six (6) months in any case in which the Association has not brought enforcement action against the Unit Owner, subject to the VA regulations in effect at the time of any such default.

- L. The Owner or Owners of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Unit while such party or parties are the Owner or Owners of a Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including any reasonable attorneys' fees, whether suit be brought or not.
- M. No Owner of a Unit may exempt himself/herself from liability for any assessment levied against him/her or his/her Unit by waiver of the use of enjoyment of any of the Common Property, or by abandonment of the Unit, or in any other way.
- N. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefore, and that such proper operation and management results in benefit to all of the Owners of Units, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Unit, which lien shall also secure the interest if any, which may be due on the amount of any delinquent assessments owing to the Association and, which lien shall also secure all costs and expenses, including reasonable attorneys fees, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in Common Property. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina; and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any Unit from date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said Unit. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association. The Association shall further be entitled to interest at the rate of eighteen percent (18%) per annum on any such advances made for such purpose, or the maximum rate permitted by state or federal law. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereof, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Unit expressly subject to such lien rights.
- O. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of the county in North Carolina in which

the Condominium is situated, which claim shall state the description of the Unit encumbered thereby, the name of the record Owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of the lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied or recorded.

The lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust recorded prior to the lien, and any person, firm or corporation acquiring title to any Unit and its appurtenant undivided interest in Common Property by virtue of any foreclosure of a first deed of trust, deed in lieu of foreclosure of a first deed of trust, or judicial sale relating to a first deed of trust, shall not be liable for any prior delinquent assessments and shall be obligated only for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in Common Property subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time such title was acquired. In the event of the acquisition of title to a Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title is not liable shall be absorbed and paid by all Owners of all Units as a part of the Common Expense; although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

P. Whenever any Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owner, shall furnish to the proposed lessee, purchaser, or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event that a Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Unit and such Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds shall be applied by the lessee or purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase to the Owner of any Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Unit, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amounts paid by Purchaser therefore.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it; nor shall a proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to Association.

ARTICLE XXV
COMMON SURPLUS

"Common Surplus", meaning all funds and other assets of the Association (including excess of receipts of the Association, including but not limited to assessments, rents, profits and revenues from whatever source) over amount of the Common Expense, shall be owned by the Owners of all Units in the same proportion that the undivided interest in Common Property appurtenant to all Units; provided, however, that said Common Surplus shall be held by the Association in the manner prescribed in, and subject to, the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of the Units.

ARTICLE XXVI
TERMINATION

The Condominium shall be terminated, if at all, in the following manner:

- A. The termination of the Condominium may be affected only by the unanimous agreement of all Unit Owners and by unanimous consent of the eligible Institutional Lenders as defined in this Declaration as expressed in an instrument to that effect duly recorded; and provided, that the holders of all liens affecting any of the Units consent thereto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such Agreement has been recorded in the public records of the county in North Carolina in which the Condominium is located.
- B. If it is determined, in the manner elsewhere provided, that the Condominium shall not be reconstructed after casualty, the Condominium plan of ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to the facts affecting the termination, which certificate shall become effective upon being recorded in the public records of the county in North Carolina in which the Condominium is located.
- C. After termination of the Condominium, the Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Units (or Units formerly owned by such Unit Owners) shall have mortgages and liens upon the respective undivided shares or interests owned as tenants in common and that percentage of the undivided interest in the Common Area and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held for the Unit Owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.
- D. Following termination, the property shall be subject to an action for sale for partition upon the election of any Unit Owner and upon the express agreement of all Unit Owners affected. If the Board of Directors determines by not less than a three-fourths (3/4ths) vote

to accept an offer for the sale of the property, and each Unit Owner affected expressly agrees to the sale, each Unit Owner shall execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such other sale, and upon the consummation thereof, shall be discontinued by all parties thereof.

