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Prepared by/return to:  
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BOX 55

DECLARATION OF CONDOMINIUM  
FOR THE BEAUCATCHER HOUSE, A CONDOMINIUM

Grantor: Beaucatcher Condominium, LLC  
Grantee: The Beaucatcher House

UNOFFICIAL

THE BEAUCATCHER HOUSE, A CONDOMINIUM

DECLARATION

THIS DECLARATION, made this 13<sup>th</sup> day of November, 2007, by and between BEAUCATCHER CONDOMINIUMS, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes ("the Act").

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate situated in the County of Buncombe, and State of North Carolina, legally described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate ("the Property"); and

WHEREAS, THIS DECLARATION REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA AS ALLOWED BY LAW<sup>1</sup>; and

WHEREAS, THIS DECLARATION REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS WITHIN THE CONDOMINIUM AS ALLOWED BY LAW AND AS MORE SPECIFICALLY DEFINED HEREIN; and

WHEREAS, Declarant desires to submit all of the Property to the Act in accordance with the following terms of this Declaration.

NOW THEREFORE, Declarant, as the owner of said Property, hereby declares as follows:

ARTICLE I
Definitions

Definitions. As used herein, the following words and terms shall have the following meanings:

- 1.1. Act: The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.
1.2. Association. The Beaucatcher House Condominium Owners Association, Inc., an incorporated association under the laws of the State of North Carolina.
1.3. Board. The Board of Directors of the Association.

1 This Disclosure is required by North Carolina General Statutes §47C-3-121.

1.4 Bylaws. The Bylaws of the Association as shown on Exhibit D which are hereby incorporated herein and made a part hereof by this reference.

1.5 Common Elements. All portions of the Condominium except the Units. Limited Common Elements are Common Elements.

1.6 Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.7 Condominium. The condominium created by this Declaration.

1.8 Declarant. Declarant and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration to add Additional Real Estate, except Security Holders and except persons whose interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights pursuant to Section 47C-3-104 of the Act.

1.9 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date one hundred (120) days after Declarant has conveyed seventy-five percent (75%) of the Units (including Units which may be created pursuant to special declarant rights) to Unit Owners other than a Declarant, or (ii) two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business the date upon which Declarant surrenders control of the Condominium; or (iii) two (2) years after any development right to add new units was last exercised.

1.10 First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give record notice thereof, and which is a first lien on the Units described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage or Deed of Trust as shown by the records of the Office of the Buncombe County Register of Deeds, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

1.11 Floor Plans. The floor plans of the Condominium recorded with, and by the Act made a part of, this Declaration as the same may hereafter be amended.

1.12 Limited Common Elements. Those portions of the Common Elements allocated by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units which Limited Common Elements are specifically allocated to Units on Exhibit B. Limited Common Elements shall include porches and condenser units.

1.13 Occupant. Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

4

1.14. Person. A natural person, corporation, partnership, trust or other entity, or any combination thereof.

1.15. Property. The real estate described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.16. Security for an Obligation. The vendor's interest in a purchase money deed of trust, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, or the holder's interest in a lien.

1.17. Security Holder. Any person owning a Security for an Obligation in a Unit.

1.18. Special Declarant Rights. The rights reserved herein, including Section 2.9 below, and in the Bylaws for the benefit of a Declarant, as follows: to complete the improvements indicated on the Floor Plans; to maintain sales offices, management offices, models and signs advertising the Condominium; to use easements through the Common Elements; and to elect, appoint or remove members of the Board during the Declarant Control Period. To the extent permitted by the Act, the Special Declarant Rights reserved herein shall be exercised within one (1) year from the time of Declarant's conveyance of one hundred percent (100%) of the Units to Unit Owners other than a Declarant.

1.19. Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit C. Each Unit is designated and delineated on the Floor Plans.

1.20. Unit Boundaries. The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Floor Plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

1.21. Unit Owner. The person or persons, including Declarant, owning a Unit in fee simple, but excluding all Security Holders.

