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REGISTER OF DEEDS  
CUMBERLAND CO., N.C.

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NORTH CAROLINA

CUMBERLAND COUNTY

DECLARATION OF THE VILLAS OF  
LOCKWOOD PARK CONDOMINIUMS

FOX AND LOYD PROPERTIES, LLC, a North Carolina limited liability company with its principal place of business in the County of Cumberland, State of North Carolina, (hereinafter "Developer and/or Declarant"), does hereby make, declare and establish this Declaration of Condominium as and for the plan of dwelling ownership of THE VILLAS OF LOCKWOOD PARK being the property and improvements hereinafter described.

**ARTICLE 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" attached hereto and incorporated herein by reference, and on which property there is to be constructed a total of six (6) two-story buildings containing a total of forty-eight (48) condominium living units and their supporting facilities, areas designated for at least ninety-one (91) parking spaces, five (5) detached garage buildings containing twenty-three (23) automobile spaces and other appurtenant improvements. There are no basements. The buildings are of wood frame and brick veneer 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 "VILLAS OF LOCKWOOD PARK Condominiums." Hereinafter in this Declaration "VILLAS OF LOCKWOOD PARK Condominiums" is sometimes referred to as "Condominium."

Developer presently intends, but is not obligated to expand The VILLAS OF LOCKWOOD PARK Condominiums beyond the eight (8) units in Phase I, to include up to five (5) additional phases with a presently contemplated maximum of forty eight (48) units. The additional phases, if constructed would contain the number of Units indicated:

<u>Phase No.</u>	<u>No. of Units</u>
Phase II	8
Phase III	8
Phase IV	8
Phase V	8
Phase VI	8

It is presently contemplated that the total number of Units in all phases would not exceed forty-eight (48). Phases II through VI 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 The VILLAS OF LOCKWOOD PARK Condominiums by the Developer is limited to seven (7) years from the recordation of this Amendment.

152

## ARTICLE II DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases as used herein shall have the following meanings:

Section 2.1. Association: "Association" shall mean and refer to The VILLAS OF LOCKWOOD PARK CONDOMINIUM OWNERS ASSOCIATION, INC., a corporation organized and existing under the Non-profit Corporation Act of the State of North Carolina pursuant to and in accordance with this Declaration, the By-Laws, and the North Carolina Condominium Act.

Section 2.2. Building: "Building" shall mean and refer to a structure containing condominium units located upon the Land.

Section 2.3. By-Laws: "By-Laws" shall mean and refer to the by-laws of the Association, which are incorporated herein by reference and all amendments to such by-laws which may from time to time be adopted.

Section 2.4. Common Elements: "Common Elements" shall mean and refer to all portions of the condominiums other than the units, and as more particularly described in Article VI, Section 6.1 of this Declaration.

Section 2.5. Common Expenses: "Common Expenses" shall mean and refer to expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the By-Laws, and the North Carolina Condominium Act, as defined in N.C.G.S. 47C-1 - 103(6). Common Expenses shall specifically include a provision for administrative expenses incurred by the executive committee in billing and collecting these common expenses from the several unit owners. Also included in Common Expenses shall be the payment of utilities which shall be allocated by and collected by the Association (the Executive Committee). Common Expenses shall include, without limitation, exterior maintenance of building and maintenance of lobby, lobby heating, air conditioning and elevator. Maintenance, upkeep and cost of operation of the single heating and air conditioning units for each unit shall be the sole responsibility of the respective unit owners. The Common Expenses shall be used to promote the recreation, health, safety, and welfare of the occupants of the office buildings in the properties and for the improvements and maintenance of the Common Elements, including, but not limited to maintenance of the fences, administrative costs, sprinkler systems, private streets, parking lots, street lighting, landscape maintenance, liability and fire insurance, and exterior painting and roofing where required under Article XXVI.

Section 2.6. Condominium: "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

Section 2.7. Condominium Documents: "Condominium Documents" shall mean and refer to this Declaration, the Articles of Incorporation of The Villas of Lockwood Park Owners Association, Inc., the By-Laws of The Villas of Lockwood Park Owners Association, Inc., and the rules and regulations governing the use of the Property, as amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 2.8. Declarant and/or Developer: "Declarant" and/or "Developer" shall mean and refer to Fox and Loyd Properties, LLC, a NC limited liability Corporation or its successor in fee ownership of all remaining Units unsold to purchasers for use as apartments or as otherwise defined in N.C.G.S. 47 C-1-103(9).

Section 2.9. Executive Board: "Executive Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with

this Declaration, the Articles of Incorporation of the Association, the By-Laws and the North Carolina Condominium Act.

Section 2.10. Land: "Land" shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein.

Section 2.11. Limited Common Elements: "Limited Common Elements" shall mean and refer to those portions of the Common Elements allocated by the Declaration or the terms of the North Carolina Condominium Act for the exclusive use and benefit of one or more but fewer than all of the Units, as more fully described in Article II, Section 17, hereinbelow, and as depicted on the Plans.

Section 2.12. Mortgage: "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

Section 2.13. Mortgagee: "Mortgagee" shall mean and refer to the owner and holder of a Mortgage.

Section 2.14. Owner; Owners: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation. "Owners" shall mean and refer to all or a portion of such record owners collectively.

Section 2.15. Plans: "Plans" shall mean and refer to the plans and specifications of the Buildings and Property prepared by \_\_\_\_\_ recorded under the name of the Condominium in the Condominium Plans Book in the Office of the Register of Deeds of Cumberland County and which are incorporated herein by reference.

Section 2.16. Property: "Property" shall mean and refer to the Land; the buildings and all other improvements and structures located on the Land; all easements, rights and appurtenances belonging or appertaining to the Land; and all articles of personal property intended for common use in connection therewith.