ARTICLE XXVII
AMENDMENT OF DECLARATION OF CONDOMINIUM

This Declaration of Condominium may be amended in the following manner:

A. Amendment to Declaration:

An amendment or amendments to this Declaration of Condominium (an "Amendment" or "Amendments") may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units. Upon any Amendment or Amendments to this Declaration being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the president of the Association, or other officer of the Association in the absence of the president, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty-five (25) days and not later than sixty (60) days from the giving of notice of the proposed Amendment or Amendments. It shall be the duty of the secretary to give each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at his/her mailing address as it appears on the records of the Association, the postage thereon prepaid. If sent by electronic mail, such notice shall be deemed to be properly given when sent via electronic mail to a member's email address as it appears on the records of the Association. Such notice shall also contain a copy of the proxy that can be cast in lieu of attendance at such meeting. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of the members owning Units in the Condominium in order for such Amendment or Amendments to become effective. During the twenty (20) year period beginning with the date of Declaration, an affirmative vote of Unit Owners owning ninety percent (90%) of the undivided interest in the Common Areas and Facilities shall be required to amend this Declaration. From and after the expiration of said twenty (20) year period, an affirmative vote of Unit Owners in person or by proxy in a meeting duly called, owning seventy-five (75%) percent of the undivided interest in the Common Areas and Facilities shall be required. Upon adoption, such Amendment or Amendments of this Declaration of Condominium shall be transcribed and certified by the president and secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment or Amendments, so certified and executed with the same formalities as a deed, shall be

recorded in the public records of the county in North Carolina in which the Condominium is located, within thirty (30) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording data identifying the Declaration of Condominium. A copy of said Amendment or Amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such Amendment or Amendments. At any meeting held to consider such Amendment or Amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting but delivers his/her vote by written proxy, provided such written proxy vote is delivered to the secretary or other officer of the Association prior to such meeting or at such meeting. Notwithstanding the above, the Declarant reserves the right to unilaterally amend this Declaration in order to comply with the technical and/or substantive regulations of HUD, Fannie Mae, Freddie Mac and/or VA; or in order to correct any typographic/ clerical errors, scrivenor's errors, and/or minor errors.

(1) Amendments which require approval of 51 % of First Mortgage Holders. Unless otherwise set forth herein, at least 51 % of the Institutional Lenders as the same are defined in this Declaration, and as the same have given the required notice, must approve any material amendments of provisions which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the common elements;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of Common Elements;
- (f) Responsibility for maintenance and repair of the several portions of the Condominiums;
- (g) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium except as provided in Paragraph B below;
- (h) Boundaries of any Unit;
- (i) The interests in the Common Elements or Limited Common Elements;
- (j) Convertibility of Units into Common Elements or Common Elements into Units;
- (k) Leasing of Units;
- (l) Imposition of the right of first refusal or similar restriction on the right of a Unit owner to sell or convey his or her Unit;
- (m) Establishment of self-management by the Association where professional management has been required previously;
- (n) Provisions pertaining to or related to the express benefit of Institutional Lenders as the same are defined herein;

(2) Amendments which require VA approval. During the Period of Declarant Control, if the VA holds, insures or guarantees any mortgage within the Condominium, then the VA must approve (and be provided a copy of) any "material amendments" or

"extraordinary actions" with respect to the Declaration as those terms are defined in VA Pamphlet 26-7, Revised, as such may be revised.

ARTICLE XXVIII REMEDIES IN EVENT OF DEFAULT

The Owner or Owners of each Unit shall be governed by and shall comply with the provisions of this Declaration of Condominium, and the Articles of Incorporation and By-Laws of the Association, as any of the same are now constituted or as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owner of the other Condominium Units to the following relief:

- A. Failure to comply with any of the terms of the Declaration of Condominium or other restrictions and regulations contained in the Articles of Incorporation or By-laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.
- B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his/her act, neglect or carelessness, or by that of any member of his/her family, or his/her or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association (including the cost of any deductible), assuming that the Association elects to make a claim against any such policy and does not exercise its fiduciary right to not make such a claim. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.
- C. In any proceeding arising because of an alleged default by a Unit Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court, in no event shall any Unit Owner be entitled to such attorneys' fees.
- D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.
- E. All rights, remedies and privileges granted to the Association or the Owner or Owners of Condominium Units, pursuant to any terms, provisions, covenants or conditions of the Declarations of Condominium or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other and additional rights, remedies or

privileges as may be available to such party at law or in equity.

