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BARBARA M GRAY, REGISTER OF DEEDS

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DARE CO, NC

Prepared by and Return to:
Robert L. Outten



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NORTH CAROLINA
DARE COUNTY

FIFTH AMENDMENT
TO DECLARATION CREATING OWNERSHIP
AND ESTABLISHING COVENANTS AND CONDITIONS
FOR
NANTUCKET VILLAGE II CONDOMINIUMS

THIS AMENDMENT to Declaration of Condominiums is made this the 16th day of July, 2004 by Duck Shores, LLC (hereinafter "Declarant") pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled and hereinafter referred to as the North Carolina Condominium Act.

WITNESSETH:

THAT WHEREAS, the Declaration of Unit Ownership for Nantucket Village II Condominiums is recorded in Book 1187 Page 0435 in the office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, the First Amendment to the Declaration for Nantucket Village II Condominiums, dated July 3, 2003, was filed in the office of the Register of Deeds of Dare County at Deed Book 1505 Page 170; and

WHEREAS, the Second Amendment to the Declaration for Nantucket Village II Condominiums, dated August 1, 2003, was filed in the office of the Register of Deeds of Dare County at Deed Book 1525 Page 147; and



WHEREAS, the Third Amendment to the Declaration for Nantucket Village II Condominiums, dated October 15, 2003, was filed in the office of the Register of Deeds of Dare County at Deed Book 1525 Page 147; and

WHEREAS, the Fourth Amendment to the Declaration for Nantucket Village II Condominiums, dated May, 2004, was filed in the office of the Register of Deeds of Dare County at Deed Book 1558 Page 110; and

WHEREAS, in Article II, "Submission of Property to the Act", Declarant subjected only that property described in Exhibit A of the Declaration to the Condominium; and reserved the right to add the balance or certain portions of the balance of that property described in Exhibit A-1 of the Declaration to the Condominium recorded in Deed Book 1187 Page 435 in the Dare County Registry; and

WHEREAS, the Statement of Submission provided that as an additional phase is subjected to the Declaration by an Amendment to the Declaration, the total combined property shall continue to be known as Nantucket Village II Condominiums; and

WHEREAS, every Grantee of every interest in such property of Nantucket Village II condominiums by the acceptance of a deed or conveyance of any interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee, each unit owner and/or other grantee or party or interest to any unit of Nantucket Village II Condominiums shall be deemed by their acceptance of a deed to a condominium unit in Nantucket Village II Condominiums to have consented to the powers of amendment therein reserved by Declarant and to any amendments previously or thereafter executed by Declarant pursuant thereto; and

WHEREAS, the Statement of Submission further provided that upon such amendment the undivided interest appurtenant to each condominium unit shall be determined in accordance with the provisions of Article II of the Declaration; and

WHEREAS, Declarant desires to now add Units 807 and 808, as further described herein, and pursuant to the provisions of Articles II and III, to amend the Declaration provided for therein to accomplish such incorporation and addition; and

WHEREAS, Duck Shores, LLC is the successor in interest to Nantucket Property Purchase Group, Inc. by virtue of a deed from Nantucket Property Purchase Group, Inc., recorded in Deed Book 1416 Page 69 in the Dare County Registry, and by reason thereof has acquired the special declarant and developer rights of Nantucket Village II Condominiums, and in such capacity makes this Fifth Amendment to the Declaration of Nantucket Village II Condominiums.

NOW, THEREFORE, Declarant hereby declares as follows:

1. Declarant is the owner of the land described in "Exhibit A-1" of the Declaration



recorded in Deed Book 1187 at Page 0435 in the Dare County Registry; and the Declarant hereby submits the property described in Plat Cabinet F1, Slide 295 to the Act and to the terms of the Declaration as amended. An additional two condominium units have been constructed upon such land and such units are shown on a plan designated "Nantucket Village II Condominiums, Duck, North Carolina" prepared by Cahoon & Kasten Architects, P.C., Registered Architects, and for a more particular designation of the units as built, see that filing in Plat Cabinet F1, Slide 295, which description is controlling over any discrepancy with the units as may be described herein.

