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RECORDED AND VERIFIED  
MARY SUE OOTS  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

LULLWATER APARTMENTS  
A CONDOMINIUM  
DECLARATION OF CONDOMINIUM

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DEVELOPED BY  
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TABLE OF CONTENTS

<u>ARTICLE NO.</u>	<u>ARTICLE HEADING</u>	<u>PAGE NO.</u>
I	DEFINITIONS . . . . .	2
II	SUBMISSION OF PROPERTY . . . . .	6
III	NATURE AND INCIDENTS OF UNIT OWNERSHIP . . . . .	6
IV	USE RESTRICTIONS . . . . .	7
V	EASEMENTS . . . . .	8
VI	THE ASSOCIATION . . . . .	9
VII	TERMINATION . . . . .	14
VIII	AMENDMENT OF DECLARATION OF CONDOMINIUM . . . . .	14
IX	REMEDIES IN EVENT OF DEFAULT. . . . .	14
X	RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS . . . . .	14
XI	RIGHT OF FIRST REFUSAL . . . . .	15
XII	SEVERABILITY . . . . .	15
XIII	LIBERAL CONSTRUCTION . . . . .	15
XIV	DECLARATION OF CONDOMINIUM BINDING ON ASSIGNS AND SUBSEQUENT OWNERS . . . . .	15
XV	EMINENT DOMAIN . . . . .	15
XVI	PROCESS . . . . .	16
XVII	WARRANTIES AND REPRESENTATIONS. . . . .	16

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM  
LULLWATER APARTMENTS  
A CONDOMINIUM

THIS DECLARATION, made this the 25th day of June, 1997, by REDMAN DAVIDSON, INC., a North Carolina corporation, hereinafter referred to as "DECLARANT";

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the Declarant is the owner of record of the fee simple title of certain real property located entirely in the City of Wilmington, County of New Hanover, State of North Carolina, which is more particularly described in Exhibit "A" hereto attached and incorporated herein by reference; and

WHEREAS, the Declarant is the owner of the two (2) multi-unit buildings, and certain other improvements heretofore constructed upon the aforesaid property; and

WHEREAS, it is the desire and the intention of the Declarant to market, sell and convey interests in the property and the improvements thereon as a condominium project pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled "The North Carolina Condominium Act"; and

WHEREAS, it is the desire and intention of the Declarant in the recordation of this DECLARATION in the Office of the Register of Deeds of New Hanover County, North Carolina, to submit said condominium project to the provisions of the said Chapter 47C;

NOW, THEREFORE, THE DECLARANT DOES HEREBY DECLARE THAT ALL OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "A" HERETO ATTACHED AS WELL AS ALL OF THE IMPROVEMENTS CONSTRUCTED THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED, USED, OCCUPIED, AND IMPROVED SUBJECT TO THE FOLLOWING ARTICLES OF COVENANTS, CONDITIONS, RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS, ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A BENEFIT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, AND ANY PERSON OR ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND IMPROVEMENTS, OR ANY SUBDIVISION THEREOF, THEIR GRANTEEES, SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

ARTICLE I.

Definitions

For the purposes of this Declaration and the By-Laws of the Association, hereinafter defined, the following definitions for the term used herein and therein shall apply unless otherwise defined by the context thereof:

1.1 ACT shall mean and refer to the The North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

1.2 ASSESSMENT shall mean and refer to a share or all of the funds required for the payment of the common expenses, hereinafter defined, of the Association which from time to time shall be levied or assessed against a unit owner(s) by the Association, all as provided for hereinbelow.

1.3 ALLOCATED INTERESTS shall mean and refer to the undivided interest(s) in the common elements, the common expense liability and votes in the Association allocated to each unit.

1.4 ASSOCIATION shall mean and refer to LULLWATER APARTMENTS, the mandatory association of all unit owners, as is more particularly described in Article VI hereinbelow and organized pursuant to North Carolina General Statutes 47C-3-101, et seq.

1.5 BUILDING shall mean and refer to the two (2) multi unit buildings which the Declarant has constructed upon the real property described in Exhibit "A", to be used for residential purposes, as hereinafter provided. Said building is more particularly described in the plans of said building, showing all particulars as required by law recorded in Condominium Plat Book 11, at Pages 78 & 79 of the New Hanover County Registry. In general, the buildings have two (2) stories plus a loft above the ground level. Each building has approximately 7189 square feet.

