Section 21.11 <u>Fidelity Insurance</u>. If desired, the Association may maintain fidelity insurance.

ARTICLE 22.

RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE.

Section 22.1 Reconstruction-Costs. Any portion of the Condominium for which insurance is required pursuant to Article 21 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of all Owners of Units not to be rebuilt or Owners of Units assigned to Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lien holders, as their interests may appear, and (3) the remainder of the proceeds shall be distributed to all of the Unit Owners or lien holders, as their interests may appear, in proportion to their Common Element interest. If Unit Owners vote not to rebuild any Unit, that Unit's allocated interests automatically shall be reallocated upon the vote as if the Unit had been condemned pursuant to N.C. Gen. Stat. § 47C-1-107(a), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations. Unless otherwise prohibited, any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

Section 22.2 Estimates of Replacement Costs. Immediately after the casualty 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 place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.

Section 22.3 <u>Priority of Repair</u>. When the damage is to Common Elements, Limited Common Elements and Condominium Units, the insurance proceeds will be applied first to the cost of repairing the Common Elements, secondly to the cost of repairing the Condominium Units, and thirdly to the cost of repairing the Limited Common Elements.

Section 22.4 <u>Association Right to Insurance Adjustments</u>. Each Condominium Unit Owner shall be deemed to have delegated to the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

ARTICLE 23.

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 Condominium Units. In the event of the sale or transfer of any Condominium 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 Condominium Unit. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any Condominium Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

ARTICLE 24.

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 Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses (not including the payment of real estate and personal property taxes) 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 against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management and improvement of the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

Section 24.1 <u>Levy of Assessments</u>. Except as specifically otherwise provided for in this Article or elsewhere in this Declaration, all assessments levied by the Association shall be levied pursuant to the allocation of Common Expenses set forth in Exhibit "C," as same may be amended from time to time. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests of the Common Expenses exclusive of the interests therein

appurtenant to any Unit or Units owned by the Association.

Section 24.2 <u>Assessments - Limited Common Elements</u>. Any Common Expense associated with the maintenance, repair or the replacement of a Limited Common Element be assessed equally against the Units to which that Limited Common Element is assigned. Any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited in such proportions as determined by the Board.

Section 24.3 <u>Payment of Assessments</u>. Assessments provided for herein may be payable in installments as directed by the Board of Directors of the Association. Such assessments shall commence upon closing of the sale of the first Unit.

Section 24.4 Association Budget. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the fiscal year set forth in the Bylaws). Such Budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to 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 Section 24.5 hereof, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of such Annual Budget by the Board of Directors of the Association, copies of said Annual Budget or summaries thereof shall be delivered to each Owner of a Condominium Unit. Within thirty (30) days after adoption of any proposed Budget, the Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the Annual Budget which date shall be not less than fourteen (14) nor more than thirty (30) days after the mailing of copies of such Annual Budget or summary thereof to the Unit Owners. There shall be no requirement that a quorum be present at the meeting. The Annual Budget is ratified unless at that meeting a majority of all the Unit Owners reject the Annual Budget. In the event the proposed Annual Budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify (i.e. fail to reject by a majority of all Unit Owners) a subsequent budget proposed by the Board of Directors. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

Section 24.5 <u>Capital Improvement Fund</u>. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements, which capital improvement and replacement fund (Capital Improvement Fund) shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may

constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. 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.

Section 24.6 Assessments-Association Property. 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, and the Bylaws of the Association. As monies for any assessment are paid into the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by other Owners of Condominium 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 Elements, shall be held for the benefit of the members of the Association, 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 Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium 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.

Section 24.7 <u>Delinquent Assessments</u>. 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. Upon the default of the payment of any assessment or installment thereof due to the Association, the Board may elect to impose a late payment charge not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of such delinquent assessment or unpaid installment thereof. All monies owing to the Association shall be due and payable at the office of the Association. In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any such installment, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Executive Board, and the entire outstanding balance of the Assessment, including such delinquent installment, may be declared due and payable in full immediately by the service of notice to such effect upon the defaulting Owner.

Section 24.8 <u>Liability for Assessments</u>. The Owner or Owners of each Condominium 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 Condominium Unit while such party or parties are Owner or Owners of a Condominium 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 personally shall be 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 a reasonable attorneys' fee, whether suit be brought or not.

