

env.



Doc ID: 007750100008 Type: CRP
 Kind: RESTRICTIVE COVENANT
 Recorded: 12/11/2009 at 10:59:07 AM
 Fee Amt: \$35.00 Page 1 of 8
 Onslow County, NC
 Rebecca L. Pollard Reg. of Deeds
 BK **3334** PG **780-787**

AMENDMENT TO DECLARATION OF
 VILLA CAPRIANI, A CONDOMINIUM

This AMENDMENT TO DECLARATION OF VILLA CAPRIANI, A
 CONDOMINIUM ("Amendment") made and entered into the 5th day of
December, 2009, by VILLA CAPRIANI HOMEOWNERS ASSOCIATION, INC. a
 North Carolina nonprofit corporation (the "Association").

RECITALS

A. Resort Equities, Inc. (the "Developer") caused to be recorded that certain
 Villa Capriani, A Condominium, Declaration in Book 940, at Page 564, in the office of the
 Register of Deeds of Onslow County (as previously amended, the "Declaration"). The capitalized
 terms set forth in this Amendment shall have the same meanings as set forth in the Declaration
 unless otherwise defined or the context shall otherwise prohibit.

B. Pursuant to Article XII and Section 13.6 of the Declaration and consistent
 with N.C. Gen. Stat. § 47C-2-117, the Association may amend the Declaration with the vote or
 written consent of the Unit Owners holding at least sixty-seven percent (67%) of the votes in the
 Association and the written consent of Eligible Mortgage Holders representing at least fifty-one
 percent (51%) of the vote allocated to Units subject to First Mortgages held by Eligible Mortgage
 Holders.

PREPARED BY
Ward and Smith, P.A.
University Corporate Center
127 Racine Drive
Wilmington, NC 28403

RETURNED TO:
 WARD AND SMITH, P.A.
 (910) 794-4800

C. The Association desires to amend the Declaration to establish, clarify, and revise certain provisions regarding insurance coverage as more particularly set forth in their Amendment.

D. Pursuant to, and in compliance with, N.C. Gen. Stat. § 47C-2-117 and the Declaration, the Amendment as set forth herein was proposed, and upon the same being submitted to the Unit Owners and Eligible Mortgage Holders, was approved by written consent of Unit Owners holding more than sixty-seven percent (67%) of the votes allocated in the Condominium and Eligible Mortgage Holders representing more than fifty-one percent (51%) of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders.

NOW, THEREFORE, pursuant to the authority above identified and recited, the Association hereby amends the Declaration as follows:

1. Section 7.1(b) of the Declaration is revised by adding the following to the end of the section: "By Unit Owners. Each Unit Owner shall promptly pay the cost to repair or replace any and all damage to the Common Elements (or the deductible associated with insured damage to the Common Elements) that have been damaged or destroyed by reason of the Unit Owner's act, omission, negligence, abuse, misuse, or neglect of a Unit Owner, or the act, omission, negligence, abuse, misuse, or neglect Occupant of said Owner's Unit. Such payment shall be made upon demand by the Association. If a Unit Owner fails to pay said repair or replacement costs demanded by the Association, the Association may pay for the cost of said repair or replacement owed by the Unit Owner, in which event said costs paid by the Association shall be charged to the Unit as an assessment for which the Association shall have a lien. In the event of damage to the Common Elements, any and all Unit Owners with knowledge of the damage shall promptly notify the Board of the nature and extent of the damage."

2. Section 7.2(a) of the Declaration is replaced in its entirety with the following: "Any Common Expense associated with the (i) uninsured maintenance, repair, or replacement of a Limited Common Element; or, (ii) in the event of insured maintenance, repair; or replacement of a Limited Common Element, the amount of Common Expense incurred up to the amount of the deductible on the Association's master insurance policies 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."

3. Section 7.2(b) of the Declaration is revised by inserting the following at the end of Section 7.2(b): ", provided that any Common Expense associated with an insured loss under the Association's master insurance policies shall be assessed in accordance with Article VIII of this Declaration."

4. Section 7.3 of the Declaration is replaced in its entirety with the following:

"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 expenses, all portions of his Unit requiring repair or replacement, provided that the Association shall insure losses associated with certain damage and assess liability for deductibles for those losses in accordance with Article VIII of this Declaration. Unit Owners shall exercise these responsibilities in such a manner as not to unreasonably disturb other Occupants. In the event of a loss insured under the Association's insurance policies, any and all Unit Owners with knowledge of the damage shall promptly notify the Board of the nature and extent of the damage. Each Unit Owner shall promptly pay the cost to repair or replace any and all damage to another Unit (or the deductible associated with insured damage to another Unit) that has been damaged or destroyed by reason of the Unit Owner's acts, omissions, negligence, abuse, misuse, or neglect acts or omissions, or by the acts, omissions, negligence, abuse, or misuse of the Occupant of said Owner's Unit."

5. Section 8.1 of the Declaration is removed and replaced in its entirety with the following:

"8.1.1 Authority to Purchase Insurance. All required or permitted insurance policies (other than title insurance) shall be purchased by the Association in the name of the Association, as Trustees for the Unit Owners and their respective Eligible Mortgage Holders as their interests may appear, and shall provide for the issuance of certificates or memoranda of insurance to the Association and to any Unit Owner, Eligible Mortgage Holder, or beneficiary of a deed of trust.