The building has been principally constructed of wood with fiberglass shingles.

1.6 BOARD shall mean and refer to the Executive Board or Board of Directors of the Association and DIRECTOR shall mean and refer to a member of said Board.

1.7 BY-LAWS shall mean and refer to those By-Laws of the Association providing for the government of the Association as they are duly adopted and amended from time to time by the Association.

1.8 COMMON ELEMENTS generally shall mean and refer to all of the real property, described on Exhibit "A", and all of the present or proposed improvements and facilities thereon which are not units, as defined hereinafter.

1.9 COMMON EXPENSES shall mean and refer to the expenditures, costs and expenses incurred by the Association for the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the common elements as well as any other financial liability incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein or by law and designated as common expenses. Common expenses are additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association of unit owners as common expenses of the Association.

1.10 COMMON EXPENSE LIABILITY shall mean the liability for common expenses allocated to each unit (allocated interests) pursuant to North Carolina General Statutes 47C-2-107.

1.11 COMMON SURPLUS shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses.

1.12 CONDOMINIUM shall mean and refer to the entire proposed development created pursuant to this Declaration consisting of all the real property including units, all improvements and structures thereon, all common areas and facilities, and all easements, rights and appurtenances belonging thereto, and all articles of personal

property intended for common use in connection therewith, which are intended to be submitted to the provisions of the act by this Declaration, and the supplements and amendments hereto, as are provided for hereinbelow.

1.13 DECLARANT shall mean REDMAN DAVIDSON, INC., a North Carolina corporation, its successors and assigns, as the owner of the property and who as a part of a common promotional plan offers to dispose of its interest in a unit not previously disposed of or reserves or succeeds to any special declarant right.

1.14 DECLARATION shall mean this Declaration of Condominium for LULLWATER APARTMENTS and any and all amendments.

1.15 DEVELOPMENT RIGHTS shall mean any right or combination of rights reserved by the Declarant in this Declaration to add real estate to a condominium; to create units, common elements or limited common elements within a condominium.

1.16 DISPOSE OR DISPOSITION shall mean the voluntary transfer to a purchaser of any legal or equitable interest in a unit, but not a transfer or release of a security interest.

1.17 EXECUTIVE BOARD shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association. It generally shall be designated herein as the "Board of Directors" or "Board".

1.18 IDENTIFYING NUMBER means the letter, symbol or address that identifies only one specific unit in the Condominium.

1.19 LIMITED COMMON ELEMENT shall mean a portion of the common elements allocated by this Declaration, if any, for the exclusive use of one or more but fewer than all of the units created in this Condominium.

1.20 PERSON shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

1.21 PURCHASER shall mean any person, other than the Declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than five (5) years, or (ii) as security for an obligation.

1.22 REAL PROPERTY OR REAL ESTATE shall mean and refer to all of the real property described in Exhibit "A" attached hereto as well as any leasehold or other estate or interest in, over, or under land, including structures, fixtures and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance.

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

1.24 SPECIAL DECLARANT RIGHTS shall mean rights reserved herein for the benefit of the Declarant to complete improvements indicated on plats and plans filed with the Declaration under General Statutes 47C-2-109; to exercise any development rights under General Statutes 47C-2-110; to maintain sales offices, management offices, signs advertising the condominium and models under General Statutes 47C-2-115; to use easements through the

common elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium under General Statutes 47C-2-116; or to appoint or remove any officer of the Association or any executive board member during any period of Declarant control under General Statutes 47C-3-103(d).

1.25 UNIT or CONDOMINIUM UNIT shall mean and refer to either one of those subdivisions of enclosed space within the building, together with any additional areas or spaces accompanying the same as defined hereinbelow, and which are intended to or will be sold as dwelling units or separate ownership pursuant to the Act and this Declaration. The deed for any particular unit shall convey such unit by its unit identifying number and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the covenants, conditions, restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

All units, as well as the additional areas defined as part of each unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the units' perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings, and floors of the additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the buildings whether the same now exist or may be caused or created by existing construction, settlement, or movement of the buildings, or by permissible repairs, construction, or alteration.