No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the use of enjoyment of any of the Common Elements, or by abandonment of the Condominium Unit or in any other way.

Section 24.9 Lien for Assessments. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium 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 the right to place a lien upon each Condominium Unit, and any Limited Common Elements assigned to such Unit, and its appurtenant undivided interest in the Common Elements for nonpayment of any assessment levied against a Unit remaining unpaid for thirty (30) days or longer, which lien also shall secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien also shall secure all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien provided for herein. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages and deeds of trust may be foreclosed under power of sale in the State of North Carolina subject to N.C. Gen. Stat. § 47C-3-116, as amended. The Association shall be entitled to bid at any foreclosure sale and may apply as cash credit against its bid all sums due as provided herein. 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 in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or may acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

Section 24.10 <u>Foreclosure/Assessment Obligation</u>. The lien herein granted unto the Association shall be enforceable from and after the time of filing a claim of lien in the office of the Clerk of Superior Court of Beaufort County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the

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amount due, the date when due and shall comply with any other requirements under N.C. Gen. Stat. § 47C-3-116, as amended. The claim of lien shall be recordable at 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, but shall be extinguished unless a proceeding to enforce the lien is instituted within three (3) years after the docketing thereof. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided and all fees, charges, late charges, fines and interest as set forth in N.C. Gen. Stat. § 47C-3-116, as amended. 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 of record.

The lien provided for herein shall be prior to all liens and encumbrances on a Unit except (1) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (2) liens for real estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

If the holder of a first mortgage or first deed of trust of record, or other purchaser of the Unit, obtains title to the Unit as a result of foreclosure or deed in lieu of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners including such purchaser, and its heirs, successors and assigns 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.

Section 24.11 <u>Statement of Assessment Status</u>. Whenever any Condominium 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 for 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.

Section 24.12 <u>Election of Collection Remedies</u>. 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 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 the Association.

Section 24.13 <u>Initial Contribution to Working Capital Fund</u>. Upon the sale and closing of the purchase of each Unit by the Declarant to a Person other than Declarant, the purchaser of each Unit shall pay a non-refundable contribution to the working capital of the Association in an amount equal to two (2) monthly installments of the annual Common Expense liability to be assessed against such Unit for the first year of operation of the Condominium. The contribution to working capital may be utilized to reimburse the Declarant the costs of premiums for insurance purchased by the Declarant for the benefit of the Condominium and the Association.

ARTICLE 25.

COMMON SURPLUS.

"Common Surplus," meaning all funds and other assets of the Association remaining after the payment of or the provision for Common Expenses, including reserves, shall be owned by the Owners of all Condominium Units in the same proportion as their Common Expense liabilities. 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 Condominium Units in accordance with their percentage interest in Common Surplus as declared herein. All Common Surplus remaining after payment of or provision for Common Expenses, including prepayment of reserves, must be paid to the Unit Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense liabilities.

ARTICLE 26.

TERMINATION.

The Condominium may be terminated only in strict compliance with N.C. Gen. Stat. § 47C-2-118.

ARTICLE 27.

AMENDMENT OF DECLARATION OF CONDOMINIUM.

This Declaration may be amended as follows:

Section 27.1 <u>Amendments Proposed by Association</u>. An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association

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acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. 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. It shall be the duty of the Secretary to give to each member written or printed notice of any meeting called to consider the amendment or amendments, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form. 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 at least sixty-seven percent (67%) of the votes in the Association which are allocated to Unit Owners in the Condominium in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted 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 Register of Deeds Office of Beaufort County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, 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.

As an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. The written agreement shall include the proposed amendment or amendments in reasonably detailed form. To be effective, the written agreement must be executed by Unit Owners of Units to which at least sixty-seven percent (67%) of the votes of the Association are allocated. Once approved, the amendment or amendments shall be transcribed, certified, executed, recorded and a copy sent to all Owners as specified above.

Section 27.2 <u>Amendments by Declarant</u>. A Declarant may amend the Declaration as set forth herein and in the Act without the consent of any other Person or the Association to exercise Development Rights.