8.1.2 Casualty Insurance. The Association shall maintain casualty insurance in full force and effect covering the Common Elements (including the Limited Common Elements) and, to the extent reasonably available, the

Units, including all buildings and all improvements upon the land and all personal property included within the Condominium, except such personal property as may be owned by the Unit Owners, shall be procured in an amount equal to the full maximum insurance replacement value thereof (exclusive of land, excavation and foundations) as determined annually. The Board is explicitly authorized to obtain periodic insurance appraisals to make that determination.

- (a) Such coverage shall afford protection against all risks of direct physical loss commonly insured against including fire and extended coverage perils.
- (b) Such coverage may, as deemed appropriate by the Board, include coverage for additional risk, including without limitation: (i) loss or damage by flood, (ii) loss or damage caused by wind or wind driven rain; and (iii) terrorism.

Casualty insurance obtained for the buildings and improvements shall provide such coverage commonly known as "all inclusive building" coverage and/or "completed Unit" coverage as such terms are used in the insurance industry, and shall include, but not be limited to, all components of the Units together with fixtures, cabinets, built in appliances and all other such improvements which were part of the original completed Units, and including betterments and improvements installed by the Unit Owner and disclosed to the Board in accordance with Section 8.1.5 herein, provided that the casualty insurance maintained by the Association may, at the Board's discretion, except from coverage any commercial tenant improvements or betterments or commercial trade fixtures. The above-described casualty insurance policy shall include an "Agreed Amount Endorsement" to the extent the same is reasonably available.

8.1.3 Premiums-Common Expenses. Premiums on insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all the Unit Owners.

8.1.4 Deductibles. In the event of a loss or partial loss under the insurance policies maintained by the Association, the deductible, if any, applicable to the insured loss shall be paid by the Association as a Common Expense, subject to this Section 8.1.4. If the damage or destruction of any portion of the Condominium arises out of the intentional

act or omission, negligence, abuse, misuse or neglect of a Unit Owner, or Occupant of said Owner's Unit, the Association shall assess any deductible amount associated with that loss against such Unit Owner. If a Unit Owner fails to pay the deductible assessed against his or her Unit and the Association pays the deductible cost owed by the Unit Owner, then the deductible cost paid by the Association shall be charged to the Unit as an assessment for which the Association shall have a lien.

Notwithstanding the forgoing, in the event that the Association maintains insurance for high risk perils, including without limitation flood, wind, wind driven rain, or terrorism insurance, the Association shall pay, as a Common Expense, the deductible under the high risk insurance policy without regard to the acts or omissions of the Unit Owners.

- 8.1.5 Owner Betterments - Notification. Unit Owners will notify the Board in writing upon the installation of any improvements or betterments to their Units that exceed Five Thousand and No/100 Dollars (\$5,000.00) in value, including without limitation equipment, fixtures or appliances.
- 8.1.6 Insurance Claim Adjustment. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Eligible Mortgage Holders, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Unit Owners and their respective Eligible Mortgage Holders as their interests may appear.
- 8.1.7 Use of Insurance Proceeds. Proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored, or the Condominium is terminated.

8.1.8 Insurance Policy Requirements. Insurance policies carried pursuant to this Article 8 shall provide that:

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

6. Section 8.3 of the Declaration is revised by removing the phrase "at least the greater of (i) one and one-half (1-½) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three (3) months' aggregate assessments on all Units plus the Association's reserve funds." with the following, "at least the sum of three (3) months' aggregate assessments on all Units plus the Association's reserve funds."

7. Section 8.6 of the Declaration is replaced in its entirety with the following:

"8.6 Individual Policies for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his Unit, his personal property and betterments and for his personal liability as may be

permitted or required by law, or deemed appropriate or necessary by the Unit Owner, and such insurance shall, if available, contain a waiver of subrogation as to any claims against Unit Owners, the Association and their respective servants, agents and guests."

8. A new Section 8.7 is added to the Declaration as follows:
 - "8.7 Insurance Availability Notification. If the insurance described in Section 8.1.2(a) of this Article, or otherwise maintained by the Association as required by the North Carolina Condominium Act is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners

[SIGNATURES ON FOLLOWING PAGE]

IN TESTIMONY WHEREOF, the Association has caused this Amendment to be executed in such form as to be binding, all by authority duly given, this the day and year first above written.

VILLA CAPRIANI HOMEOWNERS ASSOCIATION, INC. a North Carolina nonprofit corporation

By: [Signature] (SEAL)
Name: Donald G. Masch
Title: Pres, Villa Capriani HOA

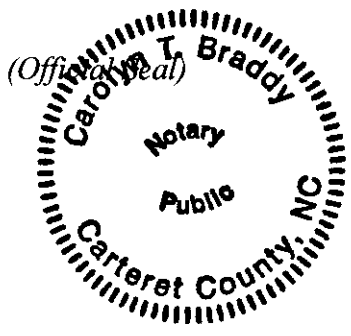
Carteret COUNTY, North Carolina STATE

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document for the purpose(s) stated therein, in the capacity indicated, and having been first authorized to do so: Donald G. Masch as President of Villa Capriani Homeowners Association.

Date 12-5-09

[Signature]
Signature of Notary Public

My commission expires: 10-11-12



071805-00001-001
WLM\MAIN\185681\4
ND: 4830-8410-4963, v. 4