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FIFTH AMENDMENT TO DECLARATION

DORRIS A. FRY
REGISTER OF DEEDS
DARE COUNTY, N.C.

OF

OYSTER POINTE CONDOMINIUMS

THIS FIFTH AMENDMENT TO DECLARATION made this 15th day of August, 1989 by Oyster Pointe Associates, Inc., a North Carolina Corporation (hereinafter referred to as the "Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

W I T N E S S E T H:

WHEREAS, the original Developer and Declarant of Oyster Pointe Condominiums (hereinafter referred to as "OPC") filed a Third Amendment to the Declaration of OPC in Deed Book 591 at Page 864 in the Office of the Register of Deeds of Dare County, N.C. and transferred all real estate referred to in the Declaration of OPC as "Additional Real Estate" along with the Developmental Rights and Special Declarant Rights reserved by the Declaration of OPC to Oyster Pointe Associates, Inc. and as a result of said transfer became the Successor Declarant to OPC (hereinafter referred to as "Declarant") and hereafter any reference to the original Developer Declarants: Kitty Hawk Bay Development Corporation and First Service Corporation of North Carolina will hereinafter collectively be referred to as "Developer"; and

WHEREAS, the Declaration of Unit Ownership for OPC is recorded in Deed Book 492 at Page 454 in the Office of the Register of Deeds of Dare County, N.C.; and

WHEREAS, the Developer filed plans for OPC of the buildings, units, and site plans in Unit Ownership File 3, Slides 163 - 179 in the Office of the Register of Deeds of Dare County, N.C.; and

WHEREAS, in Article II "Submission of Property..." Developer subjected four buildings: A, B, C & D in Phase I to the Declaration consisting of thirty-six units, said property more particularly described in "Exhibit A" to the Declaration filed in Deed Book 492 at Page 454, Dare County Registry; and

WHEREAS, the Developer reserved Developmental Rights for the expansion of OPC by adding Additional Real Estate to OPC as further described in "Exhibit A-1" to the Declaration and further described in the First Amendment to the Declaration filed in Deed Book 497 at Page 231, in the Office of the Register of Deeds of Dare County, N.C.; and

WHEREAS, the aforereferenced Developmental Rights were exercised by that Third Amendment to the Declaration which is filed in Deed Book 544 at Page 484 and added Phase II to OPC consisting of buildings: J, K & L for an additional thirty-three units, thus expanding OPC to sixty-nine condominium units. The plans for Phase II were filed in Unit Ownership File 3 at Slides 314 - 315 in the Office of the Register of Deeds of Dare County, N.C.; and

WHEREAS, in that Fourth Amendment to Declaration filed in Deed Book 591 at Page 864, Developer transferred all real estate previously referenced in all filings of OPC as "Additional Real Estate" along with Developmental Rights and Special Declarant Rights reserved by the Declaration of OPC to the Declarant herein, and further in the Fourth Amendment to the Declaration, Developer clarified that the time frame of adding additional units to OPC is up to and including January 7, 1992; and

WHEREAS, Declarant has now completed construction of Building F consisting of an additional twelve condominium units and now wishes to add Building F of Phase III of OPC; and

WHEREAS, by reservation of Special Declarant Rights, the Declarant has the right during the Declarant Control Period to make certain necessary

amendments to the Declaration for the purpose of adding additional buildings in Phases as set forth in the condominium plan of unit ownership for OPC; and

WHEREAS, every Grantee of every interest in such property of OPC 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, shall be deemed by their acceptance of a Deed to a condominium unit in OPC 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 provides that upon such amendment the undivided interest appurtenant to each condominium unit shall be determined in accordance with the provisions of Section 2 (c) as further illustrated by "Exhibit C" of the Declaration; and

WHEREAS, Declarant desires to now add Building F of Phase III to the Declaration consisting of twelve additional condominium units further described herein, and pursuant to the provisions of OPC to amend the Declaration as provided for therein to accomplish such incorporation and addition;

NOW, THEREFORE, Declarant hereby certifies as follows:

(1) Declarant is the owner of the land described in "Exhibit A" to this Fifth Amendment to Declaration, and said land is in a portion of that land previously referred to as "Additional Land" and previous filings of OPC.

(2) An additional building designated as Building F has been constructed on said land consisting of twelve condominium units and identification of said units shown on that site plan prepared by C. P. Lewis filed in Unit Ownership File 4, Slide 124, 125 in the Office of the Register of Deeds of Dare County, N.C..