Section 27.3 Amendments Requiring Declarant Consent. During the period reserved by the Declarant to exercise Development Rights, this Declaration may not be amended without the prior written consent of the Declarant. Except to the extent expressly permitted by the Act or other provisions of this Declaration (in compliance with the Act), no amendment may create or increase special Declarant Rights, create or increase Development Rights, increase the number of Units, change the boundaries of any Unit, change the allocated interest of any Unit, or change the uses to which any Unit is restricted in the absence of unanimous consent of the Unit Owners.

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ARTICLE 28.

REMEDIES IN EVENT OF DEFAULT.

Section 28.1 General Remedies. Every Owner and any occupant of any Unit shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

Section 28.2 <u>Enforcement/Sanctions</u>. The Board or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing before the Board or an adjudicatory panel appointed by the Board in accordance with the procedures set forth in § 47C-3-107.1 of the Act. Such sanctions may include, without limitation:

- (a) Imposing reasonable monetary fines not to exceed One Hundred and No/100 Dollars (\$100.00) which shall constitute a lien upon the Unit of the violator;
 - (b) Suspending an Owner's right to vote;
- (c) Suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Unit; and
- (d) Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association.

In the event a fine is imposed on the violator, an additional fine not to exceed One Hundred and No/100 Dollars (\$100.00) per day may be imposed for each day more than five (5) days after the decision that the violation occurs.

If a suspension of condominium privileges or services is imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

Any decision by an adjudicatory panel may be appealed to the Board by delivering written notice of appeal to the Board within fifteen (15) days of the adjudicatory panel's decision. The Board may affirm, vacate, or modify the adjudicatory panel's decision.

Section 28.3 <u>Self Help Remedies</u>. In addition to other rights set forth in the Association Documents and the Act, upon violation or breach of any provision of the Association Documents, the Board shall have the right: (i) to enter a Unit or Limited Common Element appurtenant thereto, on which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the

Association Documents, and the Board shall not thereby be deemed guilty in any manner of trespassed, (ii) to use self-help to remove or cure any violation of the Association Documents (including, without limitation, the towing of vehicles); or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; provided, however, that before any construction or improvements may be altered or demolished, except in emergencies, judicial proceedings shall be instituted by the Association against such defaulting Owner or its tenant.

Section 28.4 <u>Cumulative Remedies/Attorneys' Fees</u>. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Association Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 28.5 <u>Association's Right Not to Take Action</u>. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.

Section 28.6 <u>Enforcement by Owner</u>. Nothing set forth in this Article 28 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

Section 28.7 <u>No Waiver</u>. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

Section 28.8 No Waiver by Declarant. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or the other

above-mentioned documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

Section 28.9 No Waiver by Mortgagee. The failure of a first mortgagee to enforce any right, provision, privilege, covenant or condition which may be granted by this Declaration or the 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.

ARTICLE 29.

SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS RESERVED UNTO DECLARANT.

In addition to each and every right of Declarant as set forth in this Declaration, Declarant, its successors and assigns, specifically reserves all Special Declarant Rights and Development Rights hereinafter set forth.

Section 29.1 Special Declarant Rights Reserved by Declarant.

- (a) All Special Declarant Rights, as that term is defined in the Act, and any other Special Declarant Rights as are set forth in the Act and the Association Documents.
- (b) The right to use any portion or all of the Common Elements for the purpose of aiding in the sale or rental of Units. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit same and to distribute audio and visual promotional materials upon the Common Elements.
- (c) The right to maintain sales offices, management offices and models in any and/or all of the Units owned or leased by Declarant. Any Units leased or owned by Declarant may be used by Declarant for such purposes, and such offices and models may be relocated as Units are sold or leases expire.
- (d) The right to use easements through the Common Elements for utility services, drainage and vehicular and pedestrian traffic, or otherwise, across, under or through the Common Elements as may be considered by Declarant desirable for the purpose of making improvements within the Condominium.
 - (e) The right to exercise any Development Right.
- (f) The right to perform construction work, and to store materials in secure areas, in Units, and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of the Executive Board. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of

discharging Declarant's obligations or exercising Declarant's Development Rights and Special Declarant Rights, whether arising under the Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, and other entities to fulfill the plan of development.

- (g) The right to appoint, remove and replace the officers and members of the Executive Board.
- (h) Rights regarding amendments to this Declaration reserved in Section 27.3.