- F. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration of Condominium or other above mentioned document shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.
- G. The failure of an Institutional Lender or Institutional Lenders, as said term is herein defined, to enforce any right, provision or privilege, or covenant or condition, which may be granted to it or them by this Declaration of Condominium, or other above-mentioned documents shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.
- H. Regardless of the cause of action, the Association may not sue the Declarant without the approval of at least sixty-seven percent (67%) of the Unit Owners.

ARTICLE XXIX RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

- A. "Institutional Lender" or Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by first liens on residences, the Federal Housing Administration, its eligible insurers and governmental guarantors, who hold, guarantee or insure a first mortgage on a Unit, and which have requested notice pursuant to the provision of Paragraph B as set out herein below. In addition, to any other rights set forth in this Declaration, so long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any first mortgage upon any Condominium Unit or Units, or shall be the Owner of any Condominium Unit or Units, such Institutional Lender or Institutional Lenders, shall have the following rights:
 - 1. To approve the company and companies with whom casualty insurance is placed, and to be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
 - 2. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one (1) copy of the annual financial statement and report of the Association, prepared by a certified public accountant designated by the Association, such financial statement and report to be furnished by the end of each year.
 - 3. To be given notice by the Association of the call of any meeting of the membership for the purpose of considering any "material amendment" or "extraordinary action" of the Association (as those terms are defined in VA Pamphlet 26-7 Revised, as revised), including but not limited to: (1) any proposed Amendment to the Declaration of Condominium, or the Article of Incorporation and Bylaws of the Association effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining to any Unit or the liability for Common Expenses appertaining thereto, (ii) the number of votes in the Association appertaining to any Unit, or (iii) the purposes to which

any Unit or the Common Elements are restricted; and (2) the proposed termination or abandonment of the Condominium; and (3) the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association. Such notice shall state the nature of the Amendment or action being proposed.

4. To be given notice of any delinquency in the payment of any assessment or change (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Unit encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing.
5. To be given notice of any condemnation loss or casualty loss affecting the Common Areas resulting in losses greater than ten percent (10%) of the annual budget or affecting a material portion of any Unit on which there is a first mortgage held, insured or guaranteed.
6. To be given notice of any proposed action that requires the consent of a specified percentage of eligible mortgage holders.
7. To demand professional management (upon majority vote of Institutional Lenders).
8. To demand an audit of the Association's financial records (upon majority vote of Institutional lenders).

B. Whenever any Institutional Lender or Institutional Lenders desire the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Condominium Units owed by them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender or Institutional Lenders.

C. Upon written request from any agency or corporation which has an interest or a prospective interest in the Condominium, the Association shall prepare and furnish within a reasonable time, an audited financial statement of the Association for the immediately preceding fiscal year.

ARTICLE XXX
DEVELOPER CONTROL PERIOD

A. **Developer Representation on Board:** The Developer will exercise the right to appoint and remove members of the Board until the Period of Developer Control (as hereinafter

defined) ends as specified in Paragraph B. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units which have been created pursuant to Special Declarant Rights (as hereinafter defined)) to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units (including Units which have been created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant. Not later than the termination of any Period of Declarant Control, the Unit Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom must be Unit Owners. Whenever Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Developer shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Developer need not be a resident in the Condominium. However, Developer (or any Builder owning Units, as the case may be) shall be responsible for the payment of any assessments which may be levied by the Association against any Unit or Units owned by the said Developer (or any Builder owning Units, as the case may be), and for complying with the remaining terms and provisions hereof in the same manner as any other Owner of a Unit or Units.