Section 2.17. Unit: A Unit shall be a three bedroom Unit. A Three Bedroom Unit "3BR Unit" means a physical portion of the three bedroom Condominium Building consisting of approximately One Thousand Six Hundred Sixty Two (1,662) square feet and designated for separate ownership or occupancy, the boundaries of which are described pursuant to N.C.G.S. 47C-2-105(a)(5). An Owner, may however, own more than one (1) Unit.

Section 2.18. Declaration: "Declaration" means any instruments, however denominated, which create a Condominium, and any amendments to those instruments.

Section 2.19. Development Rights: "Development Rights" means any right or combination of rights reserved by the Declarant in the declaration to add real estate to a Condominium; to create Units, Common Elements, or Limited Common Elements within a Condominium; to subdivide Units or convert Units into Common Elements; or to withdraw real estate from a Condominium.

Section 2.20. Special Declarant Rights: "Special Declarant Rights" means rights reserved for the benefit of a Declarant to complete improvements indicated on plats and plans filed with the Declaration (Section 47C-2-110); to maintain sales offices, management offices, signs advertising the Condominium, and models (Section 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 (Section 47C-2-116); to make the Condominium part of a larger Condominium (Section 47C-2-121); or to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control (Section 47C-3-103(3)).

In addition, those definitions set forth in N.C.G.S. 47C-1-103 are incorporated herein by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents unless expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

### **ARTICLE III DESIGNATION OF CONDOMINIUM**

The Land on which the Buildings and other improvements are located is in or near the City of Fayetteville, Cumberland County, North Carolina, and is particularly described on Exhibit "A" attached hereto and incorporated herein by reference, which Land is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is the The VILLAS OF LOCKWOOD PARK.

### **ARTICLE IV DESCRIPTION OF BUILDINGS**

The VILLAS OF LOCKWOOD PARK Condominiums Phase I consists of one (1) two-story Building with eight (8) Units consisting of eight (8) three bedroom Units approximately 1,662 square feet each. The Building shall have brick and block foundation. Exterior walls shall be brick veneer. The Building is more particularly described in the Plans which are or will be recorded under the name of the Condominium in the Condominium Plans Book in the Office of the Register of Deeds of Cumberland County, which Plans show all particulars of the Buildings. Such Plans show a certification by \_\_\_\_\_. Said Plans contain all the information required by N.C.G.S. 47C-2-109.

### **ARTICLE V DESCRIPTION OF UNITS**

There are a total of eight (8) Units in a Building. The location of the Building is shown on the Plans filed in the Office of the Register of Deeds and incorporated herein by reference. The designation of the Units, the respective Buildings, locations, identifying numbers, approximate area, number of rooms and immediate Common Elements to which each has access, are also shown on the Plans, to which reference is hereby made for a more particular description.

Each Unit consists of all the space bounded horizontally and vertically by its perimeter walls, floors and ceilings. Each Unit includes those portions of the Buildings within such boundaries (with the exception of those items specifically listed below) and the space so encompassed. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors or ceilings are part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a limited Common Element allocated exclusively to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Subject to the provisions of the immediate preceding paragraph, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of that Unit. Any shutters, awnings, window boxes, door steps, stoops, decks, porches, balconies, patios and all exterior doors and windows 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.

All windows and doors within the walls enclosing a Unit shall be a Common Element of that Unit, but the authority and responsibility for maintenance and painting,

together with control over the exterior decorating, of all doors and windows visible from the exterior of the Building or from any Common Element, shall remain with the Association. Replacement of any broken glass in a window that is a Common Element of a Unit shall be the sole responsibility and expense of the Owner or Owners of that Unit. Routine maintenance and repair of all lath, furring, wallboard, plasterboard, plaster, and subflooring beneath, above, and/or beyond the finished surfaces of the perimeter walls, floor and ceiling of each Unit shall be the sole responsibility of the Unit Owner, although such materials are part of the Common Elements.

## ARTICLE VI COMMON ELEMENTS

Section 6.1. Common Elements: The Common Elements include all portions of the Condominium that are not part of the Units and as are more particularly described in N.C.G.S. 47C-2-102, including without limitation:

- (a) The Land;
- (b) All improvements located upon the Land that are not part of the Units, including all foundations, columns, girders, beams, supports, walls, roofs, corridors, lobbies, stairs, fire escapes, and entrances and exits of the Buildings; and
- (c) The swimming pool and/or storage house located in the proximity of the swimming pool;
- (d) Installation of central services for the furnishing of utilities and elevator and components of the heating and air conditioning systems that serve the lobby; and
- (e) Dumpster/compactor area.

Section 6.2. Limited Common Elements: The Limited Common Elements shall be composed of the following:

- (a) Those portions of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit serving exclusively that Unit shall be Limited Common Elements allocated exclusively to that Unit;
- (b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, decks and all exterior doors, windows and skylights designed to serve a single Unit, but located outside the Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Unit; and
- (c) Any portions of the heating, ventilating, and air conditioning systems, including fans, fan coil units, heating elements, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, shall be Limited Common Elements allocated exclusively to the Unit that they serve.
- (d) The garage units shall be Limited Common Elements allocated exclusively to the Unit purchasing said garage.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner or Owners having the right to the use and enjoyment of such Limited Common Elements, but the responsibility for maintenance, painting, repair and replacement, together with control over the exterior decoration of the Limited Common Element, shall remain with the Association. Notwithstanding any other provisions of this Declaration, or any provision of the By-Laws or the Unit Ownership Act, the obligations for maintenance, repair, or replacements of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References herein to Common Elements shall include

Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 6.3. Undivided interests of Owners in Common Elements: Except for minor variations due to rounding, the sum of the undivided interests in the Common Elements and Common Expense liabilities allocated at any time to all the Units shall each equal one hundred percent (100%). The percentage of interest in the Common Elements allocated to each Unit shall be as indicated on Exhibit "B" attached hereto and incorporated herein by reference. The percentage of undivided interest in the Common Elements that is allocated to each Unit has been determined by a ratio formulated upon the approximate relation that the square footage of each Unit at the date of this Declaration bears to the then aggregate square footage of all the units. The square footage of each Unit and the aggregate square footage of all units have been determined by Declarant, and this determination shall be binding upon all Units and Owners. The percentage of undivided interest in the Common Elements assigned to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees.