(3) Building F is a three story building and situated on the first floor are Units: F-9, F-10, F-11 & F-12; on the second floor are Units: F-5, F-6, F-7 & F-8; then situated on the third floor are Units: F-1, F-2, F-3 & F-4.

For a more particular description of the Units As Built, see that Certification of Benjamin Barry Cahoon, North Carolina Registration No. 5413 of Bissell Associates, Inc., attached hereto as "Exhibit B" which makes reference to the particular description of prior units as built in Unit Ownership File 3, Slide: 163, 165, 167, 168, 170, 177, 179 and 315 in the Office of the Register of Deeds of Dare County, N.C.

(4) The unit boundaries for Building F of Phase III are as set forth in Section 1.21 of the Declaration for OPC.

(5) There are no Limited Common Elements in Phase III of OPC.

(6) The allocations to each unit of percentage of undivided interest in the Common Elements, of a percentage of the Common Expenses and of votes in the Association are as hereinafter set forth.

<u>Unit No.</u>	<u>Percentage of Undivided Interest in Common Elements</u>	<u>Percentage of Common Expenses</u>	<u>Votes</u>
A-1	1.2%	1.2%	1/81st
A-2	1.2%	1.2%	1/81st
A-3	1.2%	1.2%	1/81st
A-4	1.2%	1.2%	1/81st
A-5	1.2%	1.2%	1/81st
A-6	1.2%	1.2%	1/81st
A-7	1.2%	1.2%	1/81st
A-8	1.2%	1.2%	1/81st
B-1	1.2%	1.2%	1/81st
B-2	1.2%	1.2%	1/81st
B-3	1.2%	1.2%	1/81st

<u>Unit No.</u>	<u>Percentage of Undivided Interest in Common Elements</u>	<u>Percentage of Common Expenses</u>	<u>Votes</u>
B-4	1.2%	1.2%	1/81st
B-5	1.2%	1.2%	1/81st
B-6	1.2%	1.2%	1/81st
B-7	1.2%	1.2%	1/81st
B-8	1.2%	1.2%	1/81st
C-1	1.2%	1.2%	1/81st
C-2	1.2%	1.2%	1/81st
C-3	1.2%	1.2%	1/81st
C-4	1.2%	1.2%	1/81st
C-5	1.2%	1.2%	1/81st
C-6	1.2%	1.2%	1/81st
C-7	1.2%	1.2%	1/81st
C-8	1.2%	1.2%	1/81st
D-1	2.4%	2.4%	1/81st
D-2	1.2%	1.2%	1/81st
D-3	1.2%	1.2%	1/81st
D-4	1.2%	1.2%	1/81st
D-5	1.2%	1.2%	1/81st
D-6	2.4%	2.4%	1/81st
D-7	1.0%	1.0%	1/81st
D-8	1.2%	1.2%	1/81st
D-9	1.2%	1.2%	1/81st
D-10	1.2%	1.2%	1/81st
D-11	1.2%	1.2%	1/81st
D-12	1.0%	1.0%	1/81st
F-1	1.2%	1.2%	1/81st
F-2	1.2%	1.2%	1/81st
F-3	1.2%	1.2%	1/81st
F-4	1.2%	1.2%	1/81st
F-5	1.2%	1.2%	1/81st
F-6	1.2%	1.2%	1/81st
F-7	1.2%	1.2%	1/81st
F-8	1.2%	1.2%	1/81st
F-9	1.2%	1.2%	1/81st
F-10	1.2%	1.2%	1/81st
F-11	1.2%	1.2%	1/81st
F-12	1.2%	1.2%	1/81st
J-1	1.2%	1.2%	1/81st
J-2	1.2%	1.2%	1/81st
J-3	1.2%	1.2%	1/81st
J-4	1.2%	1.2%	1/81st
J-5	1.2%	1.2%	1/81st
J-6	1.2%	1.2%	1/81st
J-7	1.2%	1.2%	1/81st
J-8	1.2%	1.2%	1/81st
J-9	1.2%	1.2%	1/81st
J-10	1.2%	1.2%	1/81st
J-11	1.2%	1.2%	1/81st
J-12	1.2%	1.2%	1/81st
K-1	1.2%	1.2%	1/81st
K-2	1.2%	1.2%	1/81st
K-3	1.2%	1.2%	1/81st
K-4	1.2%	1.2%	1/81st
K-5	1.2%	1.2%	1/81st
K-6	1.2%	1.2%	1/81st
K-7	1.2%	1.2%	1/81st
K-8	1.2%	1.2%	1/81st
K-9	1.2%	1.2%	1/81st
K-10	1.2%	1.2%	1/81st
K-11	1.2%	1.2%	1/81st
K-12	1.2%	1.2%	1/81st
L-1	1.2%	1.2%	1/81st
L-2	1.2%	1.2%	1/81st
L-3	2.4%	2.4%	1/81st
L-4	1.2%	1.2%	1/81st

