WAKE COUNTY, NC 658
LAURA M RIDDICK
REGISTER OF DEEDS
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10/10/2002 AT 16:49:05

BOOK:009656 PAGE:00510 - 00571

DECLARATION OF CONDOMINIUM FOR THE OAKS AT ALLYN'S LANDING CONDOMINIUM

(Condominium File No.____________)

Prepared by and Return to:
ROD O'DONOGHUE, JR., P.A., ATTORNEYS AT LAW
1100 Navaho Drive, Suite 106
Raleigh, NC 27609
(WCRD Vault Box 6)

NORTH CAROLINA

WAKE COUNTY

THIS DECLARATION is made as of October 10, 2002, by **FIRST RALEIGH DEVELOPMENT, LLC**, a North Carolina limited liability company, with its office located at 3903 Edwards Mill Road, Raleigh, Wake County, N.C. 27612 (the "Declarant," as hereinafter defined).

WITNESSETH:

Declarant is the owner of a tract of land and all improvements thereon (the "Property") in Wake County, North Carolina, and more particularly shown or described on attached Exhibit A, and Declarant is creating a condominium named the **OAKS AT ALLYN'S LANDING CONDOMINIUM** under the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act". Twenty-eight (28) residential condominium units have been built on the Property, which is being submitted to the North Carolina Condominium Act by this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration for the purposes and subject to all the terms and provisions hereinafter set forth and declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, uses, limitations, and obligations in furtherance of a plan for the division of said Property into Condominium Units all of which shall be deemed to run with the land and be binding on all parties having any right, title, or interest in the land or any part thereof, their heirs, successors and assigns.

ARTICLE I. ESTABLISHMENT OF CONDOMINIUM

Declarant is the owner of the fee simple title to the Property which is situated in Wake County, North Carolina, and on which Property there have been constructed two (2) buildings each containing fourteen (14) residential condominium units, for a total of twenty-eight (28) residential condominium units, and their supporting facilities and other appurtenant improvements. Each building is of frame construction with a combination of brick veneer and horizontal lap siding exterior as more particularly shown on the Condominium Plan, as hereinafter defined. Declarant does hereby submit the Property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (sometimes referred to as the "North Carolina Condominium Act" and the "Act"), and hereby declares the same to be a condominium to be known and identified as Oaks At Allyn's Landing Condominium, sometimes hereinafter referred to as the "Condominium."

ARTICLE II. SURVEY AND DESCRIPTION OF IMPROVEMENTS

A survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Units and Common Elements, as said terms are hereinafter defined, and their respective locations, approximate dimensions and principal building materials, is recorded in the Office of the Register of Deeds of Wake County, North Carolina in the Condominium File referenced on the first page of this Declaration (the Condominium Plan). Each Unit has been assigned an Identifying Number on the Condominium Plan and no Unit bears the same Identifying Number as any other Unit.

ARTICLE III. DEFINITIONS

The Condominium consists of Units and Common Elements, as said terms are hereinafter defined. Units shall include both Land Units and Developed Units. A Land Unit refers to a Unit consisting of land only on which no building has been completed (as evidenced by a certificate of occupancy or similar certificate of compliance with applicable ordinances and building code) and a Developed Unit consists of a Unit which comprises all or a part of a completed building. Upon completion of a building on a Land Unit, the owner of the Land Unit shall prepare and file an Amendment to this Declaration in accordance with Article V of this Declaration.

A. Unit Designations. The unit designation of each Condominium Unit, location and dimensions are set forth in the Plans (as hereinafter defined) for this Condominium filed in the Wake County Register of Deeds in the file number reference at the top of the first page of the Declaration.

The space comprising a Land Unit shall consist of the perimeter for each Land Unit as shown on the original, recorded plat which is part of the Plans. A Land Unit shall have no horizontal boundaries.

The space comprising a Developed Unit shall be bounded as follows:

1. The bottom horizontal boundary of a Developed Unit shall be the top surface of the subflooring material of all floors (for ground level floors, poured concrete shall be considered to be subflooring material);

2. The sides or vertical boundaries of a Developed Unit shall be the interior surface of all perimeter walls, interior bearing walls and/or bearing partitions wallpaper shall be considered part of the Developed Unit; and

3. The top horizontal boundary of a Developed Unit shall be the interior surface of the ceilings.

Units shall exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to Units and Common Elements up to and including the point of entry of such pipes, ducts, wires and conduits through the interior surfacing material for walls and ceilings and subflooring surfacing material for floors. All pipes, ducts, wires, conduits and other such facilities shall become a part of the respective Units at such point of entry.