B. Termination of Declarant Rights: Subject to Subparagraph "A" above, Developer shall have the right to designate and select a majority of the persons who shall serve as members of the Board of Directors of the Association. However, this period of Developer control (the "Developer Control Period", the "Declarant Control Period", the "Period of Developer Control", or the "Period of Declarant Control") terminates no later than the earlier of:

(i) 180 days after conveyance of seventy-five percent (85%) of the Units (including Units which have been created pursuant to Special Declarant Rights) to Unit Owners other than Developer; or (ii) two years after the Developer has ceased to offer Units for sale in the ordinary course of business; or (iii) two years after any development right to add any new Units was last exercised. Notwithstanding the above, subject to applicable law, as long as the Developer or any Builder continues to own a Unit that is offered for sale within the Condominium, then the Developer shall have the right to designate and select a majority of the persons who shall service as members of the Board of Directors of the Association, and the Period of Declarant Control shall not terminate until all Units have been sold. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event it may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, be approved by the Developer before they become effective.

C. **Special Declarant Rights.** Declarant reserves the following special Declarant rights (the "Special Declarant Rights") for the entire Property, which shall be exercisable during the Period of Declarant Control:

- (a) To complete any and all improvements indicated on the Plats and Plans;
- (b) To exercise any development right reserved in this Declaration, including, but not limited to, the right to sell building pads located upon the Property or the Additional Real Estate to any Builder;
- (c) To construct and maintain any sales office, signs advertising the Condominium, management office or model in any of the Units or on any of the Common Elements shown on the Plats and Plans for the benefit of Declarant or any Builder;
- (d) To use existing easements, and to create additional easements, including, but not limited to, easements for construction-related purposes, through the Common Elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium, said easements to also benefit any and all Builders, future residents or Owners, as applicable;
- (e) To appoint and remove the Board of Directors during the Period of Declarant Control; and
- (f) To make the Condominium part of a larger condominium.
- (g) Declarant reserves the following development rights for the entire Property and additional properties as described below during the Period of Declarant Control:
 - (1) To create Units, Common Elements, or Limited Common Elements within the Condominium; to alter the size of any Unit, to combine or merge two or more Units, to subdivide Units or convert Units into Common Elements, all in conjunction with Builders as necessary in the discretion of Declarant;
 - (2) To add real estate to the Condominium;
 - (3) To withdraw real estate from the Condominium;
 - (4) To transfer its development and other rights as Declarant to another person or entity which purchases all of a portion of the Property, the Additional Real Estate or portions of the Condominium still owned by Declarant by recording a written notice of same in the registry of the county in North Carolina in which the Condominium is located.

D. **Sales Office and Model.** The Developer shall have the right to maintain a sales office on the Property as long as the Developer owns any Units in the project. In addition, the Developer may maintain a model in any of the Units that the Developer owns. Such right

shall also apply to Builders in the discretion of Developer.

E. Dissolution: In the event of dissolution of the Developer at a time when it is the Owner of a Condominium Unit, then the rights of the Developer shall pass to and may be exercised by its successor in interest which receives ownership of any such Unit in dissolution.

ARTICLE XXXI SEVERALITY

In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

ARTICLE XXXII LIBERAL CONSTRUCTION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender shall include the feminine or neuter. The article headings are for convenience of reference only and shall not be consideration terms of this Declaration.

ARTICLE XXXIII DECLARATION OF CONDOMINOUm BINDING ON ASSIGNS AND SUBSEQUENT OWNERS

The restrictions and burdens imposed by the covenants of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common Property. This Declaration shall be binding upon Developer, its heirs, assigns, and all persons who purchase property herein.

ARTICLE XXXIV AGENT FOR SERVICE OF PROCESS

The following named individual is designated as the person to receive service of process for the Association, subject to any changes in the registered agent and registered agent address of the Association subsequently filed with the North Carolina Secretary of State: PAMS, P.O. 53081 Fayetteville, NC 28305.