Section 29.2 Development Rights Reserved by Declarant.

- (a) All Development Rights as the same are defined in this Declaration and in the Act, including all Development Rights to all Development Property.
- (b) The rights to: add real estate to the Condominium; create Units, Common Elements and Limited Common Elements within the existing Condominium or to be added to the Condominium; but not to exceed a total of one hundred (100) Units; subdivide Units; convert Units into the Common Elements; and, withdraw property, Units and Common Elements from the Condominium. The Development Right reserved to add Units shall not restrict the Declarant to the construction of buildings or Units of the same size and style as the existing buildings and Units in the Condominium.
- (c) The Development Rights reserved by Declarant may be exercised with respect to different portions of the Development Property at different times, and Declarant makes no assurances as to the boundaries of those portions or the order in which those portions of the Development Property may be subjected to the exercise of the Development Rights. If a Development Right is exercised with respect to any portion of the Development Property, Declarant may, but is not obligated to, exercise any Development Right with respect to any other portion of the Development Property.
- (d) The Development Rights reserved by Declarant must be exercised during the Development Period.
- (e) The exercise of any or all of the Development Rights reserved by Declarant shall be pursuant to, and subject to the provisions of, the Act.

Section 29.3 Phasing of Development Rights.

(a) Declarant reserves the right to exercise any of the Development Rights with respect to the areas or any portions of the Development Property at different times. No assurances are made by Declarant regarding the areas or any portion of the areas as to the portions where the Declarant will exercise its Development Rights or the order in which such portions will be developed. No assurances are made by Declarant regarding whether all or any

portion of the Development Property will be developed. The exercise of any Development Right as to some portions of the Development Property will not obligate the Declarant to exercise any of the Development Rights as to other portions. Declarant reserves the right to exercise any of the Development Rights as to portions but not all of the Development Property.

- (b) Declarant reserves the right to exercise any of the Development Rights with respect to the Units owned by the Declarant at different times. No assurances are made by Declarant regarding the Units owned by Declarant as to when the Declarant may exercise its Development Rights or in what order. No assurances are made by Declarant regarding whether or not all the Units Declarant reserves the right to create will be created. The exercise of any Development Right as to some of the Units owned by Declarant will not obligate Declarant to exercise any of Declarant's Development Rights as to other Units owned by Declarant.
- Section 29.4 <u>Limitations on the Exercise of Special Declarant Rights</u>. The Special Declarant Rights reserved hereunder shall terminate no later than the earlier of (i) the expiration of the Development Period, or (ii) upon the recording by Declarant of an instrument in the office of the Register of Deeds of Beaufort County, North Carolina terminating the Special Declarant Rights.
- Section 29.5 <u>Declarant's Personal Property</u>. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the improvements within the Condominium that has not been represented as property of the Association. Declarant reserves the right to remove from the Property any and all goods and improvements used in development, marketing, and construction, regardless of whether they have become fixtures.

Section 29.6 Interference with Special Declarant Rights.

- (a) Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.
- (b) In relation to Declarant's exercise of any Special Declarant Right, the provisions of the Declaration which prohibit or require approval of construction of or additions or alterations to any improvements shall not be applicable.
- Section 29.7 <u>Assignment of Declarant's Rights and Duties</u>. Any and/or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any Person which will assume any and/or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations, and duties hereunder. Declarant may

limit and restrict the rights and powers which are assigned to any person, corporation, or association in the instrument which assigns such rights. The term "Declarant" as used herein includes all such assignees and their successors and assigns, subject to such restrictions or limitations as may be imposed in the instrument assigning such rights.

ARTICLE 30.

CONFLICT WITH CONDOMINIUM ACT; SEVERABILITY.

Should any of the terms, conditions, provisions, paragraphs or clauses of this Declaration conflict with any provisions of the Condominium Act, the provisions of the Condominium Act shall control unless the Condominium Act permits the Declaration to override the Condominium Act, in which event the Declaration shall control. 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 31.

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 considered terms of this Declaration.

ARTICLE 32.

