

HARBOUR POINTE

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Mail to: Tr pp & Clarke, Attorneys, P.O. Box 670, Fayetteville, NC

NORTH CAROLINA

DECLARATION OF HARBOUR POINTE  
CONDOMINIUMS, LLC

CUMBERLAND COUNTY

HARBOUR POINTE CONDOMINIUMS, LLC, a North Carolina limited liability company with its principal place of business in the County of Cumberland, State of North Carolina, (herein "Developer"), does hereby make, declare and establish this Declaration of Condominium as and for the plan of dwelling ownership of HARBOUR POINTE CONDOMINIUMS, LLC, being the property and improvements hereinafter described.

I.

ESTABLISHMENT OF CONDOMINIUM

Developer is the owner of the fee simple title to that certain real property situated in Fayetteville, Cumberland County, North Carolina, which property is more particularly described in Exhibit "A"- Phase I, attached hereto and incorporated herein by reference, and on which property there are to be constructed one (1) two-story building containing a total of ten (10) condominium living units and their supporting facilities, areas designated for at least 20 parking spaces and other appurtenant improvements. There are no basements. The buildings are of wood frame construction. Developer does hereby submit the above described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Harbour Pointe Condominiums." Hereinafter in this Declaration, "Harbour Pointe Condominiums" is sometimes referred to as "Condominium."

Developer presently intends, but is not obligated to expand Harbour Pointe Condominiums beyond the twelve (12) units, Phase I, described above, to include up to six (6) additional phases with a presently contemplated maximum of ninety (90) units. The additional phases, if constructed would contain the number of Units indicated:

<u>Phase No.</u>	<u>No. of Units</u>
Phase II	12
Phase III	18
Phase IV	12
Phase V	12
Phase VI	12
Phase VII	12

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 J. LEE WARREN JR.  
 REGISTER OF DEEDS  
 CUMBERLAND CO., N.C.

It is presently contemplated that the total number of Units in all phases would not exceed ninety (90) Phases I through VII if constructed, will be located on the land described in Exhibit "A" and Exhibit "A-1". The methods and procedures for expanding the Condominiums to include these additional buildings and the effects of such expansion are described in Exhibit "A" is hereinafter known as "Property". Provided further, that the period for expansion of Harbour Pointe Condominiums by the Developer is limited to seven (7) years from the recordation of this Amendment.

II.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Referenced hereto and expressly made a part hereof as Exhibit "B" consisting of 1 page(s), as recorded in Condominium Book 6, Pages 95 through 101 Cumberland County Registry, is a survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Condominium Units and Common Areas and Facilities, a said terms are hereinafter defined, and their respective locations, approximate dimensions and principal building materials. Each Condominium Unit is identified by specific numerical designation on Exhibit "B" and no Unit bears the same designation as any other Condominium Unit.

III.

DEFINITIONS

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125

The Condominium consists of Condominium Units and Common Area and Facilities as said terms are hereinafter defined.

- A. "Condominium Units" (alternately referred to as "Unit") as defined herein shall comprise the separate numerically identified Dwelling Units which are designated in Condominium Book as set out above, excluding all spaces and improvements lying:

- (1) Beneath the wood subflooring material of all floors;
- (2) Behind the interior sheetrock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
- (3) Above the interior sheetrock, wallboard or panel surfacing material of the ceilings;

And further, excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior sheetrock, wallboard or panel surfacing material for walls and ceilings and subflooring surfacing referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panes and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Harbour Pointe Condominium

- B. "Common Areas and Facilities", sometimes referred to herein as "Common Property" shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all Owners of Condominium Units.
- C. Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit or Units to exclusion of the other Units and are designated as Limited Common Areas and Facilities. Limited Common Areas and Facilities and the Condominium Units to which they are reserved are as follows:

As shown on Exhibit "B", the walks, halls and balconies located in each building are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees, any decks, porches, balconies, patios or other fixtures designated to serve a single unit but located outside the Unit's boundaries are limited common elements allocated exclusively to that Unit, pursuant to N.C.G.S. §47C-2-102(4). Each Condominium Unit will have a garage designated for use by that Unit owner, such garage will also be a limited common area.

- D. "Period of Declarant Control", means the period commencing on the date hereof and continuing until the earlier of (i) five (5) years after the date of the first conveyance of a unit other than a declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit owner other than declarant; (iii) two years after a declarant has ceased to offer Units for sale in the ordinary course of business; (iv) two years after any development right to add new units was last exercised, or (v) the date upon which declarant voluntarily surrenders control of the condominiums

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Unit", or "Condominium Unit", "Unit Designation" and "Unit Owners", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

#### IV.

#### OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY

- A. 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 shall also own, as appurtenance to

the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit as the date of this Declaration is set out in Column I of Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each Condominium Unit as shown in Exhibit shall be proportionate to the total number of Units in the Condominium. In Phase One this shall be 1/12 for each Unit owned.

- B. In the event the Developer, acting elects to add additional phases to the Condominium, then the percentage undivided interest in the Common Property appurtenant to each Condominium Unit will change and shall be as set forth in the appropriate Column of Exhibit "C". The proportional interest in the Common Property appurtenant to each Condominium Unit shown in Exhibit "C" shall be proportionate to the total number of Units in the Condominium. In Phase One this shall be 1/12 for each Unit owned. In the event Developer elects to add additional phases to the Condominium, Developer shall, in each instance, file an amendment to this Declaration stating that the percentage undivided interest in the Common Area appurtenant to each Unit then a part of the Condominium at the time of such filing is as shown in the appropriate column of Exhibit "C". Each unit Owner shall be deemed by the acceptance of the deed to a Condominium Unit to have consented to the powers of amendments previously or thereafter executed by Developer pursuant to this Article IV and to Article XXVII-B hereof. Further, each Unit Owner and each Institutional Lender, as hereinafter defined, shall be deemed by the Owner's acceptance of a deed to a Condominium Unit to have appointed Developer their Attorney-In-Fact to give, execute and record the consent of said Owner and Institutional Lender to any and all amendment executed pursuant to this Article and to Article XXVII-B. Except as provided herein, the percentage of undivided in interest in the Common Property assigned to each Condominium Unit shall not be changed except when the unanimous consent of all of the Owners of all of the Condominium Units and with the consent of all of the Institutional Lenders, as defined in Article XXIX hereof, holding first mortgages of first deeds of trust on the Condominium Units.

