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Craven County, North Carolina
Michelle L. Toth, Register of Deeds

RECORD AND RETURN TO:

Michael S. Foelster, Esquire
Foelster, P.A.
980 North Federal Highway, Suite 110 PMB 1080
Boca Raton, Florida 33432

**COLLATERAL ASSIGNMENT OF RIGHT TO COLLECT
ASSESSMENTS AND ASSIGNMENT OF LIEN RIGHTS**

THIS COLLATERAL ASSIGNMENT OF RIGHT TO COLLECT ASSESSMENTS AND ASSIGNMENT OF LIEN RIGHTS (the "Assignment"), is made and entered into on July 31, 2024 by and between TRUIST BANK, a North Carolina banking corporation, whose mailing address is 12485 28th Street North, St. Petersburg, Florida 33716 (the "Assignee"), and Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, with its principal address of 902 Coral Reef Drive, New Bern, NC 28560 (the "Assignor").

WHEREAS, Assignor requested and Assignee agreed to make a \$6,500,000.00 loan to Assignor (the "Loan"), as evidenced by that certain Promissory Note dated as of even date herewith, in favor of Assignee in the original principal amount of up to SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,500,000.00) (as the same may be amended, restated, modified or replaced from time to time, the "Note"); and

WHEREAS, in connection with the Loan, Assignor is executing and delivering the following documents, all dated as of even date: (i) that certain Loan and Security Agreement (the "Loan and Security Agreement"); (ii) a UCC Filing Authorization, (iii) a UCC-1 Financing Statement, (iv) a Borrower's Affidavit, (v) a Borrower's Consent to Lender's Inspection Rights, (vi) a Statement Regarding No Representation, (vii) a Cooperation Agreement, (viii) an Affidavit Regarding No Pending Lawsuits, and (ix) a Closing Statement and Loan Disbursement Approval. All of the foregoing documents, along with the Note, this Assignment and any and all other instruments and documents required by Assignee in connection with the Loan, are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Assignor is the entity charged with the duty to administer the parcels of real property which are subject to the terms and provisions of the Master Declaration of Fairfield Harbour recorded in Deed Book 951, at Page 55 Craven County, Registry (including all amendments and/or supplements thereto, the "Declaration"), which Declaration has established the Articles of Incorporation of Assignor (together with all amendments and/or supplements thereto, collectively, the "Articles") and the By-Laws of Assignor (together with all amendments and/or supplements thereto, collectively, the "By-Laws"), as well as the power to levy assessments, for common expenses and to collect and enforce such assessments and collection rights by the exercise of lien rights (the "Lien Rights"); and

WHEREAS, pursuant to N.C.G.S Chapter 55A and the Declaration, Assignor possesses the power and authority to borrow, assess, lien and enforce its assessment rights; and

WHEREAS, all requisite actions have been taken by proper actions and resolutions of the Board of Directors of Assignor (the "Resolutions") (and by the members of Assignor subject to the Declaration, if required) directing that an assessment shall be adopted to provide for payment of the Loan, authorizing Assignor to secure the Loan and authorizing the appropriate officers of Assignor to execute the Loan Documents; and

WHEREAS, proper notice was given for: (a) holding a meeting of the Board of Directors of Assignor, at which meeting the Board of Directors passed resolutions which levied an assessment sufficient to timely repay the Note in accordance with the Loan Documents; and (b) securing the approval, if required under

the Declaration, the Articles or the By-Laws, of members of the Assignor to authorize the Assignor to borrow money and to enter into the Loan Documents, which Loan is to be secured by: (i) assessments levied by the Assignor against its members and their lots/units, the proceeds of which are designated for repayment of the Loan; (ii) all periodic assessments levied by the Assignor; and (iii) the excess funds from all other assessments remaining after the completion of the purpose for which the assessment was levied (collectively, referred to in this Agreement as the "Assessments" and/or as the "Collateral").

WHEREAS, the Resolutions were properly adopted by the Board of Directors of the Assignor and all approvals of members of the Assignor, if required by the Declaration, have been obtained; and

WHEREAS, as security for the timely and complete payment and performance of the obligations of the Assignor evidenced by the Note, Assignor has agreed to assign, convey and set over unto Assignee all of Assignor's right, title and interest in and to its Assessments, in and to its right to collect Assessments and in and to all Lien Rights possessed by the Assignor to collect the Assessments from its members upon default under the Note or under the other Loan Documents; and

WHEREAS, Assignor desires to secure to Assignee the timely and complete payment and performance of the obligations of the Assignor evidenced by the Note and evidenced by the other Loan Documents.