ARTICLE II  
Submission of Property to the Act

2.1. Submission. Declarant hereby submits the Property to the Act for purposes of forming a Condominium.

2.2. Name. The Property shall hereafter be known as The Beaucatcher House, a Condominium.

2.3. Division of Property into Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into one hundred six (106) Units and does hereby designate each Unit for separate ownership, subject, however, to the provisions of Section 2.4 hereof.

2.4. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111(1), (2) and (3) of the Act.

2.5. Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section 1.13, Limited Common Elements include those set forth on Exhibit B and are hereby allocated to Units as shown on Exhibit B.

2.6. Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements and of a percentage of the Common Expenses, are as stated on Exhibit C. The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the approximate amount of heated living space of each Unit to the total heated living space of all Units. The votes in the Association are equally allocated to all Units.

2.7. Encumbrances. The liens, defects and encumbrances on the Condominium to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit E.

2.8. Condominium Ordinances. The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon a condominium which are not imposed upon physically similar developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

2.9. Reservation of Special Declarant Rights. Except as provided in Article III below, pursuant to Section 47C-2-105(a)(8) and (9), Declarant hereby reserves all Special Declarant Rights as set forth in the Act, but specifically the rights as set forth in Section 47C-2-110(c)(d), Section 47C-2-113, Section 47C-2-115 and Section 47C-2-116 of the Act are reserved.

ARTICLE III  
Additional Real Estate

3.1. Declarant's Waiver of Right to Add Additional Real Estate. Declarant does not intend to add Additional Real Estate to the Condominium as contemplated by Section 47C-2-110(b) of the Act.

ARTICLE IV  
Easements

4.1. Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

4.2. Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

4.3. Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

4.4. Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purposes.

4.5. Easements to Run with Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article IV shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the Condominium or any part of any thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article IV, whether or not specifically mentioned in any such conveyance or encumbrance.

ARTICLE V  
Restrictions, Conditions and Covenants

5.1. Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

5.2. Administration of Condominium; Compliance with Declaration. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws and to the extent permitted by law.

5.3. Use Restricted; Use by Declarant.

(a) The Units shall be occupied and used by Unit Owners and Occupants for single-family residential purposes only.

(b) No "For Sale" or "For Rent" signs or other window displays, signs or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board in accordance with Rules and Regulations.

(c) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant may maintain sales offices for sales of Units in the Condominium. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than Declarant, any one or more of such offices or models.

(d) Declarant also may maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

(e) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, the Association may maintain an office in the Condominium for management of the Condominium.

5.4. Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction) to or in his Unit or the Common Elements.

5.5. Alterations of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

5.6. Limitations on Renting. A Unit Owner shall not have the right to rent his Unit for transient or hotel purposes. The renting of a Unit for three (3) consecutive months or longer shall be

permitted; provided that said lease be in writing, and shall be subject to this Declaration and the Bylaws, and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Any Unit Owner who enters into a lease of his Unit shall promptly notify the Association of the name and address of each lessee, the Unit rented, and the term of the lease.

5.7. Pets. No pet shall be allowed in the Condominium, except as may be provided by the rules and regulations promulgated from time to time by the Board or the Association or in the Bylaws.

5.8. Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

5.9. Restrictions, Conditions and Covenants To Run With Land. Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

**ARTICLE VI**  
**Assessments**

6.1. Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses, including expenses attributable to Limited Common Elements. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefore, all as set forth in the Bylaws. The determination of the total amount of Common Expenses for any given fiscal year of the Association shall be within the sole discretion of the Board. The Board shall allocate assessments for Common Expenses in such amounts to be fixed from year to year.

6.2. Personal Liability of Transferees; Statement; Liability of First Mortgagee.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to Section 8.11 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth. All Owners of Units acknowledge that the reporting of any delinquent assessments to the members of the Association or to anyone pursuant to this section shall not constitute a violation of any state or federal unfair debt collection laws.