Section 6.4. Responsibility of Owner of Each Unit: The Owner of each Unit shall be responsible to The Villas at Lockwood Owners Association, Inc. for annual assessments in the amount of One Thousand Five Hundred Twenty Four and No/100 (\$1,524.00) Dollars.

The Owner of each garage shall be responsible to The Villas at Lockwood Owners Association, Inc. for an additional annual assessment in the amount of One Hundred Twenty and No/100 (\$120.00) Dollars.

#### **ARTICLE VII OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON ELEMENTS**

- 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 Elements. The undivided interest appurtenant to each Condominium Unit as of the date of this Declaration is set out in Column 1 of Exhibit "B" attached hereto and made a part hereof. The proportional interest in the Common Elements that is appurtenant to each Condominium Unit as shown in Exhibit "B" shall be proportionate to the total number of Units in the Condominium. In Phase One this shall be 1/8 for each Unit owned.
- B. In the event the Developer elects to add additional phases to the Condominium, then the percentage undivided interest in the Common Elements appurtenant to each Condominium Unit will change and shall be as set forth in the appropriate Column of Exhibit "B". The proportional interest in the Common Elements appurtenant to each Condominium Unit shown in Exhibit "B" shall be proportionate to the total number of Units in the Condominium. In Phase One this shall be 1/8 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 Elements 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 "B". 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 VII and to Article XLV. 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 XXXVII(B). Except as provided herein, the percentage of undivided interest in the Common Elements 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 6, Section 3 hereof, holding first mortgages of first deeds of trust on the Condominium Units.

**ARTICLE VIII  
RESTRICTION AGAINST FURTHER SUBDIVISION OF  
CONDOMINIUM UNITS; SEPARATE CONVEYANCE OF APPURTENANT  
COMMON ELEMENTS PROHIBITED**

No Condominium Unit may be divided or subdivided into smaller Unit or Units than as shown on Exhibit "C" hereto. The undivided interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit and the undivided interest in Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any 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 so far as the same purports to affect any interest in Common Elements, 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 "C" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limited or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by entirety.

**ARTICLE IX  
THE CONDOMINIUM SUBJECT TO RESTRICTIONS**

The Condominium Units, Common Elements 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 Elements 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 Elements and said Condominium Units, Common Elements 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.

**ARTICLE X  
PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON ELEMENTS**

The Common Elements 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 Elements 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 VII 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 Elements, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof.

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

In the event that any Condominium Unit shall encroach upon any Common Elements, 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 Elements or upon a Condominium Unit for as long as such encroachments shall naturally exist; and in the event that any portion of the Common Elements shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Condominium Unit for as long as such encroachment shall naturally remain.

**ARTICLE XII  
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 in 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 \_\_\_\_ Page \_\_\_\_, 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.

**ARTICLE XIII  
RESTRAINT UPON SEPARATION AND  
PARTITION OF COMMON ELEMENTS**

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements in common with the Owners of all other Condominium Units, and that it is in the interest of all owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Elements appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

**ARTICLE XIV  
ADMINISTRATION OF THE CONDOMINIUM BY  
VILLAS OF LOCKWOOD PARK  
CONDOMINIUM OWNERS ASSOCIATION, INC.**

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known as VILLAS OF LOCKWOOD PARK Condominium Owners Association, Inc. (the "Association") has been organized and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of said By-Laws 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 Elements, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership. 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 Elements as its Board of Directors may deem to be in its best interest.

**ARTICLE XV  
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 one (1) year. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and By-laws 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 a corporate or partnership member shall forthwith cause such party to be removed, failing which, the Association, as agent of the Owner, shall take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefore upon demand, together with such 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 Elements 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 Elements 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 percent (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.

The condominium regime is subject to the following use restrictions:

1. No animals or poultry of any kind, except one (1) domestic cat, dog or caged bird per unit weighing no more than twenty-five (25) pounds, shall be placed or kept on any part of the premises. No dangerous breeds, including, but not limited to, pit bulls, rottweilers, dobermans, chows and German shepherds, shall be permitted on the premises. If a pet becomes a nuisance, such as loud or constant barking, the Executive Board is authorized to take all necessary action to remove the pet from the premises at the sole discretion of the Executive Board.
2. Each condominium unit shall be constructed by the Developer with specific and specially designed blinds; unit owners shall not be permitted to remove the blinds without the written permission of the Developer. Each window treatment is required to have a white exterior liner facing toward the outside of the unit.
3. Temporary Structures. No trailer, tent, shack, garage, barn or similar type outbuilding shall be placed, erected or allowed to remain on said property without the written consent of Declarant, its successors or assigns. Nor shall any structure of a temporary character be used as a residence temporarily, permanently, or otherwise.
4. Restricted Activities. No commercial, noxious or offensive trade or activity shall be carried on in any condominium, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.
5. Motor Vehicles, Boats and Trailers. No automobile or motor vehicle may be dismantled or repaired on said property. No mechanically defective automobile, motor vehicle, mechanical device, machine, machinery, or junk car shall be placed or allowed to remain on said property at any time. No commercial trucks, including but not limited to eighteen wheelers, or tractors thereof, shall be permitted to be parked on the premises except in the course of delivery, pick up, or discharge of a specific commercial duty. No motor vehicle, boat or trailer shall be permitted to be parked in the front yard of the premises.
6. Exterior Alterations. No exterior alterations, additions, or changes of any kind may be made to the structure or design of the unit without the written consent of Declarant, its successors or assigns.
7. Satellite Dishes and Radio Antennas or Towers. No satellite dish antennas, radio tower or antenna of any nature shall be placed or allowed to remain on said property.
8. Clothes Lines. No outside clothes lines shall be permitted on the premises.
9. Signs. Except as otherwise permitted herein, no sign of any character shall be displayed or placed upon any building plot except "For Sale" signs, which signs may refer only to the particular premises on which displayed, shall not exceed two (2) square feet in size, shall not extend more than four (4) feet above the surface of the ground, shall be fastened only to a stake in the ground and shall be limited to one (1) sign to a property. The Declarant may enter upon any building

plot and summarily remove and destroy any signs which do not meet the provisions of this paragraph.