<u>Unit No.</u>	<u>Percentage of Undivided Interest in Common Elements</u>	<u>Percentage of Common Expenses</u>	<u>Votes</u>
L-5	1.2%	1.2%	1/81st
L-6	1.0%	1.0%	1/81st
L-7	1.2%	1.2%	1/81st
L-8	1.2%	1.2%	1/81st
L-9	1.0%	1.0%	1/81st

At such time as additional units are added to the Condominium, the percentage of undivided interest in common elements and the percentage of undivided interest in common expenses will be reallocated. The formula for such reallocation and for successive reallocations will be to calculate the area of each unit and the area of the total units and determine the percentage that each unit bears to the whole. That will be the revised or reallocated percentage. For purposes of votes, each unit shall have one vote, without regard to the area of the unit or the number of bedrooms.

(7) As the result of this Fifth Amendment to the Declaration, twelve additional units are added to OPC for a total of eighty-one units. In accordance with the Developmental Rights reserved in the original Declaration, the Declarant expressly reserves the right to add Additional Real Estate to OPC. All or part of the Additional Real Estate which is identified in this Fifth Amendment to the Declaration may be added to the condominium at a different time, but no assurances are made in regard to the order in which such portions may be added. The Declarant shall have no duty or obligation of any kind to add any or all of the Additional Real Estate.

(8) The property described in "Exhibit A" to this Declaration which is incorporated herein by reference is the property constituting Phase III of OPC. Any other property which was originally described in "Exhibit A-1" of the original Declaration and the Amendments thereto which is not included within "Exhibit A" to this Fifth Amendment to Declaration is understood to be identified as the remaining Additional Real Estate. The rights reserving such Additional Real Estate are referred to in the preceding paragraph. For purpose of identification, the remaining Additional Real Estate is also described in "Exhibit C" to this Fifth Amendment to Declaration.

The maximum number of additional units that may be created within the remaining Additional Real Estate is sixty-three for a total of one hundred forty-four units should all Phases of OPC be completed. The Declarant may subject portions or all of the Additional Real Estate to OPC by completing condominium units on said property up to and including January 7th, 1992.

(9) This Fifth Amendment to OPC does not divest any owner of any portion of his dwelling unit and does not materially alter the planned development set forth in the Declaration.

(10) By supplemental Declaration, in similar manner as herein exercised, Declarant may from time to time add additional Phases as provided for in the original 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 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 Declarant their Attorney-in-Fact to give, execute and record the consent of said owner to any and all amendments to this Declaration which Declarant may wish to execute pursuant to the powers herein reserved.

IN WITNESS WHEREOF, Declarant has caused this Fifty Amendment to Declaration to be signed and sealed the day and year below acknowledged.

OYSTER POINTE ASSOCIATES, INC.

By: Jeffrey M. Farrar (SEAL)
Jeffrey M. Farrar, President

ATTEST:

BK 642 PG 0140

By: Jayne DePanfilis
Jayne DePanfilis, Secretary



[CORPORATE SEAL]

I, a Notary Public of the County and State aforesaid, certify that Jayne DePanfilis personally appeared before me this day and acknowledged that she is Secretary of Oyster Points Associates, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

WITNESS my hand and notarial seal this the 17th day of August, 1989.