All exterior doors, door casings, door sills, window frames, window casings, window sills, window panes and screens shall be part of the respective Units; provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames and panes shall be the responsibility of the Association, as hereinafter defined.

B. Common Elements. Common Elements shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Units, and all personal property held and maintained by the Association for the use and enjoyment of all the Owners of Units. It is specifically provided, without limitation, that water lines and sewer lines located outside public street rights-of-way and utility easements of the City of Raleigh are Common Elements.

C. Limited Common Elements. Certain portions of the Common Elements are reserved for the use of a particular Condominium Unit or particular Condominium Units to the exclusion of other Units and are designated as "Limited Common Elements." Limited Common Elements and the Condominium Unit(s) to which they are reserved are as follows:

A deck or patio located adjacent to a Unit is allocated exclusively for the use of such Unit.

D. Condominium Instruments. "Condominium Instruments" means this Declaration, the Articles of Incorporation (Exhibit D), the Bylaws (Exhibit E), the Plat and the Plans, including any and all exhibits, schedules, certifications and amendments thereof, as they may exist from time to time, made and recorded pursuant to the Act.

E. Property. The legal description of the Property comprising the Condominium on which the buildings and improvements are to be located is set forth in Exhibit "A" to this Declaration.

F. Declarant Control Period. "Declarant Control Period" means the period commencing on the date hereof and continuing until the earlier of (i) two years after the Declarant has ceased to offer Developed Units for sale in the ordinary course of business, (ii) two years after any development right to add new Developed Units was last exercised, (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five (75%) of the Developed Units (including the additional Developed Units which may be created pursuant to special declarant rights as set out in this Declaration) to Unit Owners other than the Declarant, or (iv) seven (7) years following conveyance of the first Developed Unit.

The terms "Allocated Interests," "Association," "Common Elements," "Common Expenses," "Common Expense Liability," "Condominium," "Declaration," "Development Rights," "Executive Board," "Identifying Number," "Limited Common Elements," "Residential Purposes," "Special Declarant Rights," "Unit," "Owner," and "Lessee," unless it is plainly evident from the content of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in Section 47C-1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of the filing of this Declaration.

ARTICLE IV.
OWNERSHIP OF UNITS AND ALLOCATED INTERESTS IN COMMON ELEMENTS

Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each said Unit, an Allocated Interest in the Common Elements. The Allocated Interest appurtenant to each Unit as of the date of this Declaration is as set out in Exhibit "B" attached hereto and made a part hereof. The Allocated Interest in the Common Elements of each Developed Unit as shown in said Exhibit "B" is allocated equally to each Developed Unit based upon the total number of Developed Units and the number of approved Developed Units for the Land Units. The Allocated Interest in the Common Elements appurtenant to each Land Unit as shown in said Exhibit "B" is allocated based on the number of approved Developed Units that may be constructed on the Land Unit. For example, at the time of this Declaration, there are 28 Developed Units and 5 Land Units with a 62 approved Developed Units for a total of 90 Developed Units, so each Developed Unit shall have a 1/90th Allocated Interest. If the number of approved Developed Units which may be constructed on the Land Units is changed, then the number of Developed Units and the number of approved Developed Units for the Land Units shall be redetermined and the Allocated Interest in the Common Elements of all Units shall be revised accordingly and set forth in an amendment to this Declaration which shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

The voting rights of the Condominium are allocated equally to the Units and, subject to the terms and conditions of this Declaration and the Articles of Incorporation and Bylaws of the Association, each Unit shall be entitled to one (1) vote.

The Common Expense Liability allocated to each Unit shall be as follows: (i) each Land Unit shall be allocated one percent (1%); and (ii) each Developed Unit shall be allocated a fraction of the remaining percentage (i.e., 100%, less the aggregate percentage allocated to the Land Units), the numerator of which is one (1) and the denominator of which is the number of Developed Units included within the Condominium at that time.

Except for those other assessments specifically permitted herein to be assessed against a Unit Owner, all assessments levied against the Unit Owners and their Condominium Units shall be uniform with respect to each type of Unit.