#### V.

#### RESTRICTION AGAINST FURTHER SUBDIVISION OF CONDOMINIUM UNITS; SEPARATE CONVEYANCE OF APPURTENANT COMMON-PROPERTY PROHIBITED

No Condominium Unit may be divided or subdivided into smaller Unit or Units than as shown on Exhibit "B" hereto nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property 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 Property 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 conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null, void and of no effect sofar as the same purports to affect any interest in Common Property, unless the same purports to convey devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limited or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Property by more than one person or entity as tenants-in-common, joint tenants, or as tenants by entirety.

#### VI.

#### THE CONDOMINIUM SUBJECT TO RESTRICTIONS

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

VII.

**PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON PROPERTY**

The Common Property shall be, and the same is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. The Common Property shall be subject also, to an easement of ingress egress, and regress in favor of Developer, its representatives, employees, and designees for the purpose of construction of succeeding phases, as further defined in Article XI hereof. Notwithstanding anything above provided in this Article, Association, hereinafter, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof.

VIII-A

**EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENCE ENCROACHMENTS**

In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Property or upon a Condominium Unit for as long as such encroachments shall naturally exist; and in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for as long as such encroachment shall naturally remain.

VIII-B

**EASEMENT AND INDEMNITY TO CITY OF FAYETTEVILLE AND PUBLIC WORKS COMMISSION**

The City of Fayetteville and its Public Works Commission shall not be responsible for damages which may result in the event of a rupture in water lines placed areas within ten (10) feet of or beneath existing building improvements or from the exercise of rights contained in the easement duly recorded in Book 6 Page 95, Cumberland County Registry, as applied to water lines within ten (10) feet of improvements. Such rights shall include, but not be limited to, excavation in or near the building foundations for the purpose of repairing or replacing the water lines and/or laterals. It is further understood that the Public Works Commission will not be responsible for additional cost required to relocate the facilities.

IX.

**RESTRAINT UPON SEPARATION AND PARTITION OF COMMON PROPERTY**

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property 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 Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property 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.

X.

**ADMINISTRATION OF THE CONDOMINIUM BY HARBOUR POINTE HOMEOWNERS, INC.**

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known as Harbour Pointe Condominium Owner's Association, Inc. (the "Association") has been organized & said corporation shall administer the

operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of said bylaws and Articles of Incorporation are annexed hereto and expressly made a part hereof as Exhibits "D" and "E", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership may be divested. No person, firm or corporation 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 the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest.

## XI.

### RESIDENTIAL USE RESTRICTIONS APPLICABLE TO CONDOMINIUM UNITS

Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invitees and lessees. No Unit Owner may lease less than the entire Unit. Any lease or rental agreement for a Unit shall be in writing and for a period of at least thirty (30) days. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be in default under the terms of the lease. No Owner of any Condominium Unit shall permit the use of his Unit for transient hotel or commercial purposes. Corporate or partnership members, other than the Developer shall permit the use of a Condominium Unit owned by it only by its principal officers, directors or partners, or other guests or lessees. Such corporate or partnership member shall annually sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Condominium Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration of Condominium and with the rules and regulations which may be promulgated by the Association from time to time and acknowledging that the party's right to use such Condominium Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate or partnership member to remove a party for failure to comply with the terms and provisions of the Declaration of Condominium and/or the rules and regulations of the Association or for any other reason and corporate or partnership member shall forth cause such party to be removed, failing which, the Association, as agent of the Owner, take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefore upon demand, together with such attorneys' fees as the Association may have incurred in the process of removal. It is provided further, that any mortgagees which become owners of the property through foreclosure or other means are hereby exempt from any leasing restrictions as set out herein.

Anything in this Declaration to the contrary notwithstanding, Developer shall have the right to maintain a sales office and model units and to display advertising signs upon the Common Property during the period of Unit Sales. Such right shall terminate when all Units in all phases of the Condominium are sold. Developer, its representatives, employees and designees shall have an easement of ingress, egress and regress upon across the Common Property for construction of succeeding phases, as described in Article VII hereof, which easement shall terminate when all Units in all phases are completed and sold.

Declarant reserves the following special declarant rights for the entire Property, which shall be exercisable during the period of declarant control.

- A. To complete any and all improvements indicated on the plats and plans;
- B. To construct and maintain any sales office, management office or model in any of the Units or on any of the common elements shown on the plat;
- C. To alter the size of any Unit, combine or merge two or more Units, and subdivide any Unit;

- D. To appoint and remove any executive board members during the period of declarant control; provided, however, (i) that not later than sixty (60) days after conveyance of twenty-five (25%) of the Units to owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by owners other than the declarant, and (ii) that not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by owners other than the declarant.

**XII.**

**USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION**

The use of Common Property, including the Limited Common Areas and Facilities, by Owner or Owners of all Condominium Units and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established governing such use, or which may hereafter prescribed and established by the Association.

**XIII.**

**THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES:  
RESTRICTION AGAINST NUISANCES**

No immoral, improper, offensive or unlawful use shall be made of any condominium Unit or of the Common Property, and all laws, zoning ordinance and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium or enjoy them by unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

**XIV.**

**RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES**

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

**XV.**

**RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY**

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit an agent of Association to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

**XVI.**

**LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY  
CONDOMINIUM UNITS; NO RIGHT TO ALTER COMMON PROPERTY**

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

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A. "Condominium Units" (alternately referred to as "Unit") as defined herein shall comprise the separate numerically identified Dwelling Units which are designated in Condominium Book as set out above, excluding all spaces and improvements lying:

- (1) Beneath the wood subflooring material of all floors;
- (2) Behind the interior sheetrock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
- (3) Above the interior sheetrock, wallboard or panel surfacing material of the ceilings;

And further, excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior sheetrock, wallboard or panel surfacing material for walls and ceilings and subflooring surfacing referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panes and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Harbour Pointe Condominium.

B. "Common Areas and Facilities", sometimes referred to herein as "Common Property" shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all Owners of Condominium Units.

C. Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit or Units to exclusion of the other Units and are designated as Limited Common Areas and Facilities. Limited Common Areas and Facilities and the Condominium Units to which they are reserved are as follows:

As shown on Exhibit "B", the walks, halls and balconies located in each building are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees, any decks, porches, balconies, patios or other fixtures designated to serve a single unit but located outside the Unit's boundaries are limited common elements allocated exclusively to that Unit, pursuant to N.C.G.S. §47C-2-102(4). Each Condominium Unit will have a garage designated for use by that Unit owner; such garage will also be a limited common area.

D. "Period of Declarant Control", means the period commencing on the date hereof and continuing until the earlier of (i) five (5) years after the date of the first conveyance of a unit other than a declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit owner other than declarant; (iii) two years after a declarant has ceased to offer Units for sale in the ordinary course of business; (iv) two years after any development right to add new units was last exercised, or (v) the date upon which declarant voluntarily surrenders control of the condominiums.

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Unit", or "Condominium Unit", "Unit Designation" and "Unit Owners", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

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As shown on Exhibit "B", the walks, halls and balconies located in each building are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees, any decks, porches, balconies, patios or other fixtures designated to serve a single unit but located outside the Unit's boundaries are limited common elements allocated exclusively to that Unit, pursuant to N.C.G.S. §47C-2-102(4). Each Condominium Unit will have a garage designated for use by that Unit owner, such garage will also be a limited common area.

D. "Period of Declarant Control", means the period commencing on the date hereof and continuing until the earlier of (i) five (5) years after the date of the first conveyance of a unit other than a declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit owner other than declarant; (iii) two years after a declarant has ceased to offer Units for sale in the ordinary course of business; (iv) two years after any development right to add new units was last exercised, or (v) the date upon which declarant voluntarily surrenders control of the condominiums.

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Unit", or "Condominium Unit", "Unit Designation" and "Unit Owners", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

#### IV.

#### OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY

A. 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 shall also own, as appurtenance to

Mail to: Thorp & Clarke, Attorneys, P.O. Box 670, Fayetteville, NC

NORTH CAROLINA

DECLARATION OF HARBOUR POINTE  
CONDOMINIUMS, LLC

CUMBERLAND COUNTY

HARBOUR POINTE CONDOMINIUMS, LLC, a North Carolina limited liability company with its principal place of business in the County of Cumberland, State of North Carolina, (herein "Developer"), does hereby make, declare and establish this Declaration of Condominium as and for the plan of dwelling ownership of HARBOUR POINTE CONDOMINIUMS, LLC, being the property and improvements hereinafter described.

I.

ESTABLISHMENT OF CONDOMINIUM

Developer is the owner of the fee simple title to that certain real property situated in Fayetteville, Cumberland County, North Carolina, which property is more particularly described in Exhibit "A"- Phase I, attached hereto and incorporated herein by reference, and on which property there are to be constructed one (1) two-story building containing a total of ten (10) condominium living units and their supporting facilities, areas designated for at least 20 parking spaces and other appurtenant improvements. There are no basements. The buildings are of wood frame construction. Developer does hereby submit the above described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Harbour Pointe Condominiums." Hereinafter in this Declaration, "Harbour Pointe Condominiums" is sometimes referred to as "Condominium."

Developer presently intends, but is not obligated to expand Harbour Pointe Condominiums beyond the twelve (12) units, Phase I, described above, to include up to six (6) additional phases with a presently contemplated maximum of ninety (90) units. The additional phases, if constructed would contain the number of Units indicated:

<u>Phase No.</u>	<u>No. of Units</u>
Phase II	12
Phase III	18
Phase IV	12
Phase V	12
Phase VI	12
Phase VII	12

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J. LEE WARREN JR.  
REGISTER OF DEEDS  
CUMBERLAND CO., N.C.

It is presently contemplated that the total number of Units in all phases would not exceed ninety (90) Phases I through VII if constructed, will be located on the land described in Exhibit "A" and Exhibit "A-1". The methods and procedures for expanding the Condominiums to include these additional buildings and the effects of such expansion are described in Exhibit "A" is hereinafter known as "Property". Provided further, that the period for expansion of Harbour Pointe Condominiums by the Developer is limited to seven (7) years from the recordation of this Amendment.

II.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Referenced hereto and expressly made a part hereof as Exhibit "B" consisting of 1 page(s), as recorded in Condominium Book 6, Pages 95 through 101 Cumberland County Registry, is a survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Condominium Units and Common Areas and Facilities, a said terms are hereinafter defined, and their respective locations, approximate dimensions and principal building materials. Each Condominium Unit is identified by specific numerical designation on Exhibit "B" and no Unit bears the same designation as any other Condominium Unit.

III.

DEFINITIONS

150  
125

The Condominium consists of Condominium Units and Common Area and Facilities as said terms are hereinafter defined:

A. "Condominium Units" (alternately referred to as "Unit") as defined herein shall comprise the separate numerically identified Dwelling Units which are designated in Condominium Book as set out above, excluding all spaces and improvements lying:

- (1) Beneath the wood subflooring material of all floors;
- (2) Behind the interior sheetrock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
- (3) Above the interior sheetrock, wallboard or panel surfacing material of the ceilings;

And further, excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior sheetrock, wallboard or panel surfacing material for walls and ceilings and subflooring surfacing referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panes and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Harbour Pointe Condominium.

B. "Common Areas and Facilities", sometimes referred to herein as "Common Property" shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all Owners of Condominium Units.

C. Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit or Units to exclusion of the other Units and are designated as Limited Common Areas and Facilities. Limited Common Areas and Facilities and the Condominium Units to which they are reserved are as follows:

As shown on Exhibit "B", the walks, halls and balconies located in each building are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees, any decks, porches, balconies, patios or other fixtures designated to serve a single unit but located outside the Unit's boundaries are limited common elements allocated exclusively to that Unit, pursuant to N.C.G.S. §47C-2-102(4). Each Condominium Unit will have a garage designated for use by that Unit owner; such garage will also be a limited common area.

D. "Period of Declarant Control", means the period commencing on the date hereof and continuing until the earlier of (i) five (5) years after the date of the first conveyance of a unit other than a declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit owner other than declarant; (iii) two years after a declarant has ceased to offer Units for sale in the ordinary course of business; (iv) two years after any development right to add new units was last exercised, or (v) the date upon which declarant voluntarily surrenders control of the condominiums.