DECLARATION 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 Condominium Unit and its appurtenant undivided interest in the Common Elements, and this Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who subsequently may become Owners of Condominium Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

The Association shall have current copies of the Declaration, Bylaws of the Association, and other rules and regulations concerning the Condominium, and the books, records and financial statements available for inspection by Unit Owners and by holders, insurers and guarantors of mortgages during normal business hours at the office of the Association.

ARTICLE 33.

CONDEMNATION.

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/or the awards paid on account thereof shall be used and applied in accordance with N.C. Gen. Stat. § 47C-1-107.

ARTICLE 34.

TAXES.

Pursuant to the provisions of N.C. Gen. Stat. § 47C-1-105, each Unit and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. Neither any building, the Property nor any of the Common Elements shall be deemed to be a parcel. Provided, however, pursuant to the provisions of N.C. Gen. Stat. § 47C-1-105, any areas in which Declarant has Development Rights shall be separately taxed and assessed against Declarant until Declarant exercises Declarant's Development Rights therein or Declarant's Development Rights expire, terminate or are released by Declarant.

ARTICLE 35.

NO ACTION AGAINST DECLARANT.

The Association shall not (a) file a complaint or grievance or initiate or participate in any other proceedings on account of an act or omission of Declarant with any governmental agency which has regulatory or judicial authority over the Property or any part thereof, or (b) assert and prosecute a claim against or in any manner sue Declarant without first having obtained the affirmative written consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

ARTICLE 36.

RIGHTS TO MOSS LANDING.

No Person shall use the words "Moss Landing," or derivative thereof, or any other term which Declarant may select as the name of this Condominium, or any component thereof, on any printed or promotional material without Declarant's prior written consent. However, Owners may use the words "Moss Landing" in printed materials solely to specify that a particular Unit is located within the Condominium and the Association shall be entitled to use

the words "Moss Landing" in its name. No Person shall use any symbol or "logo" adopted by Declarant for Moss Landing without Declarant's prior written consent.

IN TESTIMONY WHEREOF, Declarant has caused this instrument to be executed under seal and in such form as to be binding, all by authority duly given, this the day and year first above written.

MOSS LANDING ONE, LLC A Limited Liability Company

(SEAL)

Name:

Title:

STANLEH FRIEDM

Beaufort	COUNTY, North Carolina STATE
that he or she signed	the foregoing document for the purpose(s) stated therein, in the capacity been first authorized to do so:
Date 9/4/	OS OS Signature of Notary Public My commission expires: 8/26/12



Notary seal or stamp must appear within this box.

STATE OF NORTH CAROLINA COUNTY OF BEAUFORT

		•			to be correct. This ecorded in the office	a of the
		eaufort County, No				e or me
Page	—.	duion county, 110	, an Caronna, i	ii Çondomini	diii Book,	
	This	day of	,	, at	o'clockM.	
			**** ***	R	egister of Deeds	

EXHIBIT A Initial Property in Condominium

All that certain tract or parcel of Land lying and being situate in Beaufort County, North Carolina, shown as "Moss Landing Condominium, Phase I" on that certain Condominium Plat of Moss Landing Condominium recorded in Map PLA.

Cabined Book 1, at Page 7-7 in the office of the Register of Deeds of Beaufort County 5Live

EXHIBIT B

For survey and plat and plans see Unit Ownership File 1, Pages 68 in the office of the Register of Deeds of Beaufort County.

EXHIBIT C

UNITS

				The second second second	7.175					
Allocated Interests	3-101	3-102	3-103	3-201	3-202	3-203	3-301	4-101	4-102	4-103
Heated square footage	2,051	1,529	2,051	2,051	1,529	2,051	3,271	2,051	2,051	2,051
Undivided Interest in Common Elements Appurtenant to each Unit	4.3850%	3.2690%	4.3850%	4.3850%	3.2690%	4.3850%	6.9934%	4.3850%	4.3850%	4.3850%
Portion of Common Expenses allocated to each Unit	4.3850%	3.2690%	4.3850%	4.3850%	3.2690%	4.3850%	6.9934%	4.3850%	4.3850%	4.3850%
Votes allocated to each Unit	1	1	1	1	1	1	1	1	1	1