ARTICLE XXXV
LOCAL ORDINANCES; GENERAL STATUTES; CONFLICTING
PROVISIONS

As previously stated, it is the intent of the Developer to submit the Property and all improvements located thereon to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina. It is the further intent of the Developer to comply with the city or county zoning ordinance, as the case may be. The applicable provisions of the city or county zoning ordinance, as the case may be, to which the Property may be subject are incorporated herein by reference. Where a conflict arises between any provision of this Declaration and said city or county zoning ordinance, then the city or county zoning ordinance shall prevail. Where a conflict arises between the provisions of the city or county zoning ordinance and the North Carolina General Statutes, then the North Carolina General Statutes shall prevail

ARTICLE XXXVI
DEVELOPER CONTRACTS AND
TERMINATION OF DEVELOPER CONTRACTS

- A. **DEVELOPER CONTRACTS:** Any management agreement between the Developer or the Association and a professional manager or any other agreement providing for services of the Developer shall not exceed a term of two (2) years and shall be subject to renewal by the consent of parties and shall be consistent with Section B of this Article. The termination of any professional contract entered into will not require a penalty or advance notice of more than ninety (90) days. The Developer may enter into a professional management agreement before control of the Board of Directors is passed in accordance with Article XXX of this Declaration. However, the management contract will give the Association the right to terminate the contract without cause upon the advance notice of not more than ninety (90) days, which right can be exercised at any time after the transfer of control pursuant to Article XXX.
- B. **TERMINATION OF DEVELOPER CONTRACTS:** Pursuant to N.C.G.S.47-C-3-105, if entered into by or on behalf of the Association before the Board of Directors elected by the Unit Owners pursuant to Section 47C-3-103(f) takes office, then (1) any management contract, employment contract, or lease for recreational or parking areas or facilities, (2) any other contract or lease between the Association and the Developer or an affiliate of the Developer, or (3) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners pursuant to Section 47C-3-103(f) takes office upon not less than ninety (90) days notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the Association before the Board elected by the Unit Owners pursuant to Section 47C-3-103(t) takes office. Failure of the contract to contain such a provision shall not affect the rights of the Association under this section. This section does not apply to any lease the termination of which would terminate the Condominium or reduce its size, unless the real estate subject to that lease was included in the Condominium

for the purpose of avoiding the right of the Association to terminate a lease under this section.

ARTICLE XXXVII
VALOREN TAXES

Any city and/or county ad valorem taxes on the Common Areas, as well as city and/or county and/or PWC assessments for public and private capital improvements on the Common Areas, if any, shall be the responsibility of and paid by the Association from the assessments provided for under Article XXIV herein and subject to all provisions of said Article XXIV including those providing for assessments and liens.

Upon default by the Association in the payment of any ad valorem taxes levied against Common Areas or assessments for public or private capital improvements, which continues for a period of six (6) months, then each Owner of a Unit shall become personally obligated to pay the tax or assessment to the assessing governmental authority, with each Unit Owner's portion of such taxes or assessments to be determined by dividing the total taxes and/or assessments due by the total number of Units. If not paid by the Owner within thirty (30) days, said sum shall become a continuing lien upon any such Owner's Unit, and the taxing or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same, or elect to foreclose the lien.

ARTICLE XXXVIII
AVAILABILITY OF CONDOMINIUM DOCUMENTS

The Association shall make available to Unit Owners, Institutional Lenders, and the holders, insurers and guarantors of the first mortgage on any Unit, current copies of the Declaration, the Bylaws and other rules governing the Condominium, and other pertinent books, records and financial statements of the Association. The Association shall also make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the Condominium, and the most recent annual audited financial statement, if such has been prepared. "Available" as used in this paragraph shall at least mean available for inspections, upon request, during normal business hours or under other reasonable circumstances.

ARTICLE XXXIX
CONTINUING RIGHTS OF DECLARANT UPON SALE OF BUILDING PADS TO
THIRD PARTY BUILDERS

(Design Approval Rights; Repurchase Option; Duty of Cooperation to Annex Constructed Buildings into Condominium)

Upon the sale or conveyance of building pads located upon the Property or the Additional Real Estate by Declarant, or its successors and/or assigns, to Luxury Condos (or to any other Builder pursuant to its rights as stated in this Declaration), then such conveyances shall be subject to the following rights of the Declarant.