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Unit", or "Condominium Unit", "Unit Designation" and "Unit Owners", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

#### IV.

#### OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY

A. 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 shall also own, as appurtenance to

the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit as the date of this Declaration is set out in Column I of Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each Condominium Unit as shown in Exhibit shall be proportionate to the total number of Units in the Condominium. In Phase One this shall be 1/12 for each Unit owned.

- B. In the event the Developer, acting elects to add additional phases to the Condominium, then the percentage undivided interest in the Common Property appurtenant to each Condominium Unit will change and shall be as set forth in the appropriate Column of Exhibit "C". The proportional interest in the Common Property appurtenant to each Condominium Unit shown in Exhibit "C" shall be proportionate to the total number of Units in the Condominium. In Phase One this shall be 1/12 for each Unit owned. In the event Developer elects to add additional phases to the Condominium, Developer shall, in each instance, file an amendment to this Declaration stating that the percentage undivided interest in the Common Area appurtenant to each Unit then a part of the Condominium at the time of such filing is as shown in the appropriate column of Exhibit "C". Each unit Owner shall be deemed by the acceptance of the deed to a Condominium Unit to have consented to the powers of amendments previously or thereafter executed by Developer pursuant to this Article IV and to Article XXVII-B hereof. Further, each Unit Owner and each Institutional Lender, as hereinafter defined, shall be deemed by the Owner's acceptance of a deed to a Condominium Unit to have appointed Developer their Attorney-In-Fact to give, execute and record the consent of said Owner and Institutional Lender to any and all amendment executed pursuant to this Article and to Article XXVII-B. Except as provided herein, the percentage of undivided in interest in the Common Property assigned to each Condominium Unit shall not be changed except when the unanimous consent of all of the Owners of all of the Condominium Units and with the consent of all of the Institutional Lenders, as defined in Article XXIX hereof, holding first mortgages of first deeds of trust on the Condominium Units.

#### V.

#### RESTRICTION AGAINST FURTHER SUBDIVISION OF CONDOMINIUM UNITS; SEPARATE CONVEYANCE OF APPURTENANT COMMON-PROPERTY PROHIBITED

No Condominium Unit may be divided or subdivided into smaller Unit or Units than as shown on Exhibit "B" hereto nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property 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 Property 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 conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null, void and of no effect sofar as the same purports to affect any interest in Common Property, unless the same purports to convey devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limited or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Property by more than one person or entity as tenants-in-common, joint tenants, or as tenants by entirety.

#### VI.

#### THE CONDOMINIUM SUBJECT TO RESTRICTIONS

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

VII.

**PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON PROPERTY**

The Common Property shall be, and the same is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. The Common Property shall be subject also, to an easement of ingress egress, and regress in favor of Developer, its representatives, employees, and designees for the purpose of construction of succeeding phases, as further defined in Article XI hereof. Notwithstanding anything above provided in this Article, Association, hereinafter, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof.

VIII-A

**EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENCE  
ENCROACHMENTS**

In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Property or upon a Condominium Unit for as long as such encroachments shall naturally exist; and in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for as long as such encroachment shall naturally remain.

VIII-B

**EASEMENT AND INDEMNITY TO CITY OF FAYETTEVILLE AND  
PUBLIC WORKS COMMISSION**

The City of Fayetteville and its Public Works Commission shall not be responsible for damages which may result in the event of a rupture in water lines placed areas within ten (10) feet of or beneath existing building improvements or from the exercise of rights contained in the easement duly recorded in Book 6 Page 95, Cumberland County Registry, as applied to water lines within ten (10) feet of improvements. Such rights shall include, but not be limited to, excavation in or near the building foundations for the purpose of repairing or replacing the water lines and/or laterals. It is further understood that the Public Works Commission will not be responsible for additional cost required to relocate the facilities.

IX.

**RESTRAINT UPON SEPARATION AND PARTITION  
OF COMMON PROPERTY**

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property 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 Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property 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.

X.

**ADMINISTRATION OF THE CONDOMINIUM BY  
HARBOUR POINTE HOMEOWNERS, INC.**

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known as Harbour Pointe Condominium Owner's Association, Inc. (the "Association") has been organized & said corporation shall administer the

operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of said bylaws and Articles of Incorporation are annexed hereto and expressly made a part hereof as Exhibits "D" and "E", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership may be divested. No person, firm or corporation 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 the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest.

#### XI.

#### RESIDENTIAL USE RESTRICTIONS APPLICABLE TO CONDOMINIUM UNITS

Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invitees and lessees. No Unit Owner may lease less than the entire Unit. Any lease or rental agreement for a Unit shall be in writing and for a period of at least thirty (30) days. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be in default under the terms of the lease. No Owner of any Condominium Unit shall permit the use of his Unit for transient hotel or commercial purposes. Corporate or partnership members, other than the Developer shall permit the use of a Condominium Unit owned by it only by its principal officers, directors or partners, or other guests or lessees. Such corporate or partnership member shall annually sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Condominium Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration of Condominium and with the rules and regulations which may be promulgated by the Association from time to time and acknowledging that the party's right to use such Condominium Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate or partnership member to remove a party for failure to comply with the terms and provisions of the Declaration of Condominium and/or the rules and regulations of the Association or for any other reason and corporate or partnership member shall forth cause such party to be removed, failing which, the Association, as agent of the Owner, take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefore upon demand, together with such attorneys' fees as the Association may have incurred in the process of removal. It is provided further, that any mortgagees which become owners of the property through foreclosure or other means are hereby exempt from any leasing restrictions as set out herein.

Anything in this Declaration to the contrary notwithstanding, Developer shall have the right to maintain a sales office and model units and to display advertising signs upon the Common Property during the period of Unit Sales. Such right shall terminate when all Units in all phases of the Condominium are sold. Developer, its representatives, employees and designees shall have an easement of ingress, egress and regress upon across the Common Property for construction of succeeding phases, as described in Article VII hereof, which easement shall terminate when all Units in all phases are completed and sold.

Declarant reserves the following special declarant rights for the entire Property, which shall be exercisable during the period of declarant control:

- A. To complete any and all improvements indicated on the plats and plans;
- B. To construct and maintain any sales office, management office or model in any of the Units or on any of the common elements shown on the plat;
- C. To alter the size of any Unit, combine or merge two or more Units, and subdivide any Unit;



- D. To appoint and remove any executive board members during the period of declarant control; provided, however, (i) that not later than sixty (60) days after conveyance of twenty-five (25%) of the Units to owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by owners other than the declarant; and (ii) that not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by owners other than the declarant.