08/08/90
My Commission Expires

Vicky P. Pollay
Notary Public

[SEAL/STAMP]



NORTH CAROLINA, DARE COUNTY
The foregoing certificate (s) of Vicky P. Pollay a Notary
Public of Dare Co, NC

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.
Dorris A. Fry, Register of Deeds for Dare County
By Ranzilla M. Murren Assistant Register of Deeds

EXHIBIT A
DESCRIPTION OF OYSTER POINTE CONDOMINIUMS
PHASE III, "BUILDING F"

Beginning at a point which is located North 60 deg. 06 min. 02 sec. West a distance of 65.0 feet from a point being a corner in the Phase II boundary of Oyster Pointe Condominiums, said point being Northwest of the pool and being shown as point "B" on plat entitled Oyster Pointe Condominium, Phase III, "Building F" by C. P. Lewis, Jr., R.L.S., point of beginning shown as point "A" on said plat. Running thence from the point of beginning South 29 deg. 53 min. 57 sec. West a distance of 85.0 feet to a point; thence North 60 deg. 06 min. 03 sec. West a distance of 53.0 feet to a point; thence North 10 deg. 51 min. 44 sec. West a distance of 63.64 feet to a point; thence North 29 deg. 53 min. 57 sec. East a distance of 96.0 feet to a point; thence North 79 deg. 53 min. 57 sec. East a distance of 48.0 feet to a point; thence South 55 deg. 06 min. 03 sec. East a distance of 58.0 feet to a point; thence South 29 deg. 53 min. 57 sec. West a distance of 85.0 feet to a point, said point marking the point or place of beginning, same being an area consisting of 0.34 acres.

BK 642 PG 0142

ARCHITECT CERTIFICATION

FOR

BUILDING F, PHASE III, OYSTER POINTE CONDOMINIUMS

This Certification is given by Benjamin Barry Cahoon, Architect, North Carolina Registration No. 5413 of Bissell Associates, Inc. for "Building F of Phase III of Oyster Pointe Condominiums" located in Kill Devil Hills, North Carolina in accord with the provisions of Chapter 47C-2-109(d) of the North Carolina Condominium Act. Pursuant thereto, the undersigned hereby certifies as follows:

(1) That he has reviewed those plats and plans filed of record for Phase I of Oyster Pointe Condominiums recorded in Unit Ownership File 3, Slides 163 - 179 in the Office of the Register of Deeds of Dare County, North Carolina and those plats and plans for Phase II of Oyster Pointe Condominiums recorded in Unit Ownership File 3, Slides 314 - 315 in the Office of the Register of Deeds of Dare County, North Carolina, said plats and plans hereinafter referred to as "Recorded Plats and Plans".

(2) That the recorded plats and plans conform to the requirements of Chapter 47C-2-109(a) & (b) of the North Carolina Condominium Act.

(3) That the recorded plats and plans as hereinafter specifically referenced in Paragraph (5) herein fully and accurately depict the layout, location, ceiling and floor elevations of Building F of Phase III of Oyster Pointe Condominiums.

(4) That the layout of Building F in Oyster Pointe Condominiums and Unit Numbers are accurately depicted on that site plan of "Oyster Pointe Condominiums - Phase III, Building F" prepared by C. P. Lewis, R.L.S. and filed in Unit Ownership File 4 at Slide 24185 in the Office of the Register of Deeds of Dare County, North Carolina and the undersigned hereby certifies that the units depicted on said site plan of Building F "As Built" have been completed.

(5) That the units of Building F are the same as depicted by the following recorded plats and plans of Phases I and II of Oyster Pointe Condominiums:

(a) The "Foundation Plan of Unit A" filed in Unit Ownership File 3 at Slide 165 represents the foundation plan of Building F with the modification of the two stair towers which are rotated 90 degrees in Building F.

(b) The "Second Floor Framing Plan" filed in Unit Ownership File 3 at Slide 167 represents the floor framing plan for the second and third floors of Building F.

(c) The "First and Second Floor Plan Unit A" filed in Unit Ownership File 3 at Slide 168 accurately describes the floor plan for Building F.

(d) The "Typical Details" filed in Unit Ownership File 3 at Slide 169 are the same for Building F. The "First Floor Plan Unit B" also shown in Unit Ownership File 3 at Slide 165 has no application to Building F as Building F does not contain any one bedroom units.

(e) The "Floor Plan Unit A" filed in Unit Ownership File 3 at Slide 170 accurately depicts both the first, second and third floor plans of Building F with the exception of the stairs which are rotated 90 degrees.

(f) The "Roof Plan" filed in Unit Ownership File 3 at Slide 177 accurately depicts the roof plan of Building F.

(g) The "Electrical Floor Plan Unit A" filed in Unit Ownership File 3 at Slide 179 accurately depicts the electrical floor plan for Building F.

