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FOR REGISTRATION REGISTER OF DEEDS  
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DECLARATION OF  
MOSS LANDING CONDOMINIUM

Moss Landing One, LLC  
Developer and Declarant

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF  
THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA. THIS  
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THIS DECLARATION OF MOSS LANDING CONDOMINIUM (hereinafter referred to as the "Declaration"), made this the 28<sup>th</sup> day of August, 2008, by MOSS LANDING ONE, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant"), pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina (sometimes hereinafter referred to as the "Condominium Act" or the "Act"), with the consent and joinder of Cooperative Bank, Southern Community Bank, and Moss Property Partners, L.L.C., to ALL PROSPECTIVE PURCHASERS OR OWNERS of property described herein;

WITNESSETH:

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

WHEREAS, Declarant has constructed on the property described on Exhibit "A" five (5) separate buildings containing a total of twenty-one (21) condominium units and appurtenant facilities; and,

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

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

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



Section 3.2 Association. "Association" means the Unit Owners association organized pursuant to the Act and incorporated under Chapter 55A of the General Statutes of North Carolina, and shall be known as Moss Landing Owners Association and its successor.

Section 3.3 Association Documents. "Association Documents" means collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, the Rules and Regulations, any architectural guidelines or requirements adopted by the Association, and any resolutions by the Executive Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule, or amendment to an Association Document shall be considered a part of that document.

Section 3.4 Bylaws. "Bylaws" means the Bylaws of the Association originally adopted by the Executive Board and as may be thereafter lawfully amended.

Section 3.5 Common Elements. "Common Elements" means and comprises (i) all of the real property, improvements and facilities of the Condominium, excluding the Condominium Units as herein defined, (ii) all personal property and equipment held and maintained for the joint use and enjoyment of all the Owners of Condominium Units, and (iii) all permits for construction, maintenance and operation of the Condominium assigned by Declarant to the Association or otherwise procured or acquired by the Association. Notwithstanding this definition, to the extent that the provisions of the Act apply to "Common Elements", including, without limitation, the provisions of Section 47C-3-112, those provisions shall apply only to the "Common Elements" as defined in the Act.

Section 3.6 Common Expenses. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

Section 3.7 Condominium. "Condominium" means the Property described on Exhibit "A," together with all buildings and improvements existing thereon or hereinafter constructed thereon, and any portions of the Development Property, and buildings and improvements thereon, which may be submitted to this Declaration and added to the Condominium.

Section 3.8 Condominium Units. "Condominium Units" or "Units," as such terms are used herein, means a physical portion of the Condominium designated for separate ownership, the boundaries of which are hereinafter defined and shown on Exhibit "B." The Units shall be of two architectural styles, one being a "Townhouse Unit" and the other being a "Flats Unit" as more particularly defined hereinafter.

Section 3.9 Declarant. "Declarant" means Moss Landing One, LLC and any Person or entity who succeeds to any Special Declarant Rights as provided herein or pursuant to the Condominium Act.

Section 3.10 Declaration. "Declaration" means this instrument, any amendments thereto and restatements thereof, and all Exhibits and Schedules attached thereto.



Section 3.11 Development Period. "Development Period" means the period ending on the earliest of (a) twenty-five (25) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant's control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension; or (b) the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date so stated.

Section 3.12 Development Property. "Development Property" means that real property described on Exhibit "D."

Section 3.13 Development Rights. "Development Rights" means the rights reserved by Declarant under Article 29 of this Declaration, including the right to add additional real estate and property to the Condominium.

Section 3.14 Director. "Director" means a member of the Executive Board of the Association.

Section 3.15 Executive Board. "Executive Board" means the body responsible for administration of the Association selected as provided in the Bylaws.

Section 3.16 Flats Unit. "Flats Unit" means a Unit located either below or above another Flats Unit, and shown or noted on Exhibit B, and any other similar style of Units as may be created pursuant to the exercise of Development Rights.

The walls, floors, and ceilings of the Flats Units hereby are designated as the boundaries of each respective Flats Unit. The lower and upper horizontal boundaries of each Flats Unit are shown and designated on Exhibit "B."

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

Section 3.17 Limited Common Elements. "Limited Common Elements" means those portions of the Common Elements allocated by operation of N.C. Gen. Stat. § 47C-2-102 for the exclusive use of one or more but fewer than all of the Units, those portions of the Common Elements described in this Declaration as Limited Common Elements and those portions of the Common Elements designated as Limited Common Elements on Exhibit "B."