V.
DEVELOPMENT RIGHTS

A. Development Rights Reserved. Declarant reserves unto itself, its successors and assigns, as Declarant all rights provided to the Declarant pursuant to North Carolina General Statutes Chapter 47C, and the right to construct and create additional units on the Property and to establish additional Common Elements and to designate additional Limited Common Elements on the Property at locations determined by Declarant and to withdraw any portion of the Property from the Condominium or withdraw any Unit, Common Element and Limited Common Element on the Property from the Condominium. In adding additional units, Common Elements and Limited Common Elements Declarant reserves the right to grant easements, licenses and permits for utilities and other services to the Property and, generally, to develop the Units without encumbrance of this Declaration until such time as the Units are subjected to the terms and conditions of this Declaration.

If a development right is exercised by Declarant to a portion of the Property or the Units, there shall be no obligation for Declarant to exercise any such development right on the remainder of the Property or the Units.

The method of adding the Units, or any portion thereof, to the Condominium shall be pursuant to the provisions of G.S. 47C-2-109 and 110 of the North Carolina Condominium Act.

It is the intention of Declarant to develop the Land Units in up to six (6) phases; however, no assurance is given that as to the method of phasing or the specific areas within the Property that will be included in each phase or the order of phasing.

There is no specific time within which any or all of the Land Units and Developed Units shall be developed and added to the Condominium, except that all Units to be added shall be done within seven (7) years of the date of the sale of the first Unit.

The maximum number of Developed Units that may be created within the Property is ninety (90) Units.

All Developed Units created on the Property will be restricted exclusively for the uses permitted in this Declaration, and all restrictions, terms, covenants and conditions in this Declaration and the Association Bylaws shall apply to any and all additional Units that may be created within the Property.

Any buildings and Developed Units that may be erected upon the Property, or a portion thereof, will be compatible with the other buildings and Developed Units in the Condominium in terms of architectural style, quality of construction, and principal materials employed in construction. In addition to the buildings and Developed Units that may be erected or created upon the Property, or a portion thereof, the other improvements and Common Elements that may be made or created upon, or within, the Property or each portion thereof which may be added to the Condominium, will be generally similar in quality and quantity to the improvements and Common Elements located in the Condominium.

These assurances made will not apply with respect to any Property that is not added to the Condominium or that is withdrawn from the Condominium.

B. Special Declarant Rights Reserved. In addition to the rights reserved elsewhere in this Declaration, the Declarant reserves the following Special Declarant Rights with respect to the Condominium: (a) the right to complete the Condominium in accordance with the Plans filed from time to time as part of the Condominium File identified on the cover page hereof; (b) the right to exercise any Development Rights herein reserved in this Article; (c) the right to maintain models, sales and/or management offices at the Condominium along with appropriate signs for advertising the sale of Units and the location of such models and offices. Such offices shall be at locations selected by Declarant and may be within a Unit. The size of the offices shall be as determined by Declarant and may be relocated by Declarant, at its discretion; (d) the right of access, ingress and egress over the Common Elements for the purpose of discharging Declarant's obligations and reservation of rights hereunder and of making repairs required under the Condominium Instruments or contracts with purchasers of Units if access is not otherwise reasonably available; and (e) the right to elect or name persons to the Executive Board and to name an appoint officers of the Association and to otherwise control the activities of the Association and Board until the rights of Declarant terminate, all as specified in the Bylaws or this Declaration. All Special Declarant Rights reserved must be exercised on or before the end of seven (7) years after the time of recordation of this Declaration.

C. Right To Develop Land Units. Subject to architectural approval provided under this Declaration, the Owners of the Land Units are expressly permitted to subdivide those Units into additional Developed Units, and to establish additional Common Elements and to designate additional Limited Common Elements pursuant to plans approved in accordance with this Declaration. In subdividing those Land Units into additional Developed Units, Common Elements and Limited Common Elements the Declarant reserves and the Owners of the Land Units are hereby granted the right to grant easements, licenses and permits for utilities and other services to the Property and, generally, to develop the Developed Units. Further, the Owners of the Land Units are not required to obtain any approval of the Executive Board or the Association in order to accomplish such subdivision, but must submit those items to the Association as required by this Declaration and G.S. 47C-3-113(a).