(c) Where a holder of a First Mortgage or other person claiming through such First Mortgagee, pursuant to the remedies provided in said First Mortgage, or by foreclosure, obtains title to a Unit, the liability of such First Mortgagee or its heirs, successors and assigns by purchase for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title.

(d) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien under (b) above or, resulting as provided under (c) above from the exercise of remedies in a First Mortgage or by foreclosure thereof or by deed, or assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the First Mortgagee or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

6.3. Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

ARTICLE VII  
Management, Maintenance, Repairs,  
Replacements, Alterations and Improvements

7.1. Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provisions of Section 7.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 7.1(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

7.2. Common Expenses Associated with the Limited Common Elements or Benefiting Less Than All Units.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any Common Expense benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

7.3. Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

7.4. Waiver of Claims. Except only as provided in Section 7.5(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Condominium, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, that this waiver shall not apply to any such loss or damage due to intentional acts.

7.5. Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's duties or obligations or exercising any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 7.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(b) By Unit Owners. Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit of, or performing the duties and obligations under the Act, this Declaration or the Bylaws of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 7.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

11

ARTICLE VIII  
Insurance

8.1. Casualty Insurance. The Association shall maintain casualty insurance upon the Condominium in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all Unit Owners and Security Holders as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than the full insurable value of the Condominium on a replacement cost basis and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

8.2. Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the manager, if any, Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million Dollars (\$1,000,000) per occurrence for death, bodily injury and property damage. Said insurance shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

8.3. Fidelity Coverage. Fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-1/2) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premiums on such bonds shall be a Common Expense.

8.4. Other Insurance. The Association may procure such other insurance, including worker's compensation insurance and Officers and Directors Liability Insurance, as it may from time to time deem appropriate to protect the Association or the Unit Owners. If at least one Unit is subject to First-Mortgage financing, the Association shall obtain and keep in force such insurance as the First Mortgagee shall require from time to time. If at least one Unit is subject to VA, FNMA or FHLMC financing, the Association shall obtain and keep in force such insurance as VA, FNMA or FHLMC shall require from time to time.

8.5. Insurance Trustee. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

8.6. Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers pursuant to Section 7.4 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

8.7. Incorporation of Act Provisions. Section 47C-3-113 is specifically incorporated herein by reference as if set forth herein verbatim, and any inconsistency shall be resolved in favor of said Section 47C-3-113.

**ARTICLE IX**  
Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and the proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113 (e) and (h) of the Act.

**ARTICLE X**  
Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with Section 47C-1-107 of the Act.

**ARTICLE XI**  
Termination

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XII  
Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-109 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

ARTICLE XIII  
Rights of First Mortgagees:  
VA, FNMA and FHLMC Provisions

The following provisions shall take precedence over all other provisions of this Declaration and the Bylaws:

13.1. Amendments During Declarant Control Period. Any amendments to this Declaration or to the Bylaws during the Declarant Control Period, including those necessitated by Special Declarant Rights, shall be subject to the prior approval of the appropriate Administrator of the VA, FNMA and FHLMC, provided, however, that if said Administrator fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

13.2. Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the First Mortgagees and the insurers and guarantors of a First Mortgage on any Unit, current copies of the Declaration, the Bylaws, other rules and regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, other rules and regulations governing the Condominium, and the most recent annual audited financial statement (if one is prepared).

13.3. Successors' Personal Obligation for Delinquent Assessments. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.

13.4. Management and Other Agreements. Any management agreement between Declarant or the Association and a professional manager or any other agreement providing for services of Declarant, sponsor, builder or Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days' prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