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations paid by Assignee to Assignor, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Assignor does hereby collaterally assign, transfer, pledge and set over unto Assignee, its successors and/or assigns, the Collateral, all future income including the Assessments and the proceeds of all funds realized from any and all Assessments levied by Assignor in order to raise the funds necessary to timely tender all payments coming due under the Note. The proceeds of the Loan shall be utilized for the Project (as defined in the Loan and Security Agreement). Assignor further collaterally assigns, transfers, pledges and sets over unto Assignee, Assignor's right to collect Assessments and all Lien Rights applicable to the enforcement of Assignor's right to collect Assessments, all as specifically described in the Declaration. This Assignment shall remain in full force and effect until all indebtedness evidenced by the Note shall have been fully paid and satisfied. This Assignment shall be subject to the following terms and conditions, to wit:

1. Recitals Affirmed. The parties hereby affirm all recitals set forth above as true and correct and binding on Assignor.

2. Administration of Assessments. Assignor shall have the right to administer the Assessments, collect the proceeds of the Assessments from its members; however, after the occurrence and continuance of any Default under the Note beyond any applicable cure or grace period, all further Assessments, at Assignee's discretion, shall be paid directly to Assignee and Assignee shall have the right to enforce the liability of the members of the Assignor to pay the Assessments to the same extent and degree as if it were the Assignor. Accordingly, Assignor shall, when requested by Assignee, take any and all further steps necessary to notify the members of the Assignor to direct their payments to be tendered to Assignee and to file such documents as may be necessary under the Declaration or otherwise to perfect liens against the property of non-paying members of the Assignor and thereafter to execute such other documents as may be necessary to demonstrate that such liens have been perfected for Assignee by suit for foreclosure or otherwise. Upon occurrence of any default under the Note and/or under any of the other Loan Documents, and if such default is not cured within any applicable cure or grace period, then Assignor shall deliver to Assignee all proceeds realized from Assessments imposed upon the members of the Assignor and Assignor agrees to execute and deliver to the holder of the Note any further assignments necessary to perfect the transfer of such funds and the pledge of the Lien Rights appurtenant thereto which may be reasonably required by Assignee to enforce collection of such Assessments. In addition, upon the occurrence of any default under the Note or under any of the other Loan Documents, and if such default is not cured within any applicable cure or grace period, then Assignee shall have the right and authority to cause Assignor to impose Assessments against the members of the Assignor and the lots/units subject to the Declaration and to collect said Assessments by enforcement of the Lien Rights herein pledged and

assigned. Notwithstanding the foregoing, should Assignor timely pay and discharge the indebtedness evidenced by the Note and by the other Loan Documents, then this Assignment shall be null and void and shall be of no further force or effect, and shall be released upon the request and at the expense of Assignor.

3. Covenants of Assignor. Assignor agrees that in connection with the levy and collection of Assessments against the members of the Assignor, it will:

- a. Use all funds collected to the extent necessary for the purpose of satisfying, reducing the interest, principal and other sums that may be due under the Note;
- b. Except in the ordinary course of business, not grant any concessions, forgiveness, forbearance or other relief from the obligation of each member of the Assignor to pay such Assessments without Assignor's written consent;
- c. Enforce all of the terms, conditions, provisions and covenants contained in the Declaration, in the Articles and in the By-Laws as such documents provide for the levy, collection and enforcement of Assessments against each member of the Assignor;
- d. Will duly and punctually perform and comply with any and all representations, warranties, covenants, terms and provisions to be performed or complied with by Assignor in the Declaration relating to its ability to levy and collect the Assessments and to enforce the Lien Rights;
- e. Will maintain all Assessments and Lien Rights in full force and effect;
- f. Will enforce the Assessments in accordance with their terms and the terms of the Declaration;
- g. Will appear in and defend any action or proceeding arising under or in any manner connected with any of the Assessments or the Lien Rights or the representations, warranties, covenants and agreements of the Assignor or other parties thereto;
- h. Will furnish Assignee upon demand with executed copies of all documents, notices, correspondence, meeting minutes and other written materials related to the levying and collection of the Assessments, or the enforcement of the Lien Rights;
- i. Will not, without first procuring the consent in writing of Assignee hereafter create or permit any lien or other encumbrance to exist on its property, real or personal, now owned or hereafter acquired by it;
- j. Will not, without first procuring the consent in writing of Assignee hereafter sell, transfer, assign, pledge, hypothecate, or in any manner whatever, dispose of its assets and any interest therein; and
- k. Will take all additional action to these ends as from time to time may be requested in writing by Assignee.

Violation of any of the above covenants shall constitute a default under this Assignment, and Assignee shall be entitled to exercise the remedies contained within this Assignment.

4. Application of Assessments. All sums collected and received by Assignee as a result of a Default under the Note and the subsequent enforcement of this Assignment shall first be applied to the payment of the reasonable costs and expenses of collection thereof. The balance, if any, which shall be known as the "net income", shall be applied first to interest due under the Note and then toward reduction of the principal indebtedness evidenced by the Note, provided, however, that no credit shall be given by Assignee for any sum or sums received from Assessments until the amount collected is actually received by Assignee, and no credit shall be given for any uncollected amounts or bills.