Supplementing the provisions of N.C. Gen. Stat. § 47C-2-102(4), the following shall be Limited Common Elements:

(a) All exterior doors and door frames, except screen doors or storm doors as may have been permitted by the Association, exterior windows and window frames, and

all related components of the exterior doors and exterior windows including glass, panes and screens, and are specifically allocated to the Units in which they are installed.

(b) Specific parking spaces, storage spaces and attic areas designated on Exhibit "B" assigned to the Units designated thereon.

(c) The elevators, and all appurtenant fixtures and equipment, as are located within each building and shown on Exhibit "B" assigned to the use and benefit of the Owners of Units within each such respective building.

(d) Each chimney serving a particular Unit, and any and all chutes, flues, ducts, and other related and appurtenant fixtures and equipment, located outside the boundaries of the Unit.

Supplementing the provisions of N.C. Gen. Stat. § 47C-2-102(2), the horizontal floor and ceiling joists and appurtenant components within each Townhouse Unit, excepting the finished surface of such floors or ceilings, shall be considered "bearing walls" and Limited Common Elements for all purposes of this Section and in the Act.

Section 3.18 Permit. "Permit" means the North Carolina Stormwater Management Permit number SW7060402, and any additional North Carolina Stormwater Management Permits, applicable to the Property, and any amendments, additions or replacements thereof.

Section 3.19 Person. "Person" means a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity or any combination thereof.

Section 3.20 Property. "Property" means the real estate described on Exhibit "A," together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate, and any portion of the Development Property which may be submitted to this Declaration and the Condominium.

Section 3.21 Special Declarant Rights. "Special Declarant Rights" means all rights reserved by Declarant more particularly set forth in Section 27.3 and Section 29.1 of this Declaration.

Section 3.22 Stormwater Management Facilities. "Storm Water Management Facilities" means all improvements and areas consisting of ditches, swales, retention ponds and other improvements which are constructed pursuant to, and regulated by the Permit.

Section 3.23 Townhouse Unit. "Townhouse Unit" means a Unit which do not have any other Unit located above or beneath said Unit, and which is located and designated or



noted on Exhibit "B," and any other Units of similar architectural style as may be created pursuant to the exercise of Development Rights.

The lower horizontal boundary of each Townhouse Unit is the flooring on the ground floor, and the upper horizontal boundary of each Townhouse Unit is the ceiling of the upper most story, both of which are shown and designated on Exhibit "B." The walls are designated as the vertical boundaries of each Townhouse Unit.

Except as otherwise modified herein, and except as specifically identified as Limited Common Elements elsewhere in this Declaration, the provisions of N.C. Gen. Stat. § 47C-2-102(1), (2), (3), and (4) are incorporated herein by reference.

Section 3.24 Unit. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, and shall include Flats Units and Townhouse Units.

Section 3.25 Unit Owner. "Owner" or "Unit Owner" means any Person owning one or more Units, but shall not include a mortgagee unless such mortgagee has acquired title pursuant to foreclosure or some other process in lieu of foreclosure.

Section 3.26 Upkeep. "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

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

#### ARTICLE 4.

##### OWNERSHIP INTEREST/COMMON ELEMENTS.

Section 4.1 Common Elements. Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit also shall own, as an appurtenance to the ownership of said Condominium Unit, an undivided interest in the Common Elements. The undivided interest in the Common Elements appurtenant to each of the Units which presently exists, subject to amendment as provided herein, shall be as set out in Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Elements appurtenant to each Unit has been determined by the following formula:

The quotient, expressed as a percentage, derived by dividing the heated square footage of each Unit by the total heated square footage of all Units in the Condominium.

The proportional interest in the Common Elements appurtenant to each Unit shall be reallocated among all of the Units employing the same formula as stated above when new Units are created pursuant to the exercise of Development Rights.

Section 4.2 Common Expense Allocation. The proportion of the Common Expenses of the Association allocated to each Unit is based upon the same formula used to determine the proportional interest in the Common Expenses appurtenant to each Unit and is set out in Exhibit "C." The proportion of the Common Expenses allocated to each Unit shall be reallocated among all of the Units employing the same formula as stated above in Section 4.1 when new Units are created pursuant to the exercise of Development Rights.

Section 4.3 Voting Allocation. The vote in the Association allocated to each Unit shall be equal and shall be one (1) vote per unit.