**XII.**

**USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION**

The use of Common Property, including the Limited Common Areas and Facilities, by Owner or Owners of all Condominium Units and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established governing such use, or which may hereafter prescribed and established by the Association.

**XIII.**

**THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES:  
RESTRICTION AGAINST NUISANCES**

No immoral, improper, offensive or unlawful use shall be made of any condominium Unit or of the Common Property, and all laws, zoning ordinance and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium or enjoy them by unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

**XIV.**

**RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES**

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

**XV.**

**RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY**

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit an agent of Association to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

**XVI.**

**LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY  
CONDOMINIUM UNITS; NO RIGHT TO ALTER COMMON PROPERTY**

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

consented to the altering of the Unit's balcony or deck to a screen porch or sunroom, so long as such alterations are done according to the approved plans of the Developer, which plans are available from Developer.

The Association, through the Board of Directors (or its Architectural control committee), shall regulate the external design, appearance, use, location and maintenance of the Condominium and of improvements therein in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. No owner shall cause any improvements, alteration, repairs or changes to be made on the exterior of the Condominium (including painting or other decoration, the installation of electrical wiring, television or radio antennae or any other objects or devices which may protrude through the walls or roof of the Condominium) or in any manner alter the other appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No Unit Owner shall cause any object to be fixed to the Common Property or to any Limited Common Area (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Property or Limited Common Area without the written consent of the Association being first had and obtained.

Any Unit Owner desiring to make improvements, alteration or change described above shall submit the plans and specifications therefore, showing the nature, kind, shape, height, materials and location of the same, to the Board of Directors which shall evaluate such plans and specifications in light of the purpose of this Article as set forth above. As a condition to the granting of approval of any request made under this article, the Association may require that the Unit Owner requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Unit Owner, and any subsequent Owner of the Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth in Article XXIV subject to the lien rights described in said Article.

#### XVII.

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

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

#### XVIII.

##### **MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS**

The Association, as its expense, shall be responsible for the maintenance, repair and replacement of all the Common Property; including those portions thereof which contribute to the support of the buildings and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property for the furnishing of utility, heating and other services to the Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Condominium Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the 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, be 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. The Owner of a Condominium Unit who has exclusive use of any Limited Common Area shall maintain such at his own expense. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners.

**XIX.**

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

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the Common Property; including those portions thereof which contribute to the support of the buildings and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property for the furnishing of utility, heating and other services to the Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Condominium Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family), guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall by reason of the applicability of any deductibility provision of such insurance, or by reason of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

**XX.**

**OWNERSHIP MAINTENANCE AND REPAIR OF PRIVATE  
STREETS BY THE ASSOCIATION**

The Association shall have ownership and, at its expense, shall be responsible for the maintenance, repair and replacement of all private streets within the property subject to this Declaration of Condominiums. This Declaration of Condominiums is hereby made subject to, and incorporates herein by reference, Chapter 27 of the Code of Ordinances of the City of Fayetteville, as it pertains to the establishment of private streets within the property subject to this Declaration of Condominiums.

**XXI.**

**AUTHORITY TO PURCHASE INSURANCE**

Insurance policies upon the Common Property, including Limited Common Areas and Facilities (except title insurance) shall be purchased by the Association as Trustees for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgages as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. 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, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

**XXII.**

**INSURANCE COVERAGE TO BE MAINTAINED: USE AND  
DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS**

- A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property:

1. Casualty insurance covering the building and all improvements upon the land and all personal property included within the Property described in Exhibit "A" hereto or as it may be amended from time to time, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage. Such policy shall contain an Agreed Amount Endorsement or an Inflation Guard Endorsement, if available. By the way of illustration and not of limitation, such casualty insurance shall cover fixtures, comprising a part of the building within each individual Condominium Unit (as that term is defined in Article III hereof) in accordance with the original condominium plans and specification. In determining the amount of coverage for such fixtures, installations or additions, the Board of Directors of the Association shall annually set the Landlord allowance for such items as carpeting, bathroom and kitchen cabinets, wall covering, vinyl floor covering, ceramic tile, kitchen appliances, bookshelves, etc., which were included in the original condominium plans and specifications. By the way of illustration and not of limitation such casualty insurance shall not cover furniture, furnishings or other household or personal property owned by, used by or in the care, custody or control of a Condominium Unit Owner (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Condominium Unit by the Owner thereof at his expense. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.
  2. A comprehensive policy of public liability insurance insuring the Association in an amount no less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage.
  3. The Board of Directors shall maintain fidelity coverage against dishonest acts by the Association's officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of the paragraph XXI-A-(3). If the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or directors of the Association can and do directly receive or disburse the monies of the Association), then the Board of Directors shall provide the coverage set forth in this paragraph.

Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves and accumulated reserves; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior to written notice to the Association and to any Institutional Lender who has given the notice required under Article XXX of this Declaration.
  4. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a condominium Unit Owner.
- B. 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.
- C. All insurance policies purchased by the Association and all condemnation awards attributable the Common Property shall be for the benefit of the Association and the Condominium Unit Owners and their mortgages, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses and condemnation shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of Association, the Condominium Unit Owners and their respective mortgages in the following shares:



1. Proceeds due to damage to Common Property: in undivided shares for each condominium Unit Owner and his mortgagee, if any, which shares as to each Condominium Unit are shown on Exhibit "C" attached hereto.
2. Proceeds due to damages to Condominium are to be restored: for the Owners of damaged Condominium Unit Owners, the share of each being set forth in Exhibit "C".
  - a. Partial destruction when the Condominium is to be restored: for the Owners of damaged Condominium Unit Owners, the share of each being set forth in Exhibit "C".
  - b. Total destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired, if, at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Condominium Unit Owners who in the aggregate own three-fourths (3/4) or more of the Condominium Units vote against reconstruction or repair.
- D. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear.
- E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Condominium Unit Owners in the following manner:
  1. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

**XXIII.**

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

- A. If any part of the Common property be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:
  1. Partial destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) of the Condominium Units untenable. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair.
  2. Total destruction shall be deemed to mean destruction which renders two thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Condominium Unit Owners who in the aggregate own three-fourths (3/4) or more of the Condominium Units vote against reconstruction or repair.
- B. If the damage is only to those parts of one or more Condominium Units for which the responsibility for maintenance and repair is that of Condominium Unit Owner shall be responsible for reconstruction and



repair after casualty of condemnation. In all other instances, the responsibility of reconstruction and repair after casualty or condemnation shall be that of Association as follows:

1. Immediately after the casualty or condemnation causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in conditions good as that before the casualty or condemnation. Such costs may include professional fees and premiums for such bonds as the Board of Director, deems necessary or appropriate.
  2. When the damage is to both Common Property and Condominium Units or to Common Property only, the insurance or condemnation proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Property and the balance to the Condominium Units.
- C. Each condominium Unit Owner shall be deemed to have delegated to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association and to negotiate with governmental authorities any condemnation claims.