10. Outdoor Furniture. No upholstered furniture, of any nature, shall be placed or allowed to remain outside as lawn furniture.
11. Basket Ball Goals. No basketball goals of any nature, whether stationary or portable, of regulation size or otherwise, shall be allowed.

#### **ARTICLE XVI SERVICE OF PROCESS**

F. Stuart Clarke is hereby designated to receive service of process in any action which may be brought against or in relation to the Condominium. F. Stuart Clarke's place of business is at 150 N. McPherson Church Road, Suite B, Fayetteville, Cumberland County, North Carolina, 28303.

#### **ARTICLE XVII THE VILLAS OF LOCKWOOD PARK OWNERS ASSOCIATION, INC.**

Section 17.1. Organization of Association: A nonprofit North Carolina corporation known and designated as The VILLAS OF LOCKWOOD PARK Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the By-Laws, and the North Carolina Condominium Act. True copies of the Articles of Incorporation and By-Laws are attached hereto as Exhibits "D" and "E", respectively and are incorporated herein by reference. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit.

Section 17.2. Powers; Lien for Assessment: In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article XXXIII hereof and in Section \_\_\_ of the By-Laws, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Executive Board may deem to be in the best interest of the Association, in accordance with the By-Laws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. 47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. 47C-3-116 and Section 8 of these By-Laws.

Section 17.3. Period of Declarant Control: The Executive Board shall be appointed by the Declarant until the earlier to occur of (1) there are no Class B members as hereinafter defined; or (2) January 15, 2040, at which time the Unit Owners shall elect at least three members of the Board, two of whom must be Unit Owners.

#### **ARTICLE XVIII MEMBERSHIP AND VOTING RIGHTS**

Section 18.1 Every owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

Section 18.2. The Association shall have three (3) classes of voting membership. It is possible for an Owner to be a member of more than one class.

Class A. Class A members shall be all Owners of Units with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall

be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. Class B members shall be the Declarant and shall be entitled to fifty (50) votes for each Unit owned. Class B membership shall be entitled to fifty (50) votes for each garage owned and each second floor unit owned and shall be considered Class C and D members when voting on said exclusive matters. The Class B Membership shall cease and be converted to a Class A membership respectively upon the happening of either of the following events, whichever occurs earlier:

- (a) Declarant no longer owns a unit or garage in The VILLAS OF LOCKWOOD PARK; or
- (b) on January 15, 2099.

Class C. Class C members shall be all Owners of garages and shall be entitled to one vote for each garage owned. Only Class C members may vote on matters exclusively concerning garages. When more than one person holds an interest in any garage, all such persons shall be members. The vote for such garage shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any garage.

**ARTICLE XIX  
USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION**

The use of Common Elements, 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.

**ARTICLE XX  
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 Elements, 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 Elements, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium, 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 Elements.

**ARTICLE XXI  
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.

**ARTICLE XXII  
RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS**

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 Elements, 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.

**ARTICLE XXIII**  
**LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY**  
**CONDOMINIUM UNITS; NO RIGHT TO ALTER COMMON ELEMENTS**

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 that 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 Elements 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 Elements 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 XXXIII(F)(M) subject to the lien rights described in said Article.

**ARTICLE XXIV**  
**RIGHT OF ASSOCIATION TO ALTER AND IMPROVE**  
**COMMON ELEMENTS AND ASSESSMENT THEREFORE**

The Association shall have the right to make or cause to be made such alterations or improvements to Common Elements (including the right to grant and establish upon, over and across the Common Elements such easements as are necessary or desirable for providing service or utilities to the Units and the Common Elements) 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.

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

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the Common Elements; 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 Elements 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 Elements, 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 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. 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.

**ARTICLE XXVI  
MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE  
ASSOCIATION**

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the Common Elements; 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 Elements 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 Elements, 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 proceeds, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

**ARTICLE XXVII  
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.

**ARTICLE XXVIII  
AUTHORITY TO PURCHASE INSURANCE**

Insurance policies upon the Common Elements, 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 must 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.

**ARTICLE XXIX  
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 Elements;
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 V 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 XXX (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 (3) 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 Elements 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 Elements: in undivided shares for each condominium Unit Owner and his mortgagee, if

- any, which shares as to each Condominium Unit are shown on Exhibit "B" 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 "B".
    - 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 "B".
    - 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 Elements 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 or 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 mortgages 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.

### **ARTICLE XXX INSURANCE**

**Section 30.1. Property Insurance:** The Executive Board shall obtain and maintain at all times insurance on the Buildings and all other improvements upon the Land, and all personal property included in the Common Elements in an amount, after application of deductibles, equal to the replacement value of the Property at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the cost of the Land, excavation, foundations, streets and parking facilities and other items normally excluded from property policies; provided, that such insurance may be written on a co-insurance basis of not less than ninety percent (90%). The policies evidencing such coverage shall insure against all risks of direct physical loss including fire and extended coverage perils; shall contain clauses providing for waiver of subrogation against any Owner or member of his household and any Owner's employees or agents; shall contain the standard condominium endorsement, and a Replacement Cost Endorsement providing for repair and replacement of the Buildings and all other improvements located upon the Land from the insurance proceeds; shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all the insureds, including all mortgagees; and shall provide that no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will recover upon such policy. All such policies shall provide that adjustment of loss shall be

made by the Executive Board as insurance trustee. All policies shall comply with N.C.G.S. 47C-3-113. Each insurance policy shall provide for the issuance of certificates or mortgage endorsements to Mortgagees.