- A. The Declarant shall have the right to approve the final design of any building or other improvement to be constructed upon any portion of the Property or the Additional Real Estate. Before commencing construction on any such building or other improvement, Lakeshore Harbour LLC (or any other Builder, as the case may be) must first obtain the written approval of Declarant as to the final site plan, landscaping plan, and architectural drawings for such building or improvement. Such approval shall be in the Declarant's reasonable discretion. One of the primary factors that Declarant shall take into account shall be the extent to which the proposed building or improvement will blend with the aesthetic and quality aspects of the larger Condominium development. Such approval rights of Declarant shall also apply if Lakeshore Harbour LLC (or any other affected Builder) changes the design of any proposed building or improvement at any stage during the construction.
- B. After the sale or conveyance of any building pad located upon the Property or the Additional Real Estate to Lakeshore Harbour LLC (or to any other Builder, as the case may be), Lakeshore Harbour LLC (or other Builder, as the case may be) shall have a period of twelve (12) months (from the filing date of the deed conveying the building pad) in order to commence construction upon any said pad. If Lakeshore Harbour LLC (or any affected Builder) does not commence construction within said period of time, then Declarant hereby reserves the right to repurchase any said building pad from Lakeshore Harbour LLC (or any affected Builder) at a price of ninety-five percent (95%) of the original price for which it sold to Lakeshore Harbour LLC (or any such Builder) (said price to be based strictly upon the original purchase price upon which revenue stamps were based for said pad and not to include any closing expenses that may have been paid by Lakeshore Harbour LLC (or any affected Builder)). The Declarant may exercise its repurchase option by giving Lakeshore Harbour LLC (or any affected Builder) written notice of Declarant's exercise of said option, said notice to be delivered via hand-delivery to said party; via reputable overnight courier to said party's principal place of business or other registered address; or via certified United States mail (return receipt requested). Closing of said repurchase by Declarant shall occur on or before thirty (30) days after the affected party is served with such notice, with the exact day to be determined in the discretion of the Declarant. Commencement of construction by Lakeshore Harbour LLC (or any affected Builder) after receipt of such notice by Declarant shall not affect the rights of the parties hereunder; Declarant shall continue to have the right to repurchase the affected building pad in accordance with its rights herein despite the delinquent commencement of construction and shall further have the right to require that Lakeshore Harbour LLC (or any affected Builder) restore the affected building pad to its original condition (prior to the delinquent commencement of construction after receipt of such notice by Declarant). Nothing in this section shall obligate the Declarant to exercise its repurchase option as stated herein. In addition, the failure of the Declarant to exercise its repurchase option as stated herein shall not constitute a waiver of its right to exercise said repurchase option at any future time.
- C. After Lakeshore Harbour LLC (or any other Builder, as the case may be) commences construction of a building or other improvement upon any building pad located upon the Property or the Additional Real Estate, Lakeshore Harbour LLCs (or other affected Builder,

as the case may be) shall have a period of nine (9) months in order to complete said construction (in conformity with the plans as approved by Declarant) and obtain a certificate of occupancy for all Units within any such building. If Lakeshore Harbour LLC (or other affected Builder) does not complete construction within said period of time, and such delay is not due to force majeure matters outside the reasonable control of Builder, then Declarant may serve Lakeshore Harbour LLC (or other affected Builder) with a written notice of a violation of this provision. Such notice shall be served upon Lakeshore Harbour LLC (or other affected Builder) via hand-delivery, via reputable overnight courier, or via United States mail (in the same manner as described in Section B above). Upon receipt of such notice, Lakeshore Harbour LLC (or other affected Builder) shall have an additional ninety (90) days to complete the improvements. After the expiration of such period, if the improvements are still not complete, then Lakeshore Harbour LLC (or other affected Builder) shall pay to Declarant the sum of \$500.00 per day (for each additional day that a certificate of occupancy is not issued for all Units within the new building) as liquidated damages for Luxury Condos' (or other affected Builder's) failure to complete the improvements in a timely manner, and Declarant shall have the right to file a lien upon the building pads so affected to secure such monetary damages. Said lien may be foreclosed upon by the Declarant in the same manner as described in Article XXIV. Lakeshore Harbour LLC (or other affected Builder) shall also be liable to the Declarant for, and the lien shall also secure, all costs incurred by the Declarant related to the filing and/or foreclosure of said lien to collect any such liquidated damages, including all reasonable attorneys' fees and court costs.