If a development right is exercised by an Owner of a Land Unit, there shall be no obligation for that Owner to exercise any such development right on the remainder any Land Units owned by the Owner. The method of subdividing Units, or any portion thereof, shall be pursuant to the provisions of G.S. 47C-2-113 of the North Carolina Condominium Act.

The maximum number of Developed Units into which each Land Unit is permitted to be subdivided is listed on Exhibit B attached hereto.

Upon the preparation and filing of an amendment to this Declaration in accordance with subparagraph E, the applicable Land Unit shall cease to exist and shall be replaced by the Developed Units which were created or subdivided from such Land Unit.

D. Compatibility of Style. Any buildings and Units that may be added to the Property as part of the Condominium will be compatible with the other buildings and Units in the Condominium in terms of architectural style, quality of construction and size; provided, however, the architectural style and size of buildings and Units need not be identical to existing buildings and Units.

E. Architectural Approval. Other than improvements constructed, made, installed or planted by the Declarant, no building, wall, fence or other structure, hedge or mass planting shall be commenced, altered, erected, maintained or permitted to remain upon any Land Unit or Common Element until plans and specifications, showing the nature, kind, space, height, color, materials, and location of the same shall have been submitted to and approved in writing as compatible with the other buildings and Units in the Condominium in terms of architectural style, quality of construction and size; provided, however, the architectural style and size of buildings and Units need not be identical to existing buildings and Units. During the Declarant Control Period, such plans and specifications shall be submitted to and approved or rejected by the Declarant, and after the Declarant Control Period, such plans and specifications shall be submitted to and approval or rejected by the Executive Board or an architectural committee appointed by the Executive Board.

In the event the Declarant, the Executive Board or the architectural committee, as the case may be, fails to approve or disapprove such plans and specifications within thirty (30) days after all completed plans and specifications and other information reasonably requested have been properly submitted, approval will not be required and this Article will be deemed to have been fully complied with. Nothing herein contained shall be construed to require architectural approval for any improvements constructed, made, installed or planted by the Declarant nor to permit interference with the development of the Property by the Declarant so long as said development follows the general plan of development of the Property approved by FHA and/or VA, if any, or by the City of Raleigh from time to time.

The Declarant, Executive Board or architectural committee, as the case may be, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Unit during site preparation or construction, erection or installation of improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

F. Method of Exercising Development Rights. Upon the exercise of development rights creating new Units and additional Common Elements, or withdrawing of Units, Common Elements or other portions of the Property from the Condominium, the Declarant shall prepare and file, and upon the subdivision of the Land Units and creation of additional Common Elements, the Owner of the Land Unit shall prepare and file, an Amendment to this Declaration complying with this Declaration and the Act. The Common Elements as then constituted shall be reallocated to the Units, both new and previously existing, based on the formula set forth in Article IV hereof. Such amendment shall:

(a) assign an identifying number to each new Unit created;

(b) reallocate the Allocated Interests among the Units;

(c) describe all Common Elements and Limited Common Elements thereby created;

(d) designate the Unit(s) to which each limited Common Element is allocated.

In addition to the execution and recordation of the amendment to the Declaration described above, Declarant or Owner of a Land Unit shall record in the public records of Wake County either new plats and plans of the Condominium evidencing the changes effected by Declarant's exercise of its development rights, or new certifications of the plats and plans previously recorded if those plats and plans continue to conform to the Condominium.

G. Owner's Acceptance/Consent. Each Owner shall be deemed by his acceptance of the deed to a Unit to have consented to the Development Rights reserved in this Article and to any amendments previously or thereafter executed by Declarant pursuant to this Article V and to Article XXX hereof. Except as provided in this Declaration, the Allocated Interest in the Common Elements appurtenant to each Unit shall not be changed except with the unanimous consent of all Owners and with the consent of all of the Institutional Lenders, as defined in Article XXXII hereof.

Any and all of the Development Rights reserved under this Article V may be exercised as to any, all or none of the Property at different times and from time to time, and in any sequence, all in the sole discretion of the Declarant.

ARTICLE VI.
PROHIBITION AGAINST FURTHER SUBDIVISION OF UNITS AND REALLOCATION OF LIMITED COMMON ELEMENTS; SEPARATE CONVEYANCE OF COMMON ELEMENT INTEREST PROHIBITED

Except as provided in Article V above, no owner may subdivide his Unit into two or more Units, and Limited Common Elements may not be reallocated by Unit Owners.