13.5. Consent of First Mortgagees. This Section 13.5 shall be effective only if, at the time this Section would apply, at least one Unit is subject to First Mortgagee financing. Any decision to terminate the Condominium for reasons other than substantial destruction or condemnation of the

property shall require the prior written consent of Eligible Mortgage Holders, as defined in Section 13.7 hereof, representing at least 67% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act. Except for any amendment to the Declaration made for the purpose of adding any of the Additional Real Estate to the Condominium in accordance with the provisions hereof and the resulting reallocation of interests in the Common Elements or Limited Common Elements or rights to their use, any amendment to the Declaration or Bylaws which changes any of the following shall require the prior written consent of Unit Owners holding at least 67% of the total votes in the Association and of Eligible Mortgage Holders representing at least 51% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) the formula by which interests in the Common Elements or Limited Common Elements or rights to their use are determined;
- (f) boundaries of any Unit;
- (g) convertibility of Units into Common Elements or Common Elements into Units;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell, transfer or otherwise convey his Unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by any Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws;
- (n) any action to terminate the legal status of the Condominium after substantial damage or destruction or condemnation; or
- (o) any provisions that expressly benefit First Mortgagees or insurers or guarantors of First Mortgages.

13.6 Consent of First Mortgagees or Unit Owners. This Section 13.6 shall be effective only if, at the time this Section would apply, at least one Unit is subject to First Mortgage financing. Unless First Mortgagees holding at least sixty-six and two-thirds percent (66 2/3%) of the votes allocated to First Mortgagees (except First Mortgagees having one vote per Unit financed), or such higher percentage as is required by law, of the First Mortgagees (based upon one vote for each First Mortgage owned) and Unit Owners (other than a Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the Condominium;
- (b) except in the case of any addition of the Additional Real Estate pursuant to the provisions hereof, change the pro rata interest or obligations of any Unit for the purpose of:
  - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
  - (ii) determining the pro rata share of ownership of each Unit in the Common Elements;
- (c) partition or subdivide any Unit;
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for ingress, egress and regress and for utilities shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any part of the Condominium (whether to Units or to Common Elements) for other than repair, replacement or reconstruction thereof.

13.7. Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of First Mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its First Mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the Bylaws by said Unit Owner; or under this Declaration or the Bylaws by said Unit Owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders shall be considered an "Eligible Mortgage Holder." With respect only to non-material amendments (which excludes items (a) to (o) of Section 13.6), such as for the correction of technical errors or for clarification, any First Mortgagee who receives a written request by the Association, or any Unit Owner, to approve an addition or amendment to the Declaration or Bylaws who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have approved such request.

13.8. Assessments. Assessments shall be due and payable in monthly installments. As provided in Article VIII of the Bylaws and as legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay monthly assessments until an assessment is levied. Two-months of assessments will be due upon the purchase of a Unit from a Declarant.

13.9. Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards. With respect to First Mortgages held by or for the benefit of VA, FNMA or FHLMC or any holder of a First Mortgage, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

ARTICLE XIV  
General Provisions

14.1. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.

14.2. Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

14.3. Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

14.4. Exhibits. Exhibits A, B, C, D and E, attached hereto, are hereby made a part hereof.



IN WITNESS WHEREOF, BEAUCATCHER CONDOMINIUMS, LLC, a North Carolina limited liability company, as Declarant, has caused these presents to be signed, sealed and delivered as of this 13 day of NOV., 2007.

Beaucatcher Condominiums, LLC,  
a North Carolina limited liability company

BY [Signature]  
Member

STATE OF ~~NORTH CAROLINA~~ South Carolina  
COUNTY OF Charleston

I, Sue T. Mahood, a Notary Public of the aforesaid State and County, do hereby certify that E. Cassin, Jr. personally came before me this day and acknowledged that he is a Member of Beaucatcher Condominiums, LLC, a North Carolina limited liability company, and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 13 day of November, 2007.

[Signature]  
Notary Public  
My Commission Expires: 3/30/2013

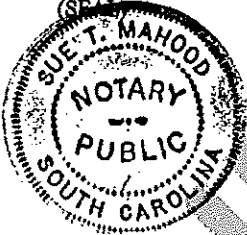


EXHIBIT A

BEING all the property, comprising the Beaucatcher House building and common elements, including access road, as shown on a plat prepared by Wallace S. McAbee, PLS, dated 9/28/07, with Drawing No. G-07-2230, and recorded in Plat Book 114, at Page 133, Buncombe County Registry, reference to said plat being made for a particular description of said property.