Section 30.2. Public Liability Insurance: The Executive Board shall obtain and maintain to the extent obtainable public liability insurance in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$500,000.00 per person and \$1,000,000.00 per occurrence against liability for bodily injury, including death resulting therefrom, and \$50,000.00 per occurrence against liability for damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Executive Board shall review such limits annually. Further, such policy shall comply with the requirements set forth in N.C.G.S. 47C-3-113(a)(2) and (d)(1) through (4).

Section 30.3. Fidelity Coverage: The Executive Board shall obtain fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount not less than the estimated maximum of funds, including reserve funds in the custody of the Association or its duly authorized agent, as the case may be, at any given time during the term of each bond. In no event, however, may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessment on all Units plus the amount of all reserve funds. An appropriate endorsement to policy to cover any persons who serve without compensation shall be added to the policy if it would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be canceled or substantially modified (including cancellation for nonpayment or premiums) without at least thirty (30) days prior written notice to the insured(s) and all Mortgagees.

Section 30.4. Other Insurance Policies: The Executive Board may obtain such other insurance coverage, including workman's compensation, as the Executive Board shall determine from time to time desirable or necessary.

Section 30.5. Premiums: Premiums upon insurance policies purchased by the Executive Board shall be paid by the Association and charged as a Common Expense.

Section 30.6. Distribution of Insurance Proceeds: All insurance policies procured by the Executive Board shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee. The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated interest in the Common Elements.
- (b) Proceeds on account of damage to Units shall be held in the following undivided shares:
  - (1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Executive Board.

- (2) When the damage is not to be restored an undivided share for each Owner, such share being the same as each such Owner's allocated interest in the Common Elements.
- (c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interest may appear.
- (d) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:
  - (1) If it is determined, as provided in Article XXXI hereinbelow, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the Owners and their Lienholder, if any, as their interest may appear. Notwithstanding the provisions of this subsection, Section 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.
  - (2) 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. Any proceeds remaining after payment of such repair costs shall be distribute to the beneficial Owners and their Lienholder, if any, as their interest may appear.

Section 30.7. Insurance obtained by Owners: It shall be the responsibility (but not the obligation of) each Owner to obtain at his own expense such additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire.

**ARTICLE XXXI  
DUTY TO REPAIR OR RECONSTRUCT**

Section 31.1. Reconstruction and Repair: In the event of damage to or destruction of any Building as a result of fire or other casualty, unless (1) the Condominium is terminated, or repair or replacement would be illegal under any state or local health or safety statute or ordinance the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Building not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment, unless the subject insurance policy covers a portion or all of such loss, in which event the Executive Board shall repair or replace such damaged property, and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 30.6(d)(2) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans or as the Executive Board shall otherwise approve.

Section 31.2. Obligations of Owners: Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans or as the Executive Board shall otherwise approve, and will make no structural addition alteration or improvement to his Unit without the prior written consent of the Executive Board, except as authorized in Article XXIII of this Declaration. Upon the failure of an Owner to so maintain his Unit, the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

**ARTICLE XXXII  
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.

**ARTICLE XXXIII  
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 Elements appurtenant to all Condominium Units as shown as Exhibit "B" 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 has 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 By-Laws.
- 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 \_\_\_\_\_ 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 Elements (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 Elements, as well as the replacement of portions of the Common Elements. 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 Elements. 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 Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his proportionate interest in the Common Elements as shown on Exhibit "B" 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 Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.
- 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 Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners 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 Elements, 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 Elements, 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 Elements 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 Elements 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 Condominium 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.

#### **ARTICLE XXXIV 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 Elements 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.

#### **ARTICLE XXXV EMINENT DOMAIN**

Section 35.1. Taking of a Unit: If a Unit is acquired by eminent domain (or if part of a Unit is acquired by eminent domain), leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for his Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemnor acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

Section 35.2. Taking of Part of a Unit: Except as provided in Section 35.1 above, if part of a unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the Declaration, and (2) the portion of the allocated interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

Section 35.3. Taking of Part of Common Elements: If part of the Common Elements is acquired by eminent domain, the portion of the award not payable to Unit Owners under Section 36.1 must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a Limited Common Element must be apportioned among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

### ARTICLE XXXVI 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 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) 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.

**ARTICLE XXXVII**  
**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, 20\_\_, 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 VI, and (2) the forty additional condominium units to be constructed on the land described in Exhibit "A", Phases II through VI, 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 VI 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 VI, the undivided interest appurtenant to each Condominium Unit will change and shall be as set out in the appropriate column of Exhibit "B". The materials used in the construction of any additional Units in Phases II through VI shall be of comparable quality as those used in the original eight (8) 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 Elements 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 XXXIX (A)(3) 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.

### **ARTICLE XXXIII 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.

#### **ARTICLE XXXIX**

#### **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 3rd 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 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.

- 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 XL thereof, the following actions will require the prior approval of the Veterans Administration: amendment of the Declaration, including amendments under Article I to add additional phases to the Condominium; and dedication of any Common Elements.

#### **ARTICLE XL 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 By-Laws 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.

#### **ARTICLE XLI 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.

**ARTICLE XLII  
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.

**ARTICLE XLIII  
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 Elements. 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.

**ARTICLE XLIV  
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.

**ARTICLE XLV  
AMENDMENT**

The provisions of this Declaration may be amended upon the vote of seventy-five (75%) percent of the Owners qualified and voting in accordance with the Bylaws and subject to Article IV. Notwithstanding any of the herein stated, the Declarant shall have the unfettered right to amend this Declaration so long as the Class B membership exists.

IN WITNESS WHEREOF, FOX AND LOYD PROPERTIES, LLC has caused these presents to be executed in its name by its Managing Partner.

This the 17<sup>th</sup> day of August, 2005.

FOX AND LOYD PROPERTIES, L.L.C.