XXIV.

**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 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 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 mortgagee or mortgages on any Condominium Unit, the amount of such mortgage or mortgagee and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder or 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.

XXV.

**ASSESSMENT: 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 administer properly 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 which are sometimes herein referred to as "Common Expense". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments and fines against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to Association to make, levy and collect assessment and fines to pay the costs and expenses for the operation, management of and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

- A. Unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total undivided interest in Common Property appurtenant to all Condominium Units as shown as Exhibit "C" attached hereto.
- B. Assessments provided for herein shall be payable in monthly installments as determined by the Board of Directors of the Association. Such assessments shall commence for each Unit on the first day of the first month following the recordation of this Declaration in the Cumberland County Registry.



- C. In addition to annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto provided that any such assessment shall have the assent of Unit Owners owning two-thirds (2/3) of the Common Areas and Facilities who are voting in person or by proxy at a meeting duly called for such purposes.
- D. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence, the Association had established a Working Capital Fund. At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association. No such payments made into the working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws.
- E. The Board of Directors of the Association shall establish an Annual Budget in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and the budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with paragraph "G" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Owner of a Condominium Unit and the assessment for said year shall be established based upon such Budget, although the delivery of a copy of said Budget to each Owner shall not affect the liability of any Owner for such assessment.
- F. Until December 31 of the year in which the first Unit is conveyed to an Owner, the maximum annual assessment shall be TWELVE HUNDRED SIXTY DOLLARS per year. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) by the Board of Directors. Any increase of more than five percent (5%) over the previous year's assessment requires a vote of the Unit Owners owning two-thirds (2/3rds) of the Common Areas and Facilities who are voting in person or by proxy, at a meeting duly called for such purpose.
- G. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his proportionate interest in the Common Property as shown on Exhibit "C" and the Association shall annually notify each Unit Owner of the amount of his balance in the Capital Improvement Account; however, such balance shall not be subject to withdrawal by a Unit Owner.
- H. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominium, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Owner of a Condominium Unit, the same may be co-mingled with monies paid to the Association by the other Owners of Condominium Units. Although all funds and common surplus, including other assets of the

Association, and any increments thereto or profits derived thereof or from the leasing or use of Common Property, 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.

- I. The Association shall have the right from time to time to levy fines against Unit Owners who violate the rules, regulations and restrictive Covenants, in such amount as deemed necessary to enforce said rule, regulation and restrictive covenant. The Association shall publish and maintain at its office a schedule of fines to be levied in accordance with this Declaration.
- J. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at twelve percent (12%) per annum allowed by VA until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association in the State of North Carolina.
- K. The Owners 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 shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee whether suit be brought or not.
- L. 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 Property, or by abandonment of the Condominium Unit or in any other way.
- M. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses. Therefore, and that such proper operation and management results in benefit to all of the Owners of 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 a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure interest if any, which may be due on the amount of any delinquent assessments owing to the Association and, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure interest if any, which may be due on the amount of any delinquent assessments owing to the Association and, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit from date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium Unit. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association shall further be entitled to interest at twelve percent (12%) per annum allowed by VA 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 acquire a mortgage, lien or other encumbrance thereof, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

- N. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim or lien in the Public Records of Cumberland County, North Carolina which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of the lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied or recorded.

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

- O. 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 by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding by proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

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

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

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

#### XXVI.

#### COMMON SURPLUS

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

time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in Common Surplus as declared herein.

**XXVII.**

**TERMINATION**

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

- A. The termination of the condominium may be affected only by the unanimous agreement of all Condominium Unit Owners expressed in an instrument to that effect duly recorded; and provided, that the holders of all liens affecting any of the Condominium Units consent thereto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Condominium Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such Agreement has been recorded in the public records of Cumberland County, North Carolina.
- B. If it is determined in the manner elsewhere provided that the Condominium shall not be reconstructed after casualty, the Condominium plan or ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts affecting the termination, which Certificate shall become effective upon being recorded in the public records of Cumberland County, North Carolina.
- C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the Common Area and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be continue to be held for the Unit Owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.
- D. Following termination, the property shall be subject to an action for partition at the suit of any Condominium Unit Owner and upon the express agreement of all Unit Owners affected. If the Board of Directors determines by not less than a three-fourths (3/4<sup>th</sup>) vote to accept an offer for the sale of the property, and each Unit Owner affected expressly agrees to the sale, each Condominium Unit Owner shall execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such other sale, and upon the consummation thereof shall be discontinued by all parties thereof.