The Certificate of Surveyor of Wallace S. McAbee, PLS is attached hereto as Exhibit A-1 and incorporated herein by reference.

UNOFFICIAL

EXHIBIT A-1

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

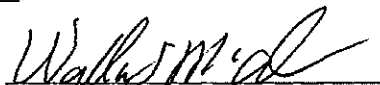
CERTIFICATE OF SURVEYOR

Wallace S. McAbee, being duly sworn, deposes and says:


That he/she is a registered land surveyor licensed under the provisions of Chapter 89C of the General Statutes of North Carolina and that as such he/she prepared the Plat of the Property of Beaucatcher Condominiums, LLC, a North Carolina limited liability company, for the development known as The Beaucatcher House, A Condominium, said Plat being recorded in Plat Book 114, at Page 133, in the Office of the Register of Deeds for Buncombe County, North Carolina; That said Plat, which is incorporated by reference to a Declaration of Condominium for The Beaucatcher House, A Condominium, dated the 13<sup>th</sup> day of November, 2007, and filed in the Office of the Register of Deeds for Buncombe County, North Carolina, accurately depicts the legal boundaries and the physical location of the Units of said Condominium (said Units being more particularly shown on the Plans for the Property as prepared by Stewart W. Aiken, Licensed Architect, said Plans to be filed as Exhibit "B" to said Declaration of Condominium) and other improvements relative to those boundaries as located on the property described in said Declaration and shown on said Plat.

This Certificate is given under and in accordance and compliance with Chapter 47C-2-109(b) (6a) of the General Statutes of North Carolina.

This 28 day of September, 2007.

  
Wallace S. McAbee  
Professional Land Surveyor  
(N.C. Registration No. L-2473)

Sworn to and subscribed before me, this 28 day of September, 2007.

  
Notary Public  
Printed Name: ANN WAEGER  
My Commission Expires: 04-20-2009



DMS:4848-8128-3817v1(1-1-6028)3/27/2007

EXHIBIT B

The plans and graphic description of the units comprising The Beaucatcher House, a Condominium (106 Units) as well as Limited Common Elements which are the porches and condenser units, are all shown on Plans recorded in file # 962-972 of the Buncombe County, North Carolina Register's Office.

The Certificate of Architect of Stewart W. Aiken, is attached hereto as Exhibit B-1 and incorporated herein by reference.

UNOFFICIAL

STATE OF Georgia  
COUNTY OF Fulton

**CERTIFICATE OF ARCHITECT**

STEWART W. AIKEN, being duly sworn, deposes and says:

That he/she is an architect licensed under the provisions of Chapter 83 of the General Statutes of North Carolina and that as such he/she prepared the Plans for The Beaucatcher House, A Condominium, for Beaucatcher Condominiums, LLC, a North Carolina limited liability company; that said Plans as attached hereto and made a part hereof and as attached to a Declaration of Condominium by the said Beaucatcher Condominiums, LLC, a North Carolina limited liability company, dated the 6<sup>th</sup> day of November, 2007, and filed in the Office of the Register of Deeds for Buncombe County, North Carolina, simultaneously with such Declaration fully and accurately depict the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units as built and as located on the property described in said Declaration, and that all structural components and mechanical systems of the Building are substantially complete in accordance with the plans.

This Certificate is given under and in accordance and compliance with Chapter 47C-2-109(b) (6) and 47C-2-101 (b) of the General Statutes of North Carolina.

This 16<sup>th</sup> day of November, 2007.



Stewart W. Aiken  
STEWART W. AIKEN  
Licensed Architect  
(NC) Registration No. 4933

Sworn to and subscribed before me, this 16<sup>th</sup> day of November, 2007.