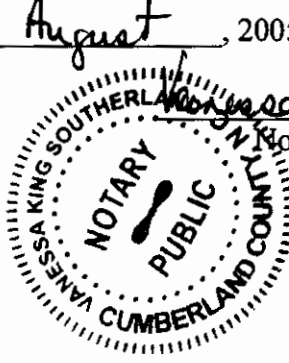
By: 

NORTH CAROLINA  
CUMBERLAND COUNTY

I, Vanessa King Southerland, a Notary Public for said County and State, do hereby certify that F. ROYAL LOYD, JR., personally came before me this day and acknowledged that he is member-manager of FOX AND LOYD PROPERTIES, LLC, a NC limited liability company, and that by authority duly given and as the act of the entity, he signed the foregoing instrument in its name and on its behalf as its act and deed.

This the 17<sup>th</sup> day of August, 2005.

My commission expires:  
11/29/2008



Vanessa King Southerland  
Notary Public

The foregoing Certificate(s) of Vanessa King Southerland

is/~~are~~ certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

J. LEE WARREN, JR. REGISTER OF DEEDS FOR CUMBERLAND COUNTY,  
By Regina Frazer Deputy/~~Assistant~~ Register of Deeds

EXHIBIT "A"  
Legal Description

BEING all of that property more specifically described on a plat entitled "Lockwood Park Condominium Development" being duly recorded in Condominium Book 7, Page 3-5, Cumberland County, NC Registry.

Exhibit A-1

Exhibit "B"  
Percentage interest in common elements

<u>UNIT</u>	<u>Percentage Interest</u>
Unit 1	1/8
Unit 2	1/8
Unit 3	1/8
Unit 4	1/8
Unit 5	1/8
Unit 6	1/8
Unit 7	1/8
Unit 8	1/8

Exhibit "C"  
Condominium units

Any instrument conveying, devising, or encumbering any Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "C" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit

EXHIBIT "D"

**BY-LAWS  
OF  
THE VILLAS OF LOCKWOOD PARK  
CONDOMINIUM OWNERS ASSOCIATION, INC.**

**Article I  
PURPOSES AND OBJECTIVES**

The purpose of the corporation shall be the management of a homeowner's association for the THE VILLAS OF LOCKWOOD PARK CONDOMINIUM OWNERS ASSOCIATION, INC. including but not limited to the maintenance for the landscaping of Lots.

**Article II  
OFFICES**

Section 1. PRINCIPAL OFFICE: The principal office of the Corporation shall be located at the residence of the person holding the office of Secretary of the corporation.

Section 2. REGISTERED OFFICE: The registered office of the Corporation required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office. Until otherwise changed by the Board of Directors, the registered office shall be 4140 Ferncreek Drive, Suite 101 Fayetteville, Cumberland County, North Carolina, 28314.

**Article III  
BOARD OF DIRECTORS**

Section 1. GENERAL POWERS: The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 2. NUMBER, TERM AND QUALIFICATION: The affairs of the Association shall be managed by a Board of three (3) Directors. The original Board of Directors shall consist of three (3) members. At the first annual meeting the members shall elect one Director for a term of one (1) year, one Director for a term of two (2) years, and one Director for a term of three (3) years. Each Director shall hold office until the expiration of his or her term, or until his or her successor is elected and qualified.

No director shall serve more than two (2) consecutive terms (including the initial term).

Section 3. ELECTION OF DIRECTORS: Except as provided in Section 2 of Article III, the Directors shall be elected at the annual meeting of the Association. Those persons who receive the highest number of votes shall be deemed to have been elected. In the event any vacancy shall occur because of death, resignation, incapacity to act, or removal of a Director, the members shall within a reasonable time, fill the vacancy.

Section 4. REMOVAL: Directors may be removed from office with or without cause by a vote of three-fifths (3/5) of the majority of the members of the Association. If any Directors are so

removed, new Directors may be elected at the same meeting.

Section 5. VACANCIES: A vacancy occurring in the Board of Directors shall be filled by a majority of the members of the Association, even though less than a quorum. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 6. COMPENSATION: The members of the Board of Directors may not be compensated for their services in fulfilling their duties to the corporation.

Section 7. INDEMNIFICATION OF DIRECTORS AND OFFICERS: Each present and former Director and officer of the corporation shall be indemnified by the corporation against expenses reasonably incurred by him or her in connection with any threatened, pending, or completed action, suit or proceeding to which he or she may be made a party by reason of his or her being or having been an officer or Director of the corporation (whether or not he or she continues in that capacity at the time of incurring such expenses), except in disputes between himself or herself and the corporation; and in those events, he or she shall be entitled to indemnification should a court of competent jurisdiction find the corporation to be at fault. The foregoing right of indemnification shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of other rights to which any Director or officer may be entitled as a matter of law.

Section 8. EXECUTIVE COMMITTEE: There shall be elected annually by the members of the association three (3) members thereof, who with the Chairman, Secretary, Treasurer and any Executive Committee shall act on behalf of the corporation in any manner (except as provided in Article VII) when the Board of Directors is not in session, reporting to the Board of Directors for its ratification of their action at each regular or special meeting called for that purpose. Four (4) members shall constitute a quorum for the transaction of business. Meetings may be called by the Chairman or by two (2) members.

Section 9. SPECIAL COMMITTEES: The Chairman may, at any time, appoint other committees on any subject for which there are no standing committees, or terminate any standing committee which does not serve any purpose. Each committee shall consist of at least one (1) Director.

Section 10. COMMITTEE QUORUM: A majority of any committee of the corporation shall constitute a quorum for the transaction of business, unless any committee shall by majority vote of its entire membership decide otherwise.

#### Article IV

##### MEETINGS OF THE DIRECTORS

Section 1. REGULAR MEETINGS: Regular meetings of the Board of Directors shall be held at 7:30 p.m. on the first Thursday of each month at a time and place designated by a majority of the Directors.

Section 2. ANNUAL MEETINGS: The annual meetings of the Board of Directors shall be held at 7:30 p.m. on the first Thursday in February of each year, if not a legal holiday, for the purpose of electing Directors of the corporation and for the transaction of such other business as may be properly brought before the meeting.