Except as otherwise provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, the Allocated Interest in the Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit, and the Allocated Interest in the Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such Allocated Interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Except as provided in this Declaration, the Articles of Incorporation or the Bylaws, any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer which purports to grant any right, interest or lien in, to or upon an Allocated Interests in the Common Elements shall be void and of no effect unless the same transfer conveys, devises, encumbers or otherwise trades or deals with the entire Unit to which such Allocated Interests are appurtenant. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the Identifying Number assigned thereto in Condominium Plan without limitation or exception, shall be deemed and construed to affect the entire Unit and its Allocated Interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its Allocated Interests in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety.

ARTICLE VII.
THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Units, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use thereof and setting forth the obligations and responsibilities incident to ownership of each Unit and its Allocated Interest in the Common Elements, and said Units, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium. The covenants and restrictions in this Declaration are for the purpose of insuring the best use and most appropriate development and improvement of the Property and the Units; to protect the Owners against such improper use of surrounding Units and Common Elements as will depreciate the value of the Property or the Units; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious or compatible color schemes, architectural style, quality of construction and size; to insure the highest and best development of the Property and the Units; and in general to provide adequately for a high type and quality of improvements in the Property and thereby to enhance the values of investments made by the purchasers of Units therein.

The recording data for all easements and licenses which have been recorded and which now affect the Condominium is set out on Exhibit "C" which is attached to this Declaration and incorporated herein by reference.

ARTICLE VIII.
PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON ELEMENTS

The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Units in the Condominium for their use and the use of their family members, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Units. Notwithstanding anything above provided in this Article, the Association, as hereinafter identified, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Unit, his family, guests and invitees, may be entitled to use the Common Elements, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof; provided that no rule or regulation shall restrict the right of ingress and egress of an Owner to his or her Unit.

In the event of the construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements resulting either in the common elements encroaching on any unit, or in an unit encroaching on the common elements or on another unit, there shall be created a valid easement for both the encroachment and its maintenance - as long as the physical boundaries of the units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears in the declaration. Any such easement shall extend for whatever period the encroachment exists.

ARTICLE IX.
RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

Recognizing that the proper use of a Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements in common with the Owners of all other Units, and that it is in the interest of all Owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the Allocated Interests in the Common Elements appurtenant to each Unit shall remain undivided and no Owner shall bring or have any right to bring any action for partition or division.

ARTICLE X.
ADMINISTRATION OF THE CONDOMINIUM
BY OAKS AT ALLYN'S LANDING OWNERS ASSOCIATION

Oaks At Allyn's Landing Owners Association, Inc. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Units, a nonprofit North Carolina corporation known and designated as Oaks At Allyn's Landing Owners Association, Inc. (the "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. The Owner of each Unit shall automatically become a member of said Association upon his acquisition of an ownership interest in title to any Unit and its Allocated Interests in the Common Elements, and the membership of such Owner shall terminate automatically upon such Owner's being divested of ownership interest in the title to such Unit, regardless of the means by which ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said corporation or to any of the rights or privileges of membership except as specifically set forth in this Declaration, the Articles or Bylaws. In the administration of the operation and management of the Condominium, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Executive Board of said Association may deem to be in the best interests of the Association.

ARTICLE XI.
RESIDENTIAL USE RESTRICTIONS
APPLICABLE TO UNITS

Except as provided in Paragraph A of Article XII hereof, each Unit is hereby restricted to residential use by the Owner thereof, his or her family members, guests, invitees and tenants. Any lease of a Unit shall be for a term of no less than 3 months. Any lease or rental agreement for a Unit shall be in writing. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation, Bylaws, rules and regulations of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. Upon request, the Executive Board shall be furnished with a copy of any lease. Corporate, partnership and limited liability company members may permit the use of a Unit owned by it by its principal officers, directors, partners, members, managers, other guests and lessees. Such member shall annually sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration and with the rules and regulations which may be promulgated by the Association from time to time and acknowledging that the party's right to use such Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate, partnership or limited liability company member to remove a party for failure to comply with the terms and provisions of the Declaration and/or the rules and regulations of the Association or for any other reason, the member shall forthwith cause such party to be removed, failing which, the Association, as agent of the Owner, may take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefor upon demand, together with such attorneys' fees as the Association may have incurred in the process of removal.