#### ARTICLE 5.

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

Section 5.1 Alteration of Units-Boundaries. Subject to the provisions of N.C. Gen. Stat. § 47C-2-108, 47C-2-111, 47C-2-112 and 47C-2-113, and to the limitations contained in Article 16 of this Declaration, Units may be altered, boundaries between adjoining Units may be relocated, Units may be subdivided, Limited Common Elements may be reallocated, and Common Elements may be allocated as Limited Common Elements.

Section 5.2 Common Elements Appurtenant to Units. The undivided interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Condominium Unit, which describes said Condominium Unit by the number designation assigned thereto by the map recorded as aforesaid without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.



ARTICLE 6.

CONDOMINIUM SUBJECT TO RESTRICTIONS.

The Condominium Units and Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Elements, and said Condominium Units and Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium and those hereinafter set forth:

Section 6.1 Single Family. Each Unit shall be occupied and utilized only for single family residential purposes subject to the provisions of this Declaration.

Section 6.2 Leasing. Nothing contained herein shall prohibit the leasing or renting of a Unit; provided, however, that:

(a) No Unit shall be leased or rented for a period of less than three hundred sixty-five (365) consecutive calendar days without the prior written consent of the Association.

(b) All leases for any Unit shall be in writing signed by the Owner and the tenant.

(c) All leases shall be in such form, and contain such provisions, as approved by the Executive Board, including provisions (i) requiring the tenant to comply with the Association Documents, (ii) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (iii) providing that the Association may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Unit by judicial process or otherwise.

A true executed copy of any lease for a Unit shall be provided to the Association prior to the occupancy by the tenant of such Unit. For purposes of this Declaration, "leasing" is defined as regular exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity, or emolument. The Executive Board may adopt reasonable additional restrictions and rules regulating leasing and subleasing of Units.

Notwithstanding the above, the Declarant retains the right to lease any Unit it owns for a period of not less than thirty (30) days.



Section 6.3 Prohibited Activities. The following activities are prohibited within the Condominium unless expressly authorized by, and then subject to such conditions as may be imposed by the Board:

(a) Food preparation, including using exterior or outside cooking equipment, shall not be permitted in any portion of the Common Elements or Limited Common Elements except pursuant to rules and regulations which may be adopted, from time to time, by the Board of Directors.

(b) No immoral, improper, offensive or unlawful uses or behavior within any Unit or the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Unit shall permit or suffer anything to be done or kept in his Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Unit, or which interferes with the peaceful possession and proper use of any other Unit or the Common Elements.

(c) No Unit may be used for, nor shall any Owner permit the use of a Unit for, a timesharing, fraction-sharing or similar program whereby the right to exclusive right of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

(d) Raising, breeding or keeping of animals or reptiles of any kind, except as may be determined by the Board, and subject to such permitting conditions and rules and regulations determined by the Board. Any such animals which are permitted and which, in the sole discretion of the Board, make objectionable noises, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or occupants of Units shall be removed upon request of the Board.

(e) Discharge of firearms or explosives within the Condominium. The term "firearms" includes "B-B" guns, pellet guns and other types of firearms. The Board may grant variances, in its sole discretion, in connection with holiday or seasonal events.

(f) Repairing any Vehicle (as defined in Section 6.4 herein) on the Property except in the event of an emergency.

(g) Conducting any Business or Trade (as herein after defined), garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities which are commonly conducted within residential areas within Dwelling Units so long as: (i) the existence or operation of the Business or Trade is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the Business or Trade conforms to all zoning requirements for the Condominium; (iii) the activity does not involve visitation to the Unit by clients, customers, suppliers or other business invitees, vendors, or



door-to-door solicitation of occupants of Units within the Condominium; and (iv) the Business or Trade is consistent with the residential character of the Condominium and does not constitute a nuisance, hazardous or offensive use, or threaten the security or safety of occupants within the Condominium, as may be determined in the sole discretion of the Board. This subsection shall not be interpreted to prevent the operation of a home office or internet based business.

For purposes of this Declaration, "Business" and "Trade" shall be construed to have an ordinary, generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an on-going basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation or other form or consideration regardless of whether such activity is engaged in full or part-time, intended to or does generate a profit or a license is required.

Section 6.4 Prohibited Conditions. The following shall be prohibited within the Condominium:

(a) Garage doors shall remain closed at all times except when entering and exiting the garage.