Each unit is hereby defined also to include:

- (i) All non-load bearing partition walls located entirely within the unit;
- (ii) All materials, including, but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the unit; and all window panes, frames, panes and exterior doors (including garage doors);
- (iii) All air handling and condensing units, ducts and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines, located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as defined hereinabove.

Each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services to the units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for perimeter walls, ceilings and floors of the units. All such pipes, ducts, wires, conduits, and other such facilities are defined as a part of the unit at and from their point of entry into the unit.

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as

a part of the units is defined hereby as a part of the common areas, elements and facilities of the condominium.

1.26 UNIT OWNER shall mean and refer to a person, corporation, partnership, association, trust, other legal entity including the Declarant, or any combination thereof, in whose name or names the title to or an interest in the title to any unit is vested, excluding those who own or hold such title or interest under the terms of any mortgage or deed of trust or other similar instrument for the purposes of securing the payment of an indebtedness or the performance of an obligation.

#### ARTICLE II.

##### Submission of Property

Pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, the Declarant does hereby submit all of the real property described in Exhibit "A" attached hereto together with all improvements thereon and described herein, to the provisions of the "North Carolina Condominium Act" of the State of North Carolina, which is codified as Chapter 47C of the General Statutes of the State of North Carolina. The Condominium created hereunder shall be known as LULLWATER APARTMENTS.

Declarant has filed with the New Hanover County Register of Deeds the plat and plans to the LULLWATER APARTMENTS and shall be considered a part of this Declaration. Said plats and plans are recorded in Condominium Plat Book No. 11 at Pages 78 & 79 in the New Hanover County Register of Deeds Office.

#### ARTICLE III.

##### The Nature and Incidents of Unit Ownership

3.1 Each unit shall be conveyed and treated as an individual real property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common areas and facilities of LULLWATER APARTMENTS. The undivided interest in the common areas and facilities of LULLWATER APARTMENTS, appurtenant to each of the units of LULLWATER APARTMENTS is set forth on Exhibit "B" attached hereto and incorporated herein by reference.

Said proportional interest in the common areas and facilities that is appurtenant to each unit has been determined in a manner consistent with the Act.

3.2 No unit may be divided or subdivided into a smaller unit or units than as shown on the recorded plat or plans referred to herein. The undivided interest in the common areas and facilities declared to be an appurtenance to each unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said unit, and the undivided interest in common areas and facilities appurtenant to each unit shall be deemed conveyed, devised, encumbered, or otherwise included with the unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such unit. Any conveyance, mortgage, or other instrument which purports to grant any right, interest, or lien in, to or upon a unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a unit and its appurtenant undivided interest in common areas and facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire unit. Any instrument conveying,

devising, encumbering, or otherwise dealing with any unit, which described said unit by the identifying number assigned thereto without limitation or exception, shall be deemed and construed to affect the entire unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety; provided, however, no unit shall be sold, or transferred under a time-share or interval ownership concept, as those terms are commonly used in the home building/real estate industry.

3.3 The common areas and facilities shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners of units in LULLWATER APARTMENTS for their use and the use of their immediate families, guests or 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 units.

3.4 The Condominium is not subject to any zoning, subdivision, building code or other real estate use law, ordinance or regulation (i) prohibiting the Condominium form of ownership or (ii) imposing any requirement upon a Condominium which it would not impose upon a substantially similar development under a different form of ownership. This statement is made pursuant to N.C.G.S. 47C-1-106 for the purpose of helping provide marketable title to the units in the Condominium.

#### ARTICLE IV.

##### Use Restrictions

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

4.2 No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas and facilities, which will increase the rate of insurance on the condominium, or which will obstruct or interfere with the rights of other occupants of the other units or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit, or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

4.3 The use of common areas and facilities, by the owner or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

4.4 No owner of a unit shall permit any structural modification or alteration to be made to such unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect or in any manner endanger the condominium in part or in its



entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennas or any other objects, machines or air conditioning units which may protrude through the walls or roof of the condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first obtained. No unit owner shall cause any object to be fixed to the common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the written consent of the Association being first obtained.