**XXVIII.**

**AMENDMENT OF DECLARATION OF CONDOMINIUM**

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

- A. An Amendment or Amendments to this Declaration of Condominium may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments to this Declaration of Condominium being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment or amendments. It shall be the duty of the Secretary to give each member written or printed notice of such special Meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days not more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member, may, by written waiver of notice signed

- by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of the members owning Units in the Condominium in order for such Amendment or Amendments to become effective. During the twenty-year period beginning with the date of Declaration, an affirmative vote of Unit Owners owning ninety percent (90%) of the undivided interest in the Common Areas and Facilities shall be required to amend this Declaration. From and after the expiration of said twenty-year period, an affirmative vote of Unit Owners in person or by proxy in a meeting duly called, owning seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities shall be required. Upon adoption such Amendment or Amendments of this Declaration of Condominium shall be transcribed and certified by the President and Secretary of the Association has having been duly adopted. The original or an executed copy of such Amendment or Amendments, so certified and executed with the same formalities as a Deed, shall be recorded in the Public Records of Cumberland County, North Carolina, within ten (10) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording date identifying the Declaration of Condominium. 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 of the effectiveness of such Amendment or Amendments. At any meeting held to consider such Amendment or Amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented there or by proxy, provided such written notice is delivered to the Secretary of the Association prior to such meeting or at such meeting.
- B. Developer shall have the right to file an amendment to this Declaration at any time and from time to time prior to December 31, 2008, without the further consent of the Unit Owners, to incorporate into the Condominium (1) any and all of the additional land described in Exhibit "A", Phases II through VII, and (2) the seventy eight additional condominium units to be constructed on the land described in Exhibit "A", Phases II through VII, respectively. In the event this Declaration is so amended, the terms "Condominium" and "Property" as used herein shall be deemed to mean and include the property described in Exhibit "A", Phases II through VII as the case may be and all improvements and structures now or hereafter placed by Developer thereon, all easements, rights and appurtenances thereto, and all articles of personal property provided by Developer and intended for use in connection therewith. Upon any such amendment that includes the land and additional Units in Phases II through VII, the undivided interest appurtenant to each Condominium Unit will change and shall be as set out in the appropriate column of Exhibit "C". The materials used in the construction of any additional Units in Phases II through VII shall be of comparable quality as those used in the original twelve (12) Units, the layout, size and architectural style of the additional Units shall be substantially the same as and compatible with the original Units, and the Units will be substantially completed prior to being incorporated into the condominium. No amendment made by Developer in accordance with this paragraph shall divest as Owner of any portion of his dwelling Unit without the consent of such Owner and no such amendment shall materially alter the plan of development set forth herein without the consent of all Owners affected thereby. Each Unit Owner shall be deemed, by his acceptance of a deed to a Condominium Unit, to have consented to the powers of amendment therein reserved by Developer and to any amendments previously or thereafter executed by Developer pursuant thereto. Each Unit Owner and each Institutional Lender shall further be deemed by the Owner's acceptance of a deed to a Condominium Unit, to have appointed Developer their respective Attorney-in-Fact to give, execute and record the consent of said Owner and said Institutional Lender to any and all amendments to this Declaration which Developer may wish to execute pursuant to the powers herein reserved.
- C. Except as expressly set forth in this Declaration, no alteration in the percentage of ownership in Common Property appurtenant to each Condominium Unit, or alteration of the basis for sharing Common Expenses and other apportionment of assessment which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, shall be made without prior written consent of all of the Owners of all Condominium Units and all of the Institutional Lenders holding first mortgages or first deeds of trust on the Condominium Units.
- D. No material alteration, amendment or modification of this Declaration, the Articles of Incorporation or By-Laws of the Association shall become effective without the prior written consent, of Institutional Lenders (as defined in Article XXIX) holding first mortgage loans on Units representing at least fifty-one percent (51%) of the votes in the Association being first had and obtained. Any change to the provisions of this Declaration, the Articles of Incorporation or By-Laws that affects any of the

following shall be deemed material: voting rights, assessment, assessment liens, or subordination or assessment liens, reserves for maintenance, repair and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the Common Areas of Limited Common Areas, or rights to their use; boundaries of any Unit; convertibility of Units into Common Areas or vice versa; expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium; insurance or fidelity bonds; leasing of Units; imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; a decision by the Owners association to establish self management; restoration or repair of the Condominium; any provisions expressly benefit Institutional Lenders.

- E. No alteration, amendment or modification of the rights and privileges granted and reserved herein favor of Developer shall be made without the written consent of said part being first had and obtained.
- F. The Condominium Regime may not be amended or merged with a successor regime without the prior approval of the Department of Veterans Affairs.

#### XXIX.

#### REMEDIES IN EVENT OF DEFAULT

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

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



- G. The failure of an Institutional Lender or Institutional Lenders, as said term in herein defined, to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by this Declaration of Condominium or other above mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

XXX.

**RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS:  
RIGHTS RESERVED UNTO THE VETERANS ADMINISTRATION**

- A. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by first liens on residences, the Veterans Administration, the Federal Housing Administration and eligible insurers and governmental guarantors. In addition to any other rights set forth in this Declaration, so long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any Condominium Unit or Units, or shall be the owner of any Condominium Unit or Units, such Institutional Lender or Institutional Lenders shall have the following rights:
1. To approve the company or companies with whom casualty insurance is placed, and to be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
  2. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant designated by the Association, such financial statement and report to be furnished by April 30<sup>th</sup> of each calendar year.
  3. To be given notice by the Association of the Call of any meeting of the membership to be held for the purpose of considering: (1) any proposed Amendment to this Declaration of Condominium, or the Articles of Incorporation and Bylaws of the Association; (2) the proposed termination or abandonment of the Condominium; (3) the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association. Such notice shall state the nature of the Amendment or action being proposed.
  4. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Condominium Unit encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing.
  5. To be given notice of any condemnation loss or casualty loss which affects a material portion of the Common Areas or a material portion of any Unit.

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

- B. So long as Developer retains the right to appoint a majority of the Board of Directors of the Association as set forth in Article XXX thereof, the following actions will require the prior approval of the Veterans Administration: amendment of the Declaration, including amendments under Article XXVII-B to add additional phases to the Condominium; and dedication of any Common Areas and Facilities.

**XXXI.**

**RIGHT OF DEVELOPER TO REPRESENTATION  
ON BOARD OF DIRECTORS OF THE ASSOCIATION**

For a period ending one hundred twenty (120) days after Developer ceases to own twenty-five (25%) or more of the Units in the Condominium, but in any event, no longer than five (5) years from the date of recording of the first conveyance of a Unit sold in Phase 1 of the Condominium, Developer shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association.

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

Whenever Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided by the Articles of Incorporation and/or Bylaws of the Association, and Developer shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and or replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Developer need not be a resident in the Condominium. However, Developer shall be responsible for the payment of any assessments which may be levied by the Association against any Condominium Unit or Units owned by the said Developer, and for complying with the remaining terms and provisions hereof in the same manner as any other Owner of a Condominium Unit or Units.

**XXXII.**

**SEVERABILITY**

In the event that any of the terms, provisions, or covenants of this Declaration of Condominium 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.