2. Declarant does hereby add two additional units to Nantucket Village II Condominiums in accordance with the Declaration recorded in Deed Book 1187 at Page 0435 in the Dare County Registry, said units being designated as Units 807 and 808 and having as a percentage of undivided interests that percent calculated using the formula set forth in Article II of said Declaration and said formula is hereby incorporated by reference as if fully set forth herein.
3. 1.12. Floor Plans. The floor plans of the Condominiums recorded with, and by the Act made a part of, this Fifth Amendment to the Declaration, as the same may hereafter be amended.
4. Paragraph 1.21. "Unit Boundaries" is hereby amended as the same relates to Phase 8B, sub Part One, Units 805 and 806, as follows:

1.21 Unit Boundaries. The boundaries of each unit, both as a vertical and horizontal planes, as shown on the floor plans, are the lath, furring wall board, plaster board, plaster, paneling, tiles, wallpaper, paint finished flooring, and any other materials constituting any part of the finished floor, and any other materials constituting any part of the finished surfaces thereof are a part of the unit. Said unit also includes all spaces, interior partitions and other fixtures and improvements within such boundaries and further includes all portions of the heat pump system for that Unit, including but not limited to its air handler, coils, ducts, condenser, gas lines, and thermostat. In addition, the "Unit Boundaries" of Units 805 and 806 shall include all exterior porches, whether covered or uncovered, decks, landings, stairs, hot tubs, (and all lines and equipment for operating the hot tubs), and deck areas around the hot tubs, whether on the first level or the second level of the building. The porches, decks, landings, stairs, hot tub decks, and hot tubs are hereby defined and made a part of each Unit to which the same are attached and the unit owners of those Units to which decks, porches, hot tub deck areas, hot tubs, landings and stairs are attached shall be solely responsible for the repair, replacement and maintenance of those areas, the hot tubs and accessory equipment and lines, as well as the costs thereof. The Nantucket Village II Condominium Associations, Inc., shall have no legal obligation to repair,



maintain, or replace the porches, decks, hot tubs, and accessory equipment and lines, hot tub deck areas, landings and exterior stairs attached to the respective units.

The "Unit Boundaries" as described and amended herein and in the First, Second and Fourth Amendment to the Declaration did not change the original description of "Unit Boundaries" as applied to units previously included in the Declaration as amended.

5. The property described in this submission shall be known as Nantucket Village II Condominiums.
6. Paragraph 2.3 Division of Property into separate owner units. Developer, pursuant to the Act, and to establish a plan of condominium ownership for the condominium, does hereby divide the property into two (2) Units and does hereby designate all such Units for separate ownership, subject, however, to the provisions of 2.4 of the Declaration. The two Units are designated as Unit 807 and 808.
7. Paragraph 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 A and are hereby allocated to Units as shown on Exhibit A.
8. Paragraph 2.9 Reservation of Special Declarant Rights. This paragraph is amended by extending the date upon which the Special Declarant Rights shall terminate from seven years to ten years from the date of recordation of the Declaration unless sooner terminated as provided herein or by written notice of termination filed by the declarant in the Dare County Register of Deeds.
9. Paragraph 14.5 Exhibits. Exhibits A, and B attached hereto are hereby made a part hereof.
10. By supplemental declaration in similar manner as herein exercised, Declarant may from time to time add additional units and /or phases as provided for in the original Declaration and this Amendment to Declaration, and subject such land and buildings and improvements thereon to the original Declaration. Each condominium unit owner shall be deemed by their acceptance of a deed to a condominium unit to have consented to the provisions of amendment reserved by Declarant and to any amendments previously or thereafter exercised by the Declarant. Each condominium unit owner shall further be deemed by the owner's acceptance of a deed or deed of trust to each condominium unit to have appointed



acceptance of a deed or deed of trust to each condominium unit to have appointed Declarant, or its Attorney-In-Fact, to give, execute and record the consent of said owner to any and all amendments to the Declaration which Declarant wishes to execute pursuant to the powers herein reserved.