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

#### ARTICLE V.

##### Easements

In addition to easements and rights established and/or reserved elsewhere in this Declaration, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

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

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

5.3 The initial and subsequent Boards may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the units and/or common areas and facilities; and, each unit owner hereby grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

5.4 In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment upon the common areas and facilities or upon a unit for so long as such

encroachment shall naturally exist; and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings and if upon reconstruction of such unit and/or common areas and facilities in accordance with this Declaration, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

5.5 The Declarant has such easements to the common elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special Declarant rights whether arising under the Act or reserved in this Declaration.

#### ARTICLE VI.

##### The Owners Association

6.1 Organization of Association: To efficiently and effectively provide for the administration and maintenance of LULLWATER APARTMENTS by the unit owners, a non-profit corporation known as LULLWATER APARTMENTS OWNERS ASSOCIATION (hereinafter the "Association"), has been organized pursuant to N.C.G.S. 47C-3-101 et seq. The Association shall administer the operation and management of the Condominium and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its duly adopted By-Laws. The membership of the Association at all times shall consist exclusively of all the unit owners. Except as may be limited by the terms of this Declaration, each unit shall be allocated one vote in the Association to be used by the unit owner or unit owners of each respective unit.

6.2 Powers: The Association shall have the power to: adopt and amend By-Laws and rules and regulations; adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners; hire and terminate employees, agents and independent contractors; institute, defend or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium; make contracts and incur liabilities; regulate the use, maintenance, repair, replacement and modification of common elements; cause additional improvements to be made as a part of the common elements; acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112; grant easements, leases, license and concessions through and over the common elements; impose and receive any payments, fees or charges for the use, rental or operation of the common elements and for services provided unit owners; impose charges for late payment of assessments, and after notice and an opportunity to be heard, levy reasonable fines not to exceed \$150.00, or the maximum allowed by law, whichever is greater, per violation for violation of the Declaration, By-Laws and rules and regulations of the Association; impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates or statements of unpaid assessments; provide for the indemnification of and maintain liability insurance for the officers, the Board, its employees and agents; exercise all other powers that may be exercised in North

Carolina by legal entities of the same type as this Association; exercise all powers set forth in the Articles of Incorporation establishing Lullwater Apartments Owners Association, and exercise any other powers necessary and proper for the governing and operation of the Association.

6.3 The Board of Directors may act on behalf of the Association to amend the Declaration, to terminate the Condominium or elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Board members in accordance with the By-Laws and Articles of Incorporation.

6.4 Common Expenses: The common expenses of the Association shall be shared equally by the unit owners which is the same proportion that the undivided interest in the common areas and facilities appurtenant to each owner's unit bears to the total of all undivided interests in the common areas and facilities appurtenant to all units.

6.5 Management and Maintenance: The Association, as a common expense, shall be responsible for the maintenance, repair and replacement as necessary of all of the common elements, including those portions thereof which contribute to the support of the building or buildings. All pipes, conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas and facilities are to be maintained, repaired and replaced as necessary, and should any incidental damage be caused to any unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any common areas and facilities, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair, and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a unit owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, 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, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. If insurance proceeds are not available then the unit owner responsible for the loss or damage (whether done by the owner or the owner's family, guests or invitees) shall be solely responsible for the costs of repair.

6.6 Unit Owners Maintenance: Every owner shall perform promptly all maintenance and repair work within his unit which, if omitted, would affect the condominium, either in its entirety or in a part belonging to other owners; every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each unit shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit. Such owner shall further be responsible and liable for the maintenance, repair, and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of his unit, including painting, decorating, and furnishings, and all other accessories

which such owner may desire to place or maintain in his unit. Whenever the maintenance, repair, and replacement of any item for which the owner of a unit is obligated to maintain, replace, or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement except that the owner of such unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. All glass doors, windowframes, panes and screens are a part of the respective units and shall be maintained by the respective unit owners. Unit owners shall be responsible for the repair and maintenance of all limited common elements, if any, exclusively used by that unit owner.

6.7. Except as expressly provided herein or in the By-Laws (Exhibit D) N.C.G.S. 47C-3-107 shall govern the procedure to be followed by the Owners Association in the event of damage to a unit or to any common or limited common elements.