**XXXIII.**

**LIBERAL CONSTRUCTION**

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

**XXXIV.**

**DECLARATION OF CONDOMINIUM FINDING ON  
ASSIGNS AND SUBSEQUENT OWNERS**

The restrictions and burdens imposed by the covenants of this Declaration of Condominium 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 Common Property. This Declaration of Condominiums shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become Owners of Condominium uncured for a period of sixty (60) days by any Owner owning a Condominium Unit in the Condominium, and their respective heirs, legal representatives, successor and assigns.

**XXXV.**

**AGENT FOR SERVICE OF PROCESS**

The following named individual is designated as the person to receive service of process for the Association:

F. Calvin Riddle, Jr.  
916 Hay Street  
Fayetteville, NC 28305

XXXVI

CONFLICTING PROVISIONS

To the extent the provisions of this Declaration conflict with any applicable provisions of the Fayetteville City Code or Chapter 47C of the General Statutes of North Carolina, the conflicting provision of the City Code or the North Carolina statute shall control. In the event of a conflict between the North Carolina Statute and the City Code, then in that event, the North Carolina General Statute shall control.

IN WITNESS WHEREOF, HARBOUR POINTE CONDOMINIUMS, L.L.C. has caused these presents to be executed in its name by its Managing Partner.

This the 16 day of OCTOBER 2003.

HARBOUR POINTE CONDOMINIUMS, L.L.C.

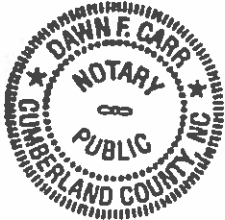
By: [Signature]  
Manager

NORTH CAROLINA  
CUMBERLAND COUNTY

I, DAWN F. CARR a Notary Public for said County and State, do hereby certify that F. CALVIN RIDDLE, JR., personally appeared before me this day and acknowledged the due execution of the foregoing instrument. MANAGER

WITNESS my hand and official seal, this 16<sup>th</sup> day of October, 2003.

My Commission Expires: November 16, 2003



**Legal Description**

LYING in Cross Creek Township, Cumberland County, Fayetteville, North Carolina this subject property being bounded on the north by the southern right of way margin of Georgetown Circle; bounded on the east, south and west by property conveyed to Harbour Pointe Condominiums LLC, as described and recorded in Deed Book 5537, Page 612, Cumberland County Registry, of which this is a part; bounded on the south and west also by property conveyed to Cumberland County as described and recorded in Deed Book 4249, Page 598, Cumberland County Registry; bounded on the west also by Lot 327, Phase Two, Section Four, Lake Shores, as described and recorded in Plat Book 61, Page 21, Cumberland County Registry.

COMMENCING from a pk-nail in the center line of Georgetown Circle approximately 230 feet northeast of the centerline intersection of Georgetown Circle and Greyson Court, thence South 54 degrees 24 minutes 58 seconds West for a distance of 303.96 feet to a pk-nail near the edge of pavement approximately 90 feet southwest of the aforementioned intersection; thence South 41 degrees 09 minutes 36 seconds West for a distance of 20.13 feet to an iron rebar in the aforementioned margin of Georgetown Circle, said rebar being the northeastern boundary corner of the aforementioned Lot 327, said rebar also being the westernmost boundary corner of the aforementioned Harbour Pointe property, said rebar being the point and place of BEGINNING;

THENCE along a curve to the left having a radius of 425.00 feet and an arc length of 170.50 feet, being subtended by a chord of North 69 degrees 49 minutes 23 seconds East for a distance of 169.36 feet with said margin of Georgetown Circle to an iron rebar in said margin;

THENCE South 39 degrees 31 minutes 00 seconds East for a distance of 159.26 feet with a new line to a point;

THENCE along a curve to the left having a radius of 554.50 feet and an arc length of 190.50 feet, being subtended by a chord of South 48 degrees 51 minutes 50 seconds East for a distance of 189.57 feet with a new line to a point;

THENCE South 31 degrees 17 minutes 38 seconds West for a distance of 181.30 feet with a new line to an iron rebar in the western boundary line of said Harbour Pointe property, said rebar also lying in the eastern boundary of the aforementioned Cumberland County property, said point also lying in the eastern edge of McFayden Lake;

THENCE and with the Cumberland County property line and the edge of McFayden Lake the following bearings and distances:

- North 42 degrees 24 minutes 00 seconds West for a distance of 15.39 feet to a point;
- North 69 degrees 18 minutes 00 seconds West for a distance of 50.80 feet to a point;
- North 63 degrees 40 minutes 00 seconds West for a distance of 50.16 feet to a point;
- North 62 degrees 34 minutes 00 seconds West for a distance of 31.85 feet to a point;
- North 43 degrees 43 minutes 00 seconds West for a distance of 20.45 feet to a point;
- North 22 degrees 08 minutes 00 seconds West for a distance of 13.44 feet to a point;

THENCE North 44 degrees 51 minutes 05 seconds East for a distance of 129.16 feet leaving said County property and Lake boundaries and with a new line, to a point;

THENCE along a curve to the right having a radius of 625.88 feet and an arc length of 66.14 feet, being subtended by a chord of North 42 degrees 07 minutes 17 seconds West for a distance of 66.11 feet to a point;

THENCE North 39 degrees 31 minutes 00 seconds West for a distance of 75.57 feet to a point;

THENCE South 50 degrees 29 minutes 00 seconds West for a distance of 138.50 feet to a point in the aforementioned County property and Lake boundaries;

THENCE and with said boundaries the following bearings and distances:

- North 62 degrees 38 minutes 00 seconds West for a distance of 7.31 feet to a point;
- North 69 degrees 39 minutes 00 seconds West for a distance of 8.14 feet to a point;
- North 86 degrees 45 minutes 00 seconds West for a distance of 15.43 feet to a point, said point being the southeastern boundary corner of said Lot 327;

THENCE North 08 degrees 56 minutes 32 seconds West for a distance of 134.40 feet with the eastern boundary line of said Lot 327, and the point and place of BEGINNING;

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 1.421 acres (61,902 square feet).

This description prepared by Larry King & Associates, R.L.S., P.A. under the supervision W. Larry King on this 2<sup>nd</sup> day of October, 2003.

*W. Larry King*  
W. Larry King, 11339