Allocated Interests	4-201	4-202	4-203	4-301	<u>B-201</u>	B-203	C-207	<u>C-209</u>	<u>C-211</u>	D-208
Heated square footage	2,051	1,529	2,051	3,271	2,414	2,644	2,177	2,379	2,644	2,513
Undivided Interest in Common Elements Appurtenant to each Unit	4.3850%	3.2690%	4.3850%	6.9934%	5.1611%	5.6528%	4.6544%	5.0863%	5.6528%	5.3728%
Portion of Common Expenses allocated to each Unit	4.3850%	3.2690%	4.3850%	6.9934%	5.1611%	5.6528%	4.6544%	5.0863%	5.6528%	5.3728%
Votes allocated to each Unit	1	1	1	1	1	1	1	1	1	1

Allocated Interests	D-210	TOTALS
Heated square footage	2,414	46,773
Undivided Interest in Common Elements Appurtenant to each Unit	5.1611%	100.00%
Portion of Common Expenses allocated to each Unit	5.1611%	100.00%
Votes allocated to each Unit	1	21

^{*}Rounded to 100% per N.C. Gen. Stat. § 47C-2-107(c)

EXHIBIT D

Development Property

All that certain tract or parcel of Land lying and being situate in Beaufort County, North Carolina, shown as "Subject to Development Rights" on that certain Condominium Plat of Moss Landing Condominium recorded in Map Book <u>Vo-1</u>, at Page <u>69</u> in the office of the Register of Deeds of Beaufort County

CONSENT OF LIENHOLDER

Southern Community Bank, Beneficiary pursuant to the Deed of Trust recorded in Book 1618, at Page 715 in the office of the Register of Deeds of Beaufort County, North Carolina, hereby executes this Consent of Lienholder to consent to the imposition of the condominium regime on the property described at the Exhibit "A" to the Declaration of Moss Landing Condominium, and any subsequent amendments thereto.

IN TESTIMONY WHEREOF, Beneficiary has properly executed this Consent of Lienholder, this 28th day of August, 2008.

SOUTHERN COMMUNITY BANK

By:

Vice - President

Guilfor COUNTY, North Carolina STATE

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document for the purpose(s) stated therein, in the capacity indicated, and having been first authorized to do so:

Eric Fitzgerald

Vice President

of SOUTHERN COMMUNITY BANK.

Date 8 28/2008

My commission expires:

4-16-2011



Notary seal or stamp must appear within this box.

051202-00001-001 WLMAIN\145731\2



JENNIFER LEGGETT WHITEHURST BEAUFORT COUNTY REGISTER OF DEEDS COURTHOUSE BUILDING 112 W. 2ND STREET WASHINGTON, NC 27889

Filed For Registration:

09/04/2008 12:06:44 PM

Book:

RE 1658 Page: 360-410

Document No.:

2008006085

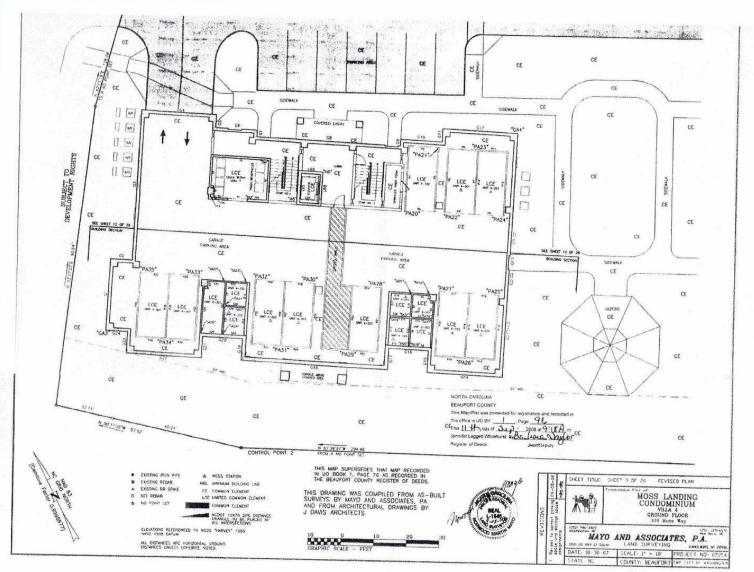
DECLR 51 PGS \$161.00

Recorder:

PATRICIA COLUMBUS

Wayland Sermons *2008006085*

2008006085



UCBKI 1994