(b) The term "vehicles" as used in this Section shall include, without limitation, passenger automobiles, truck, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Condominium except in a garage or within a Limited Common Element or other area designated by the Board. Notwithstanding the foregoing, no commercial vehicle, recreational vehicle, boat or other water craft may be parked, kept or stored within or upon the Property.

(c) Without the prior written approval of the Board of Directors, no outside antenna of any nature or type shall be maintained on the Property.

(d) No trash receptacles may be stored on the Property in public view.

(e) Without the prior written consent of the Board, no signs shall be maintained on any Unit, Limited Common Elements, excepting customary name and address signs.

(f) No junked vehicle, derelict vehicle or other vehicle on which current registration plates and current state inspection permits are not displayed shall be kept on any portion of the Property.

(g) No clotheslines or similar apparatus shall be installed either permanently or temporarily on any portion of the Property. No laundry towels, bedding or the like shall be hung from any windows or balconies.

(h) Except where explicitly approved by the Declarant or subsequently

approved by the Board, no gas or charcoal grills shall be maintained on any balcony or other Limited Common Element.

(i) All window treatment linings must be white or neutral in color unless otherwise approved in writing by the Board.

Section 6.5 Rights of Owners. No rules or regulations shall be adopted in violation of the following provisions:

(a) Similarly situated Owners and occupants shall be treated similarly.

(b) The rights of Owners and occupants to display within their Unit flags, political signs, signs and symbols of the kinds normally displayed in or outside of residences located in residential neighborhoods shall not be abridged; provided, however, the Board may adopt reasonable time, place, size and manner of display restrictions regulating flags, political signs, signs and symbols which are visible from outside the Unit.

(c) The rights of Owners and occupants to display religious and holiday signs, symbols and decorations within their Units shall not be abridged, except that the Board may adopt reasonable time, place and manner of restrictions regarding such displays that are visible from outside the Unit.

## ARTICLE 7.

### PERPETUAL EASEMENTS IN COMMON ELEMENTS.

Section 7.1 Easements-Common Areas. Subject to the Special Declarant Rights reserved to Declarant in this Declaration and the provisions of N.C. Gen. Stat. § 47C-3-112, all of the Common Elements, except the Limited Common Elements, shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units. For that portion of the Common Elements upon which a particular Unit is located as depicted on Exhibit "B," the easement to so locate a Unit shall be exclusive. Subject to the Special Declarant Rights, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his tenants, guests, invitees and customers, may be entitled to use the Common Elements and to establish regulations concerning the use of said Common Elements.

Section 7.2 Easements-Units. Each Unit Owner hereby is granted a perpetual easement to locate heating and air conditioning systems and related equipment and other utilities, upon the Common Elements. When so located, such heating and air conditioning systems, utilities, related pipes, ducts, conduits, wires and related facilities and equipment shall become and be deemed to be a part of the respective Condominium Unit to which they are affixed or



serve. Prior to installing any heating and air conditioning systems, utilities or any facilities and equipment in the Common Elements, the Unit Owner shall obtain the consent of the Association as provided in Article 16 herein.

Section 7.3 Reserved Declarant Easements. Declarant, its successors and assigns, reserves a perpetual non-exclusive easement, over, upon and across the Common Elements, said easement hereby reserved to be for any and all purposes deemed desirable by Declarant, its successors and assigns, including, but not limited to, (i) the installation, maintenance, repair and replacement of utilities and other services; and (ii) pedestrian and vehicular access to other property without regard to whether such other property is contiguous to the Condominium or owned by the Declarant.

#### ARTICLE 8.

##### EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS.

In the event that any Condominium Unit shall encroach upon any Common Elements, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Condominium Unit for so long as such encroachment naturally shall exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Condominium Unit for so long as such encroachment naturally shall exist. If any Condominium Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Elements in accordance with Article 22 hereof, there exist encroachments of portions of the Common Elements upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments naturally shall remain.

#### ARTICLE 9.

##### RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Elements appurtenant to each Condominium



Unit, shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division of the Common Elements.

#### ARTICLE 10.

##### ADMINISTRATION OF THE CONDOMINIUM BY MOSS LANDING OWNERS ASSOCIATION.

To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, an association of all Unit Owners has been incorporated pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "MOSS LANDING OWNERS ASSOCIATION" (herein sometimes called the "Association"). The Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Bylaws. The Owner or Owners of each Condominium Unit automatically shall become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person, firm or association holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association, subject to the provisions of N.C. Gen. Stat. § 47C-3-105 and 47C-3-112, shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C. Gen. Stat. § 47C-3-102, including the right to assign future assessments, assessment rights and income of the Association.