6.8 Insurance Acquisition: Commencing not later than at the time of the first conveyance of a unit to a person other than the Declarant, the Association shall maintain, to the extent available: (i) property insurance on the common elements and units insuring against all risk of direct physical loss, commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductible shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and (ii) liability insurance in reasonable amounts, covering all occurrences commonly insured against including death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements. Further, the policies purchased hereunder shall provide that no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy and if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

6.8.1 Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of the Association, as Trustee for all of the unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the units or any of them, and the policies shall provide that:

(1) Each unit owner is an additional insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner or members of his household;

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

Each unit owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

**6.8.2 Notice of Non-Coverage:** If the insurance described in Section 6.8.1 above is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to all unit owners. The Association may carry any other insurance it deems appropriate to protect the Association or the unit owners.

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

**6.8.4 Distribution of Insurance Proceeds:** The insurance proceeds payable under any policy purchased hereunder shall be payable to the Association as Trustee, or its designee. The Association as Trustee, or its designee, shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions set forth hereinafter, the proceeds shall be disbursed first for the repair or restoration of the damaged property and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.

**6.8.5 Insurance Policies:** An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon their request, to any unit owner, mortgagee or beneficiary under a Deed of Trust. The insurer issuing the policy may not cancel or refuse to renew a policy until thirty (30) days after notice of the proposed cancellation or renewal has been mailed to the Association, each unit owner and each mortgagee or beneficiary under a Deed of Trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

**6.8.6 Damage, Reconstruction or Repair:** Any portion of the Condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the

unit owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of units not to be rebuilt or owners assigned to limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interest may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under G.S. 47C-1-107(a), and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, G.S. 47C-2-118 governs the distribution of insurance proceeds if the Condominium is terminated.

6.9 Register of Owners and Mortgagees: The Association shall at all times maintain a Register setting forth the names of the owners of all of the units and their addresses. In the event of the sale or transfer of any unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such unit together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any unit. Further, the owner of each unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify such mortgagee(s). The holder of any mortgage or mortgages upon any unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

6.10 Assessments: Liability, Lien and Enforcement: The Association has been given the authority to administer the operation and management of the condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the owners of all units. To properly administer the operation and management of the condominium, the Association will incur for the mutual benefit of all of the owners of units, costs and expenses which are sometimes herein referred to as "common expense". Said common expenses shall include funds to not only maintain and manage the condominium but shall also include funds adequate to create a capital reserve to defray major repairs and replacements as same may become necessary in the future. The Association shall establish such a capital reserve fund and shall fund same on a regular basis through assessments determined and levied by the Association. To provide the funds necessary for such proper operation, management, and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the unit owners and their units.

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided therefor by Chapter 44A of the General Statutes.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines and interest charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-115 and 47C-3-116, G.S. 47C-3-107(d), and 47C-3-107A, are enforceable as assessments under this section.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the line in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) The provisions herein do not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree or order in any action brought under this article shall include costs and reasonable attorney's fees for the Association.

#### ARTICLE VII.

##### Termination

The condominium shall be terminated, if at all, by the agreement of all (both) of the unit owners of all units and in accordance with G.S. 47C-2-118.

#### ARTICLE VIII.

##### Amendment of Declaration of Condominium

This Declaration shall only be amended in accordance with the provisions of G.S. 47C-2-118.

#### ARTICLE IX.

##### Remedies in Event of Default

Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the By-Laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, arbitration or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved unit owner.

#### ARTICLE X.

##### Rights Reserved Unto Institutional Lenders

"Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, or other reputable mortgage lenders. So long as any institutional lender or institutional lenders shall hold any mortgage upon any unit or units, or shall be

the owner of any unit or units, such institutional lender or institutional lenders shall have the following rights:

A. To approve the company or companies with whom casualty insurance is placed said approval not to be unreasonably withheld.

B. 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, the cost of preparation of said financial statement to be born by the unit owner whose mortgagee or lender requires same.

C. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment, to this Declaration, or the By-Laws of the Association, which notice shall state the nature of the amendment being proposed.