Section 3. SUBSTITUTE ANNUAL MEETINGS: If the annual meeting shall not be held on the day designated by these by-laws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4. SPECIAL MEETINGS: Special meetings of the membership may be called at any time by the President, on or at such other place, as shall be designated in the notice of the meeting agreed upon by a majority of the Directors entitled to vote thereat.

Section 5. NOTICE OF MEETINGS: Written or printed notice stating the time and place of the meeting shall be delivered not less than five or more than fifty days before the date thereof, either personally or by mail, by or at the direction of each President, Secretary or other person calling the meeting, to each member of record entitled to vote at such meeting. In case of an annual or substitute meeting, the notice of meeting need not specifically state the business to be transacted. In case of a special meeting, the notice of meeting shall not necessarily state the purpose or purposes for which the meeting is called.

When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty days in any one adjournment, it is not necessary to give notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

Section 6. QUORUM: A majority of the duly elected or appointed and qualified Directors of the corporation shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting from time to time without notice, other than announcement at the meeting, until a quorum shall attend.

Section 7. MANNER OF ACTING: Except as otherwise provided in this Section, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. INFORMAL ACTION BY DIRECTORS: Action taken by a majority of the Directors without meeting is nevertheless Board action if written consent to the action in question

is signed by all the Directors and filed with the Minutes of the proceedings of the Board, whether done before or after the action is so taken.

**Article V**  
**OFFICERS**

Section 1. NUMBER: The Corporation shall have a Chairman, Secretary, Treasurer and such Vice-Chairman, Assistant Secretaries, Assistant Treasurers and other officers as the members may from time to time elect. Any two or more offices may be held by the same person, except the office of Chairman and Secretary. However, no officer may act in more than one capacity where the action of two (2) or more offices is required.

Section 2. ELECTION AND TERM: The officers of the Corporation shall be elected by the Board of Directors. Such elections may be held at any regular or special meeting of the membership. Each officer shall hold office for one (1) year, or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified, unless otherwise specified by the members. The members may fill any vacancy in any office occurring for whatever reason.

Section 3. REMOVAL: Any officer or agent elected or appointed by the members may be removed by the members with or without cause, except that in the case of the Chairman, he shall not be removed by less than a three-fourths (3/4) majority of the members.

Section 4. CHAIRMAN: The Chairman shall be the chief executive officer of the corporation and shall preside at all meetings of the members and the Board of Directors. Subject to the direction and control of the Board of Directors, he shall have general charge and authority over the business of the corporation. He shall make reports of the business of the corporation for the preceding fiscal year to the Directors at each annual meeting. He shall sign with any other proper officer any deeds, mortgages, bonds, contracts, or other instrument which may be lawfully executed on behalf of the corporation, except where the signing and execution thereof shall be delegated by the Board of Directors to some other office or agent. In general he shall perform all duties as may be prescribed by the Board of Directors from time to time, including the appointment of various committees from the membership in order to carry out the business of the corporation as approved by the Board of Directors.

Section 5. VICE-CHAIRMAN: The Vice-Chairman shall perform the duties of the Chairman in his absence or during his inability to act. The Vice-Chairman (or Vice-Chairmen) shall have such other duties and powers as may be assigned to or vested in them by the Board of Directors.

Section 6. SECRETARY: The Secretary shall keep accurate records of the acts and proceedings of all meetings of shareholders and Directors. He shall give all notices required by law and by these by-laws. He shall have general charge of all corporate books and records and of the corporate seal, and he shall affix the corporate seal to any lawfully executed instrument requiring it. He shall then sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may be assigned to him from time to time by the

Chairman, the Executive Committee, or by the Board of Directors.

Section 7. **TREASURER:** The Treasurer shall have custody of all funds and securities belonging to the Corporation and shall receive, deposit or disburse the same under the direction of the Board of Directors or the Executive Committee. The Board of Directors or the Executive Committee may appoint a custodian or a depository for any such funds and securities and may designate those persons upon whose signature or authority such fund and securities may be disbursed or transferred. He shall keep full and accurate accounts of the finances of the Corporation in books especially provided for that purpose; and he shall cause a true statement of its assets and liabilities as of the close of each fiscal year within four (4) months after the end of such fiscal year. The Treasurer shall, in general, perform all duties incident to this office and such other duties as may be assigned to him from time to time by the Chairman, the Board of Directors, or the Executive Committee.

Section 8. **ASSISTANT SECRETARIES AND TREASURERS:** The Assistant Secretaries and Assistant Treasurers shall, in the absence of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or Treasurer, respectively, or by the Chairman, Board of Directors, or Executive Committee.

#### **Article VI MEMBERS**

Section 1. This corporation shall be a nonprofit corporation organized and existing under all Laws of the State of North Carolina, being governed by a Board of Directors as set forth in Article III of the By-laws, and shall be with voting members.

Section 2. Any person owning a lot in The Villas of Lockwood Park Condominiums will be a member of the corporation.

Section 3. **ANNUAL MEETING:** There shall be an annual meeting of the members of this corporation to hear the annual report of the corporation and to transact other business in accordance with the decision of the Board of Directors. Unless otherwise determined by the Board of Directors, the annual meeting of members shall be held in the first Thursday in May at a time and place designated by the Chairman of the corporation; provided, however, that should said day fall upon a legal holiday, then any such meeting shall be held at the same time and place to be determined by the Board of Directors. Notice of the annual meeting shall be given to all members of the Board of Directors and members of the corporation. The notice required by this Section shall in all respects comply with the notice required by Article IV, Section 4 of these By-laws for notice to members of the Board of Directors in case of a special meeting of said Board.

#### **Article VII CONTRACTS, LOANS, DEPOSITS, AND MISCELLANEOUS PROVISIONS**

Section 1. **CONTRACTS:** The Board of Directors may authorize any officer or officers, agent

or agents, to enter into any contract or execute and deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. LOANS: No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the members. Such authorization may be general or confined to specific instances.