- D. As of the final completion of construction of any building upon any building pad located upon the Property, the Declarant and Lakeshore Harbour LLC (or other affected Builder, as the case may be) shall work together with their legal counsel promptly and in good faith to jointly execute an amendment to this Declaration to be recorded in the local registry (said amendment to include a plat of the footprint of the new building, as well as its as-built architectural drawings), so as to legally annex the new building into the Condominium in full compliance with Chapter 47C of the North Carolina General Statutes. Such amendment shall be consented to, and executed by, Lakeshore Harbour LLC (or other affected Builder's, as the case may be) construction mortgage lender, such that said lender's lien rights are fully subordinated to said recorded amendment (and such that any subsequent foreclosure of said lien rights will not also foreclose and sever the improvement from being part of the Condominium scheme of development). Lakeshore Harbour LLC (or other affected Builder, as the case may be) shall be responsible for all legal and recording expenses related to the requirements of this paragraph.
- E. In the event of any violation of this Article, as well as in the event of any violation of any other provision of this Declaration, then the Declarant shall be entitled to all remedies at law and/or in equity, including the remedy of specific performance.
- F. Lakeshore Harbour LLC (or any other Builder, as the case may be) hereby agrees by acceptance of any deed from Declarant for one or more building pads, to indemnify, defend and hold harmless Declarant, the Association, or any Unit Owner, from any liability and/or any expense related to the activities upon the Property (or in the vicinity thereof) of Luxury Condos (or any other Builder, as the case may be), its successors, assigns, contractors, subcontractors, employees, agents, and invitees. In addition, Lakeshore Harbour LLC (or any other Builder, as the case may be) hereby agrees by acceptance of any such deed from Declarant to assume full control and responsibility of required erosion control measures (as required by the North Carolina Department of Environmental, Health and Natural Resources ("DEHNR") upon any conveyed building pad (or in the vicinity thereof) prior to and during any period of construction. Lakeshore Harbour LLC (or any

other Builder, as the case may be) shall be responsible for all compliance with any required erosion control after taking title to any building pad and shall indemnify, defend and hold harmless Declarant for any alleged violation and/or actual fines assessed by DEHNR (or any other regulatory or municipal agency having jurisdiction) related to any lack of erosion control compliance.

G. Any reference to Declarant or Builder or any other party in this Article, as well as elsewhere in this Declaration, shall also refer to their successors and/or assigns.

This Amendment to the Declaration shall be effective on the date of recordation of the same in the Offices of the Cumberland County Register of Deeds.

This Amendment to the Declaration has been approved or ratified by a majority of the Board of the Association.

IN WITNESS WHEREOF, Declarant has executed this Restated and Amended Declaration as of the date set forth in the below notary and does hereby declare that the foregoing Restated and Amended Declaration shall be binding on all parties having or hereafter acquiring any right, title or interest in the Properties subject to the Declaration, inclusive of any and all Lots and Dwellings, or any part thereof, and shall inure to the benefit of each Owner or successor in interest, heir, transferee, assignee, or otherwise thereof.

A North Carolina Non-Profit Corporation

Signatures start on next page



, Its President

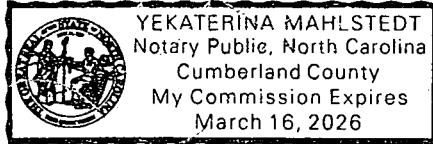
STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF CUMBERLAND

I, Yekaterina Mahlstedt, a Notary Public of the County and State aforesaid, certify that Darrin Collins personally came before me this day and acknowledged that she/he is the President of Lakeshore Harbor, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its president.

Witness my hand and official stamp or seal, this 2 day of April, 2025.



(N.P. SEAL)



Yekaterina Mahlstedt
Notary Public
Yekaterina Mahlstedt

Printed Name

My Commission Expires: 03.16.2026