5. Additional Assessments. In the event the Assessments are not sufficient to timely tender all of the payments required under the terms and provisions of the Note, then Assignor shall levy such additional Assessments, including on an emergency basis, as may be necessary to timely tender all of the payments due pursuant to the terms and provisions of the Note and/or other Loan Documents.

6. Further Assurances. At any time and from time to time upon request by the Assignee, the Assignor shall make, execute and deliver to the Assignee any and all such other and further assignments, security agreements, financing statements, continuation statements, instruments of further assurance and other documents as may, in the opinion of the Assignee, be necessary or desirable in order to effectuate, complete or perfect, or to continue to preserve the assignment and security interest of the Assignee created or intended to be created hereby in any and all Assessments. Without limiting the rights of the Assignee hereunder, it is the intent of this Assignment that the assignment and security interest created hereby will automatically attach, without further act, to all Assessments coming into existence or obtained by the Assignor after the date hereof

7. Agents and Employees in Collection. Assignee may, after occurrence of a default as above provided, from time to time appoint and dismiss such agents or employees, including professionals, as shall be necessary for the collection and enforcement of such Assessments and Assignor hereby grants to such agents or employees so appointed full and irrevocable authority on Assignor's behalf to collect and enforce collection of the Assessments and to do all acts relating to the collection of the Assessments as may be authorized by the Declaration. Assignee shall have the sole control of such agents or employees and such agents or employees shall be paid from the proceeds of the Assessments as a cost of collection. Assignor hereby expressly releases Assignee from any liability to Assignor for the acts of such agents or employees so long as they exercise reasonable care. Furthermore, the costs and expenses of any agents utilized by Assignee shall be borne exclusively by Assignor.

8. Rights Cumulative. Assignor agrees that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted in any of the other Loan Documents executed by Assignor in favor of Assignee to evidence or further secure payment of the Note and the rights herein shall be in addition thereto.

9. Waiver. The collection and application of the proceeds of the Assessments by Assignee to the indebtedness evidenced by the Note shall not constitute a waiver of any default which might, at the time of application or thereafter, exist under the Note or under the other Loan Documents, and the payment of the indebtedness may be accelerated in accordance with the terms of the Note, notwithstanding such application. It is understood and agreed by Assignor that neither the existence of this Assignment nor the exercise by Assignee of its privilege to collect the Assessments hereunder shall be construed as a waiver by Assignee or its successors and assigns of the right to enforce payment and performance of the Loan in strict accordance with the terms and provisions of the Note and Loan Documents.

10. Cross Default. This Assignment is executed to secure a payment of the indebtedness evidenced by the Note and by the other Loan Documents. A default on the part of the Assignor under any one of the Loan Documents shall be and shall constitute a default under this Assignment. Conversely, a default under this Assignment shall be and shall constitute a default on the part of the Assignor under the terms, conditions and provisions of each of the other Loan Documents. This Loan shall be cross-defaulted and cross-collateralized with any other loan between Assignor and Assignee. In the event of a default on this Loan, a default shall be deemed to accrue under any other outstanding loan between Assignor and Assignee. In addition, the collateral securing any other Loan between Assignor and Assignee shall likewise secure this Loan.

11. Default; Remedies. The breach of any covenant or obligation hereunder, if not cured within any applicable cure or grace period, shall be a Default under the Note and Assignee shall have all remedies available under the Note or at law and in equity. In addition to such rights, Assignee shall have the right to notify each member of Assignor to pay directly to Assignee, until the Note shall be paid in full, all Assessments imposed against the members of the Assignor and each member of the Assignor shall be entitled to rely upon such written directions from Assignee without the necessity of receiving confirmation

from Assignor. In such event, upon the filing of a bill in equity to enforce the rights of Assignee hereunder and to the extent permitted by law and without regard to the value or the adequacy of the security, Assignee shall be entitled to apply for the appointment of a receiver to take financial control of the operation of Assignor. The receiver shall collect all Assessments and other revenues due to Assignor and shall apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the State of North Carolina. Assignor shall be liable for all costs and expenses of collection and enforcement hereof, including reasonable court costs and attorneys' fees, whether or not suit is instituted and including all costs and fees of appellate proceedings, provided that Assignee is determined to be a prevailing party with regard to litigation matters.