Section 3. CHECKS AND DRAFTS: All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. DEPOSITS: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as the Board of Directors shall direct.

Section 5. FISCAL YEAR: Unless otherwise ordered by the Board of Trustees, the fiscal year of the corporation shall be from January 1 through December 31 of each calendar year.

Section 6. AMENDMENTS: Except as otherwise provided herein, these By-laws may be amended or repealed and new By-laws may be adopted by the affirmative vote of 3/5 of the members at any regular or special meeting of members.

Section 7. SEAL: The corporate seal of the corporation shall consist of two concentric circles between which in the name of the corporation and in the center of which is inscribed "Seal".

#### **Article IX PROHIBITED ACTIVITIES**

Other provisions of these By-laws notwithstanding, the corporation shall not engage in any act of self-dealing as defined in Section 4941, Subdivision (d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal excise law; nor retain any excessive business holdings as defined in Section 4943, Subdivision (c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws; nor make any investment in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945, Subdivision (d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954, or the corresponding provisions of any subsequent federal tax laws.

#### **Article X**

**501(c)(3) REQUIREMENTS**

Section 1. EARNINGS: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, Directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth in the Articles hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of a candidate for public office.

Section 2. EXEMPT FUNDS: Notwithstanding any other provisions of these Articles, this corporation shall not carry on any other activities not permitted to be carried on by (a) corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 or the corresponding provisions of any future United States Internal Revenue Law or (b) corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 or any other corresponding provisions of any future United States Internal Revenue law.

Section 3. DISSOLUTION: Upon the dissolution of the corporation, the Board of Directors shall, after paying and making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such asset not so disposed of shall be disposed of by the Superior Court of the county in which the principal office of the corporation is then located exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

IN TESTIMONY WHEREOF, the undersigned have set their hands and seals this the \_\_\_\_\_ day of August, 2005.

 (SEAL)  
F. Royal Lloyd, Jr.

 (SEAL)  
Richard L. Fox, II

EXHIBIT "E"



# NORTH CAROLINA

## Department of The Secretary of State

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To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

### ARTICLES OF INCORPORATION

OF

VILLAS OF LOCKWOOD PARK CONDOMINIUM OWNERS ASSOCIATION, INC.,

the original of which was filed in this office on the 23rd day of February, 2005.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 23rd day of February, 2005

*Elaine F. Marshall*

Secretary of State

SOSID: 768639  
Date Filed: 2/23/2005 10:14:00 AM  
Elaine F. Marshall  
North Carolina Secretary of State  
C200505300096

**ARTICLES OF INCORPORATION  
OF  
THE VILLAS OF LOCKWOOD PARK  
CONDOMINIUM OWNERS ASSOCIATION, INC.**

In compliance with the requirements of Chapter 55A of the General Statutes of North Carolina, the undersigned, all of whom are residents of the State of North Carolina and all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

**ARTICLE I**

The name of the corporation is The Villas of Lockwood Park Condominium Owners Association, Inc., hereafter called the "Association".

**ARTICLE II**

The principal office and the registered office of the Association is located at 4140 Ferncreek Drive, Suite 101, Fayetteville, Cumberland County, North Carolina, 28314.

**ARTICLE III**

F. Stuart Clarke whose address is 150 N. McPherson Church Road, Ste B, Fayetteville, Cumberland County, North Carolina, 28303, is hereby appointed the initial registered agent of the Association.

**ARTICLE IV**

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance and architectural control of the Units and Common Area within that certain tract of property described on plat of The Villas of Lockwood Park Condominiums, to be recorded in the office of the Register of Deeds for Cumberland County, North Carolina, and to promote the health, safety and welfare of the owners within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the certain Declaration of Covenants, Conditions and Restriction, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the office of the Register of Deeds of Cumberland County, North Carolina, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments

respect to any Unit.

Class B. Class B members shall be the Declarant and shall be entitled to four (4) votes for each Unit owned. The Class B Membership shall cease and be converted to a Class A membership respectively upon the happening of either of the following events, whichever occurs earlier:

- (a) Declarant no longer owns a unit in the The Villas of Lockwood Park Condominiums; or
- (b) on June 30, 2099.

**ARTICLE VII  
BOARD OF DIRECTORS**

The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be members of the Association.

The number of Directors may be changed by amendment of the By-laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

- |                    |   |
|--------------------|---|
| F. Royal Loyd, Jr. | 4140 Ferncreek Drive, Suite 101<br>Fayetteville, NC 28314 |
| Richard Fox, II    | 240 Summertime<br>Fayetteville, NC 28303                  |

At the first annual meeting the members shall elect three (3) Directors for a term of one year, three Directors for a term of two years and three Directors for a term of three years; and at each annual meeting thereafter the members shall elect three Directors for a term of three years.

**ARTICLE VIII  
INCORPORATOR**

The name and address of the incorporator is:

- |                  |  |
|------------------|--|
| F. Stuart Clarke | 150 N. McPherson Church Road, Suite B<br>Cumberland County<br>Fayetteville, NC 28303 |
|------------------|--|

**ARTICLE IX  
DISSOLUTION**

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The Association may be dissolved with the assent given in writing and signed by not less than three-fourths (3/4) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

**ARTICLE X  
DURATION**

The corporation shall exist perpetually.


**ARTICLE XI  
AMENDMENTS**

Amendment of these Articles shall require the assent of Seventy-five (75%) per cent of the entire membership.

**ARTICLE XII**

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, merger and consolidations, mortgaging of Common Area, Dedication of Common Area, Dissolution and amendment of these Articles.

IN WITNESS WHEREOF, for the purposes of forming this corporation under the laws of the State of North Carolina, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this the 16<sup>th</sup> day of February, 2005.

  
\_\_\_\_\_  
F. Stuart Clarke, Incorporator  
150 N. McPherson Church Rd., Ste B  
Post Office Box 670  
Fayetteville, NC 28302