#### ARTICLE 11.

##### STORM WATER PERMIT PROVISIONS.

Section 11.1 Construction of Stormwater Management Facilities. The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities to be located upon the Property or any portion of the Development Property annexed into the Property by the Declarant to the standards required by the Permit.

Section 11.2 Assignment and Acceptance of Permit. Declarant shall transfer the Permit and Declarant's responsibilities under the Permit to the Association and the Association shall accept such transfer. Thereafter, upon the completion of the initial construction of any



Stormwater Management Facilities required by the applicable Permit for any portion of the Development Property submitted by Declarant to this Declaration and into the Property, Declarant shall transfer the applicable Permit and Declarant's responsibilities under the Permit applicable to that portion of the Development Property annexed by Declarant into the Property to the Association and the Association shall accept the transfer from Declarant of the applicable Permit and responsibilities under the Permit. Transfers of the Permit shall occur upon the date the North Carolina Department of Environment and Natural Resources allows the transfer to occur.

Prior to any such transfer of the Permit, the Stormwater Management Facilities shall be certified to the Association and the State of North Carolina either by state inspection or by licensed engineer as being in compliance with the applicable Permit prior to such assignment or transfer.

Section 11.3 Indemnification. The Association shall indemnify and hold Declarant harmless from any and all loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as a responsible party under the Permit from and after the date Declarant tenders transfer of its responsibilities under the Permit. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant and that offense of any action Declarant as holder of the Permit from and after the date Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this Article.

Section 11.4 Administration of the Permit. From and after the transfer of Declarant's responsibilities under the Permit applicable to any Property and from and after the transfer of the Permit to the Association, the oversight, supervision, management and administration the Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permit shall be performed in accordance with the terms and conditions of the Association Documents and the Permit.

## ARTICLE 12.

### USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION.

Section 12.1 Use of Common Elements by Owners. The use of Common Elements by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be at all times subject to the Association Documents.

Section 12.2 Use of Limited Common Elements by Owners. The use of Limited Common Elements is restricted to the Owners and Owners' tenants, guests, invitees and customers, of the Unit and/or Units to which the Limited Common Elements are allocated.



ARTICLE 13.

INTENTIONALLY OMITTED.

ARTICLE 14.

RIGHT OF ENTRY IN EMERGENCIES.

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

ARTICLE 15.

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

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

ARTICLE 16.

LIMITATION UPON RIGHT OF OWNERS  
TO ALTER AND MODIFY CONDOMINIUM UNITS;  
NO RIGHT TO ALTER COMMON ELEMENTS.

Section 16.1 Consent to Modification of Units. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, and the restrictions in Section 5.1 of this Declaration, no Owner of a Condominium Unit shall permit any modification or alteration to be made to a Condominium Unit or any betterment or improvement to the Limited Common Elements appurtenant to a Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in its sole discretion, that such modifications, alterations, betterments or improvements would adversely affect or in any manner endanger the Condominium in part or in its entirety, any other Unit within the Condominium or the peaceful occupancy and enjoyment by any occupant of a Unit. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Owner shall cause any improvements or changes to be made to any Unit or building (other than interior painting or other interior decoration) including the installation of electrical wiring, television or radio antennae or any other objects,



machines or equipment which may protrude through the walls or roof of any Unit or building, or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. Such consent shall not be unreasonably withheld. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Unit Owner shall cause any object to be affixed to the Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Association being first obtained. In the event the Association shall grant its consent for such improvements or changes to be made, such improvements, including but not limited to all antennae and other objects, machines or equipment which may protrude through the walls or roof shall become and be deemed to be a part of the Unit to which they are affixed.

Section 16.2 Indemnification-Unit Modification. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, the Board of Directors of the Association, in its sole discretion, may require a Unit Owner desiring to add betterments or improvements to his Unit or the Limited Common Elements appurtenant to his Unit to indemnify the other Unit Owners and the Association against any and all loss, cost and expense that may be occasioned by the addition of such betterments or improvements and further may require such Unit Owner to obtain liability insurance naming the other Unit Owners and the Association as additional insured's in such amounts and upon such terms as the Board of Directors shall determine.