12. No Amendment of Resolutions, Declaration, Articles or By-Laws. As long as this Assignment remains in effect, Assignor agrees that neither the Resolutions, including representations as to notice and approval of the Loan, nor the Assessments may be modified nor any liability released, nor any changes made in connection with payment terms or any other changes, amendments or modifications of whatsoever kind, without the prior written consent of Assignee. Furthermore, Assignor shall not amend or modify the terms and provisions of the Declaration which would adversely affect the rights of Assignee under this Assignment without the consent of Assignee, and Assignor shall not amend or modify the By-Laws or the Articles without the consent of Assignee, if such amendments would adversely affect in any manner the rights of Assignee under this Assignment.

13. Continuing Obligation to Update Corporate Officers/Directors/Address. Assignor shall have a continuing, affirmative duty to provide written notification to Assignee immediately upon any addition, deletion or other change in any of the officers, directors and/or address of Assignor. Assignor understands that Assignee may rely on the most recent information actually received by Assignee, which may include information transmitted by facsimile and/or e-mail correspondence.

14. Notices. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and either hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at such address as each party has provided to the other, or at such other address which the party may hereafter designate by Notice given in like fashion. Notice shall be deemed received when delivered if by hand delivery or three (3) business days after sent postage prepaid, certified mail, return receipt requested. Notwithstanding the foregoing, routine communications such as ordinary distribution checks, copies of documents, etc., may be sent by ordinary first class mail or facsimile.

15. Successors and/or Assigns. This assignment of the right to collect Assessments and the pledge and assignment of the Lien Rights to enforce such Assessments shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon the successors and assigns of Assignor, including any entity or entities that may succeed or partially succeed Assignor as a party responsible for the operation of the real property subject to the Declaration.

16. Applicable Law; Severability; Captions; Plurality. This Assignment is being delivered and is intended to be performed in the State of North Carolina and shall be construed and enforced in accordance with and be governed by the laws of such State. In the event of any inapplicability or unenforceability of any provision of this Assignment, then such inapplicability or unenforceability shall not affect, limit or impair the validity or operation of all other provisions of this Assignment and shall be deemed to be deleted from this Assignment. The captions used herein are used for convenience only and shall not affect the interpretation of this Assignment. At all times, any word used in the singular herein shall also include the plural, and vice versa.

17. Recordable Release. Upon full and complete payment of the Note, Assignee shall execute, and deliver to Assignor, a release of this Assignment, in the form of a UCC-3, which may be recordable.

18. Time of Essence. Time is of the essence with respect to this Assignment and the other Loan Documents.

19. Headings. The headings of the paragraphs contained in this Assignment are for convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meaning of the parties hereto.

20. Modification. No modification, alteration or amendment to the terms or provisions of this Assignment shall be effective unless the same is in writing, is executed by both parties and is recorded in the public records of the Craven County, North Carolina.

21. Waiver. No failure by the Assignee to insist on full or timely performance of any covenant or obligation of the Assignor hereunder on any occasion shall be construed as a waiver of such covenant or obligation, or the right of the Assignee to insist on full or timely performance of such covenant or obligation at a future time.

22. Additional Liens. The Assignor may not assign or otherwise encumber, pledge or burden its interest or obligation under this Assignment, nor may the Assignor further pledge, encumber or assign the Assessments or the Lien Rights, without the prior expressed written consent of the Assignee.

23. Enforceability. In the event that any provision of this Assignment is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.

24. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute one and the same agreement.

25. Waiver of Trial by Jury. ASSIGNOR AND ASSIGNEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT, THE LOAN DOCUMENTS AND ANY AGREEMENT CONTEMPLATED OR TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.

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IN WITNESS WHEREOF, this Assignment has been executed as of the day and year first above written.

ASSIGNOR:

Fairfield Harbour Property Owners Association,
Inc., a North Carolina non-profit corporation

Witness: Jm daiti

Print Name: Jennifer L. Guclaitis

Witness: Cathleen K

Print Name: Cathleen Klich

By: Carolyn Gayle Albertini
Carolyn Gayle Albertini, President

By: David Pfefferkorn
David Pfefferkorn, Vice President

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STATE OF NORTH CAROLINA)
) SS:
COUNTY OF CRAVEN)

The foregoing document was acknowledged before me by means of X physical presence or ___ online notarization, this 31 day of July, 2024, by Carolyn Gayle Albertini, as President of Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, on behalf of and as an act of the corporation.



Sign: Nicole Barnett
Print or Stamp Name: Nicole Barnett
Notary Public, State of North Carolina
Commission No.: _____
My Commission Expires: July 1, 2029

STATE OF NORTH CAROLINA)
) SS:
COUNTY OF CRAVEN)

The foregoing document was acknowledged before me by means of X physical presence or ___ online notarization, this ___ day of July, 2024, by David Pfefferkorn, as Vice President of Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, on behalf of and as an act of the corporation.



Sign: Nicole Barnett
Print or Stamp Name: Nicole Barnett
Notary Public, State of North Carolina
Commission No.: _____
My Commission Expires: July 1, 2029