David M. [Signature]  
Notary Public  
Printed Name: DAVID M. [Name]  
My Commission Expires: 5/1/2008

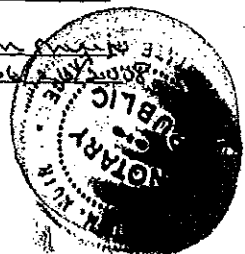


EXHIBIT C -- PAGE 1 OF 3

22

UNIT	DESCRIPTION* Unit Type/Square Feet	PERCENTAGE OF UNDIVIDED INTEREST
101	2B 1136	0.934%
102	2C1 1275	1.048%
103	1A 995	0.818%
104	1B 988	0.812%
105	1C 813	0.668%
106	2C1 1275	1.048%
107	1A 995	0.818%
108	2B 1136	0.934%
109	2B 1136	0.934%
110	2D 1214	0.998%
111	2C2 1310	1.077%
112	2A 1294	1.063%
113	2A 1294	1.063%
114	2C1 1275	1.048%
115	2B 1136	0.934%
116	1B 988	0.812%
117	1A 995	0.818%
118	2C1 1275	1.048%
119	1C 813	0.668%
120	2B 1136	0.934%
121	1A 995	0.818%
122	2D 1214	0.998%
123	2B 1136	0.934%
124	2A 1294	1.063%
125	2C2 1310	1.077%
127	2A 1294	1.063%
201	2B 1136	0.934%
202	2C2 1275	1.048%
203	1A 995	0.818%
204	1B 988	0.812%
205	1C 813	0.668%
206	2C2 1275	1.048%
207	1A 995	0.818%
208	2B 1136	0.934%
209	2B 1136	0.934%
210	2D 1214	0.998%
211	2C3 1310	1.077%
212	2A 1294	1.063%
213	2A 1294	1.063%
214	2C2 1275	1.048%
216	2B 1136	0.934%
216	1B 988	0.812%
217	1A 995	0.818%
218	2C2 1275	1.048%

EXHIBIT C -- PAGE 2 OF 3

219	1C	813	0.668%
220	2B	1136	0.934%
221	1A	995	0.818%
222	2D	1214	0.998%
223	2B	1136	0.934%
224	2A	1294	1.063%
225	2C3	1310	1.077%
227	2A	1294	1.063%
300	1D	1393	1.145%
301	2B	1136	0.934%
302	2C2	1275	1.048%
303	1A	995	0.818%
304	1B	988	0.812%
305	1C	813	0.668%
306	2C2	1275	1.048%
307	1A	995	0.818%
308	2B	1136	0.934%
309	2B	1136	0.934%
310	2D	1214	0.998%
311	2C3	1310	1.077%
312	2A	1294	1.063%
313	2A	1294	1.063%
314	2C2	1275	1.048%
315	2B	1136	0.934%
316	1B	988	0.812%
317	1A	995	0.818%
318	2C2	1275	1.048%
319	1C	813	0.668%
320	2B	1136	0.934%
321	1A	995	0.818%
322	2D	1214	0.998%
323	2B	1136	0.934%
324	2A	1294	1.063%
325	2C3	1310	1.077%
327	2A	1294	1.063%
400	1D	1393	1.145%
401	2B	1136	0.934%
402	2C2	1275	1.048%
403	1A	995	0.818%
404	1B	988	0.812%
405	1C	813	0.668%
406	2C2	1275	1.048%
407	1A	995	0.818%
408	2B	1136	0.934%
409	2B	1136	0.934%
410	2D	1214	0.998%
411	2C3	1310	1.077%
412	2A	1294	1.063%

EXHIBIT C – PAGE 3 OF 3

24

413	2A	1294	1.063%
414	2C2	1275	1.048%
415	2B	1136	0.934%
416	1B	988	0.812%
417	1A	995	0.818%
418	2C2	1275	1.048%
419	1C	813	0.668%
420	2B	1136	0.934%
421	1A	995	0.818%
422	2D	1214	0.998%
423	2B	1136	0.934%
424	2A	1294	1.063%
425	2C3	1310	1.077%
427	2A	1294	1.063%
		121,674	100%

\*See floor plan for detailed description of units including number of bedrooms,  
etc.

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