(h) The "Right Side Elevation" filed in Unit Ownership File 3 at Slide 315 accurately depicts the right side elevation of Building F with the exception of the stairs which are rotated 90 degrees. The "Real Elevation Unit A" and the "Front Elevation Unit A" which are also shown at Unit Ownership File 3 at Slide 315 are similar but do not accurately depict Building F, the difference being that Building F is a three story building.

(i) The aforementioned recorded plats and plans do not contain a cross-section of a three story building, therefore reference could not be made for Building F to the recorded plats and plans. A cross-section plat of Building F has been prepared which accurately depicts Building F and the same has been recorded in Unit Ownership File 4 at Slide 184/85 in the Office of the Register of Deeds of Dare County, North Carolina.

This Certification given this 15th day of August, 1989.

Benjamin Barry Cahoon (SEAL)
BENJAMIN BARRY CAHOON,
Architect N.C. Registration #5413

NORTH CAROLINA
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that BENJAMIN BARRY CAHOON, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 15th day of August, 1989.

08/08/90
My Commission Expires

Vicky P. Pollay
Notary Public

SEAL/STAMP



EXHIBIT C
DESCRIPTION OF REMAINING
"ADDITIONAL REAL ESTATE"
OF
OYSTER POINTE CONDOMINIUMS

That certain parcel of land located in the Town of Kill Devil Hills in the vicinity of First Flight Village, Dare County, North Carolina and more particularly described as follows:

The point of beginning for this description is located by certain bearings and distances from a point of reference. The point of reference is identified as the Northeastern corner of Lot No. 118 of the subdivision of First Flight Village, Section 3, Phase B as shown on the plat recorded in Plat Cabinet B at Slide 50 of the Dare County Registry. The point of beginning is located by the following courses and distances from the point of reference: beginning at the point of reference and running North 00 deg. 29 min. 56 sec. East a distance of 119.54 feet to a point; thence continuing along the right-of-way of Bay Drive along a curve to the right when proceeding in a Northerly direction an arc distance of 96.31 feet to a point, said curve having a radius of 462.13 feet; thence turning and running North 44 deg. 06 min. 57 sec. West a distance of 243.91 feet to a point; thence running North 73 deg. 06 min. 57 sec. West a distance of 258.00 feet to a point; thence South 26 deg. 53 min. 03 sec. West a distance of 50 feet to a point; thence South 69 deg. 23 min. 03 sec. West a distance of 97 feet to a point; thence North 39 deg. 36 min. 57 sec. West a distance of 64 feet to a point marking the point or place of beginning. Running thence from the point of beginning as established by the preceding courses and distances from the point of reference the following description of the property: running South 68 deg. 27 min. 15 sec. West a distance of 67.78 feet to a point; thence South 55 deg. 53 min. 03 sec. West a distance of 198.0 feet to a point; thence North 11 deg. 06 min. 57 sec. West a distance of 68.76 feet to a point; thence North 04 deg. 13 min. 31 sec. West a distance of 190.02 feet to a point; thence North 04 deg. 02 min. 57 sec. East a distance of 394.21 feet to a point; thence South 84 deg. 16 min. 05 sec. East a distance of 317.31 feet to a point; thence South 60 deg. 45 min. 55 sec. East a distance of 150.53 feet to a point; thence South 29 deg. 14 min. 05 sec. West a distance of 63 feet to a point; thence South 77 deg. 06 min. 45 sec. West a distance of 48.88 feet to a point; thence South 29 deg. 52 min. 29 sec. West a distance of 50.0 feet to a point; thence South 60 deg. 07 min. 31 sec. East a distance of 133.0 feet to a point; thence South 16 deg. 20 min. 00 sec. West a distance of 63.12 feet to a point; thence South 22 deg. 56 min. 03 sec. West a distance of 144.86 feet to a point; thence North 60 deg. 06 min. 02 sec. West a distance of 117.67 feet to a point; thence South 29 deg. 53 min. 57 sec. West a distance of 113.32 feet to a point, said point marking the point or place of beginning; excepting, however, the property described previously as Oyster Pointe Condominiums, Phase III, "Building F", said property more particularly described in Exhibit A.

Same being an area consisting of 4.59 acres and constituting the remaining Additional Real Estate after the dedication of Phase III to the Oyster Pointe Condominiums. The property hereinabove described is subject to additional Developer's rights and those rights include, without limitation, the right to construct additional condominium units on such property and the right to withdraw such property from the condominium declaration, all more particularly defined in the Declaration of Condominium for the Oyster Pointe Condominiums and the Amendments thereto.