DUCK SHORES, LLC

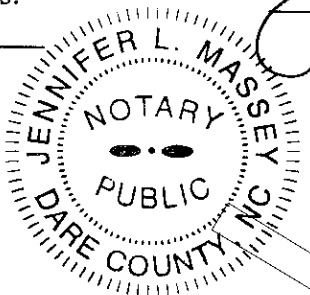
BY: [Signature] (SEAL)
Kerry D. Vornadore, Member/Manager

STATE OF NC
CITY/COUNTY OF Dare

I, the undersigned, a Notary Public in and for the aforesaid State and City/County, do hereby certify that Kerry D. Vornadore, Member/Manager of Duck Shores, LLC, a North Carolina Limited Liability Company personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness, my hand and notarial seal this the 16th day of July, 2004.

My Commission Expires:
2/5/06



[Signature]
Notary Public

The foregoing Certificate(s) of Jennifer L. Massey
a Notary Public

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.

BARBARA M. GRAY

REGISTER OF DEEDS for Dare County

BY: [Signature] Deputy/~~Assistant~~ Register of Deeds.

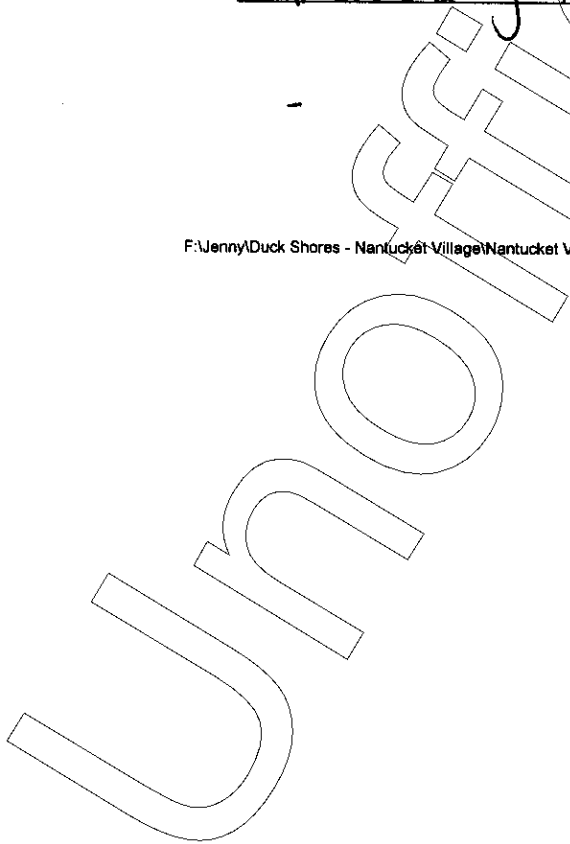




EXHIBIT A
TO
FIFTH AMENDMENT
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FOR NANTUCKET VILLAGE II CONDOMINIUMS

LIMITED COMMON ELEMENTS

1. The parking spaces designated on the map or plat as overflow parking for Units 807 and 808 as designated on the plat described in this Fifth Amendment to the Declaration for Nantucket Village II Condominiums.
2. The garages shall be limited common elements to the units under which the garages have been located.
3. Any porches, decks, exterior stairs, landings, hot tubs and deck areas surrounding hot tubs not included within the unit boundaries as herein defined (or as may subsequently be excluded from the definition of the units by a court order) are hereby declared to be limited common elements to the units to which the decks, porches, landing areas, exterior stairs, hot tubs and deck areas surrounding the hot tubs are attached. The Nantucket Villages II Association, Inc., shall have no legal responsibility to repair, maintain, or replace the limited common areas described in this paragraph, and the condominium unit owners to which these limited common elements are attached shall be responsible for the maintenance, repair and replacement of these limited common elements.



EXHIBIT B
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LIENS AND ENCUMBRANCES

1. General service and utility easements affecting the property.
2. Ad valorem taxes for the current year.
3. Condominium Declaration.
4. Construction Loan Deed of Trust, which Deed of Trust will be released at the time of transfer of any Unit to a purchaser from the Developer.