D. To be given notice of default by any owner owning a unit encumbered by a mortgage held by the institutional lender or institutional lenders, such notice to be given in writing and to be sent to the principal office of such institutional lender or institutional lenders, or to the place which it or they may designate in writing. 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 unit or units upon which any such institutional lender or institutional lenders hold any mortgage or mortgages, or identifying any units owned 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.

#### ARTICLE XI.

##### Severability

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

#### ARTICLE XII.

##### Liberal Construction

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

#### ARTICLE XIII.

##### Declaration of Condominium Binding on Assigns and Subsequent Owners

The restrictions, covenants and burdens imposed by the Articles of this Declaration are intended to and shall constitute



covenants running with the land, and shall constitute an equitable servitude upon each unit and its appurtenant undivided interest in common elements; this Declaration shall be binding upon the Declarant, its successors and assigns, and upon all parties who may subsequently become owners of units in the condominium, and their respective heirs, devisees, legal representatives, successors and assigns. This Declaration and the exhibits attached hereto and amendments hereof shall be construed and controlled by and under the laws of the State of North Carolina.

ARTICLE XIV.

Eminent Domain

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of a unit or the common elements, then G.S. 47C-1-107 shall govern.

ARTICLE XV.

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

John T. Jordan, Jr.  
4509 Greg Drive  
Wilmington, NC 28405

ARTICLE XVI.

Warranties and Representations

The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the condominium, except as specifically set forth herein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of common expenses, taxes, or other charges are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

IN WITNESS WHEREOF, the Declarant has executed this document, the day and year first above written.

ATTEST:

*Deborah A. Jordan*  
Secretary

REIDMAN DAVIDSON, INC.

BY:

*John T. Jordan*  
President

(AFFIX CORPORATE SEAL)



2200 0948

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Michelle R. Ward, a Notary Public of the County of New Hanover, and State aforesaid, do hereby certify that Deborah A. Jordan personally came before me this day and acknowledged that he/she is Secretary of REIDMAN DAVIDSON, INC., and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

WITNESS my hand and notarial seal, this the 24th day of June, 1997.

Michelle R. Ward  
Notary Public

My Commission Expires:

August 16, 1999

(AFFIX NOTARIAL SEAL)



STATE OF NORTH CAROLINA  
New Hanover County

The foregoing Acknowledgment(s) of

Michelle R. Ward

Notary (Notaries) Public is/are certified to be correct.

This the 25 day of June 1997

My Comm. Expires, Register of Deeds

Patricia Barnes  
Deputy Registrar

BOOK

PAGE

2200

0949

EXHIBIT "A"

Beginning at a point in the eastern line of Lullwater Drive that is located North 77 degrees 26 minutes 30 seconds East 30.37 feet and North 05 degrees 22 minutes 30 seconds West 36.30 feet from the centerline of Lullwater Drive where it intersects with the centerline of Franklin Avenue if said Franklin Avenue were extended eastwardly; thence from said beginning point continuing along the eastern line of Lullwater Drive North 05 degrees 22 minutes 30 seconds West 281.74 feet to a point in the eastern line of Lullwater Drive; thence North 68 degrees 01 minutes 30 seconds East 189.51 feet to a point in the western line of the Village Square Townhouses' property as same is shown on that map recorded in Map Book 34 at Page 213 of the New Hanover County Registry; thence South 21 degrees 58 minutes 30 seconds East 270 feet along said line (which is also the common boundary line with Colonial Park Apartments as same is recorded in Map Book 31, at Page 141 of said Registry) and thence South 68 degrees 01 minutes 30 seconds West 270 feet to the place and point of beginning, containing 1.42 acres, more or less.

BOOK  
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PAGE  
0950  
EXHIBIT "B"

<u>UNIT</u>	<u>ALLOCATED INTEREST</u>
145-101	4.9%
145-102	4.9%
145-103	4.9%
145-104	4.9%
149-101	4.9%
149-102	4.9%
149-103	4.9%
149-104	4.9%
145-201	3.8%
145-202	3.8%
145-203	3.8%
145-204	3.8%
145-205	3.8%
145-206	3.8%
145-207	3.8%
145-208	3.8%
149-201	3.8%
149-202	3.8%
149-203	3.8%
149-204	3.8%
149-205	3.8%
149-206	3.8%
149-207	3.8%
149-208	3.8%