## ARTICLE 17.

### RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR.

Subject to Declarant's Special Declarant Rights, the Association shall have the right to make or cause to be made such alterations or improvements to the Common Elements which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.



## ARTICLE 18.

MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS.

Section 18.1 Owner Maintenance of Units. Every Owner shall perform promptly Upkeep of his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, or adversely impair the ability to rent such Owner's Unit or any other Unit, and every Owner shall be expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit shall be liable and responsible for the Upkeep of all air conditioning and heating equipment, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service solely to his Condominium Unit. Such Owner further shall be responsible and liable for the Upkeep of the surfaces of any and all walls, ceilings and floors in the interior of his Unit including painting, decorating and furnishings, and all other accessories in his Condominium Unit.

Section 18.2 Maintenance-Insurance Proceeds. Whenever the maintenance, repair and replacement of any item for which the Owner of a Condominium is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

Section 18.3 Improvements to Limited Common Elements. All betterments and improvements added to the Limited Common Elements by the Unit Owners are a part of the respective Condominium Units and the respective Unit Owners shall be responsible for Upkeep of the same.

## ARTICLE 19.

MAINTENANCE AND REPAIR OF COMMON ELEMENTS  
BY THE ASSOCIATION.

Subject to Declarant's Special Declarant Rights, the Association shall be responsible for the Upkeep of the Common Elements, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements or in a Condominium Unit for the furnishing of utility and/or other services to the Common Elements or other Condominium Units. If any incidental damage is caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the Upkeep of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the Upkeep of any item for which the Association is obligated to maintain, replace or repair at its expense is



occasioned by any act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of such Upkeep, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay such portion of the cost of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such Upkeep. Whenever the Upkeep of any item for which the Association is obligated to Upkeep at its expense is occasioned by an act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage is not covered by any insurance maintained in force by the Association, the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay the cost of such Upkeep. Establishment of liability for damage caused by the Owner of a Unit or the Association is subject to the provisions of N.C. Gen. Stat. § 47C-3-107(d).

#### ARTICLE 20.

##### AUTHORITY TO PURCHASE INSURANCE.

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

#### ARTICLE 21.

##### INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE PROCEEDS.

Section 21.1 Insurance Coverages. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Casualty insurance covering the Common Elements, and to the extent reasonably available, the Units, including all buildings and all improvements upon the land and all personal property included within the Condominium, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to at least eighty percent (80%) of the maximum insurable replacement value thereof (exclusive of land, excavation and foundations) as determined annually by the insurance company affording



such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and, (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief. Casualty insurance obtained for the buildings and improvements shall provide such coverage commonly known as "all inclusive building" coverage and/or "completed condominium unit" coverage as such terms are used in the insurance industry, and shall include, but not be limited to, all components of the Units together with fixtures, cabinets, built in appliances and all other such improvements which were part of the original completed Units, except for betterments and improvements installed by the Owner.

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

Section 21.2 Premiums - Common Expenses. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.

Section 21.3 Insurance Claim Adjustment. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear.

Section 21.4 Mortgagee-Insurance Proceeds. In the event a mortgage endorsement has been issued for a Condominium Unit, the share of any insurance proceeds of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

Section 21.5 Use of Insurance Proceeds. Proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated except as specified in Article 22.



Section 21.6 Reimbursement of Initial Insurance Premiums. Declarant shall pay the premium(s) of the initial insurance policies required by this Article 21 and shall be reimbursed for the pro rata portion of the cost thereof by each Unit Owner at the time each Unit is conveyed to a Person other than Declarant, or reimbursed by the Association.

Section 21.7 Insurance Policy Requirements. Insurance policies carried pursuant to this Article 21 shall provide that:

- (a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household, if applicable;
- (c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;
- (d) If, at the time of any loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and
- (e) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or endorsements have been issued at their respective last known addresses.

Section 21.8 Insurance Coverage-Betterments. The Association shall not be required to maintain insurance coverage for any betterments or improvements to the Units and/or Limited Common Elements added by any Unit Owner and a Unit Owner may be required to maintain such liability coverage as is otherwise provided herein.

Section 21.9 Insurance Availability Notification. If the insurance described in this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

Section 21.10 Flood Insurance. The Association shall maintain flood insurance on the buildings and all improvements upon the land, the Common Elements, and all personal property of the Condominium (except personal property of the Condominium Unit Owners).