ARTICLE XII
DECLARANT'S RIGHTS; RESERVED EASEMENTS

A. Models: Advertising on Common Elements. Subject to the Restrictive Covenants, Declarant shall have the right to maintain or allow its agents to maintain sales models within the Condominium, in such numbers and sizes as Declarant may select from time to time. Subject to the Restrictive Covenants, Declarant shall also have the right to display signs upon the Common Elements during the period of Unit sales. Any such models or signs may be located at such place or places within the Condominium as Declarant shall select, and Declarant shall have the right at any time and from time to time to relocate any models or signs from their previous location to another location. Such rights shall terminate when Declarant no longer owns any Unit in any phase of the Condominium.

B. Easements through Common Elements. Declarant shall be deemed to have such easements on, across and over the Common Elements as shall be reasonably necessary for the exercise of any of the Development Rights set out in Article V of this Declaration or the Declarant Rights reserved in this Article, or as may be reasonably necessary in the discharge of any obligations imposed on Declarant by this Declaration or under the North Carolina Condominium Act.

C. Drainage Easement. A non-exclusive easement is hereby reserved to the Declarant, its successors and assigns, to enter upon, across, over, in, and under any portion of the Common Elements for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Common Elements so as to improve the drainage of water on the Common Elements and/or any adjacent property. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of Owners and the Association, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work.

D. Recreational Amenities Easements. The Declarant hereby reserves for itself and for the benefit of any person developing or owning any recreational amenities adjacent to or in proximity to the Condominium, across, over, in and under the Common Elements, a nonexclusive right and easement of access and use of all streets, roadways, parking areas, paths and walkways located within the Condominium reasonably necessary for the construction, maintenance, operation, access and use of any golf course or other recreational amenities. Declarant reserves the right to grant or deed such easement rights to any person or entity developing recreational amenities and to impose such additional restrictions on such easements at that time and from time to time as may be reasonably required to effectuate the purposes of such easements. The reservation of these easements is made for the benefit of Declarant, developer, and for the associated maintenance and service personnel.

Nothing herein shall be construed as a requirement or representation that or any other recreational amenities will be constructed by Declarant or any other person.

E. Declarant's Rights Incident To Construction. Declarant, for itself and its successors and assigns, hereby retains the right to complete the improvements indicated on the Condominium Plan and to perform any required warranty work, and further reserves a right and easement of ingress and egress over, in, upon, under and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of improvements on any real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to its property by any Owner or such Owner's family, tenants, employees, guests, or invitees.

F. Additional Rights of Declarant. So long as Declarant owns any Condominium Units primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents and employees shall have a transferable right and easement for the maintenance of signs, a sales office, a business office, promotional facilities and model Units on the Property, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development or sale of the Condominium Units on the Property. The Declarant may use any three (3) Units which it owns or leases for models and/or sales offices, which Units may be changed from time to time. During the period that Declarant owns any Unit, Declarant, its duly authorized contractors, representatives, agents and employees, shall have a transferable easement on, over, through, under and across the Common Elements for the purpose of doing all things reasonably necessary and proper in connection the development of the Property or the exercise of any of its rights under this Declaration.

ARTICLE XIII.
USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION

The use of Common Elements, including the Limited Common Elements, by the Owners and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Executive Board in accordance with its Bylaws.

ARTICLE XIV.
THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES: ADDITIONAL USE RESTRICTIONS

A. No Immoral/Unlawful Use. No immoral, improper, offensive or unlawful use shall be made of any Unit or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Unit shall permit or suffer anything to be done or kept in his Unit, on the Common Elements, or on any Limited Common Elements which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Unit, or which interferes with the peaceful possession and proper use of any other Unit, the Common Elements or the Limited Common Elements.

B. Business Activities and Signs. No business activities, other than the development and sales activities of Declarant as permitted hereunder, shall be conducted on any portion of the Property. Except as may be required by legal proceedings and except as permitted in this Declaration, no "For Sale" or "For Rent" signs or other signs or advertising posters of any kind shall be maintained or permitted on any portion of the Property without the express prior written permission of the Executive Board, and the approval of signs and posters shall be upon such conditions as may from time to time be determined by the Executive Board. Notwithstanding the foregoing, the provisions of this section shall not apply to any signs maintained on the Property by Declarant, its agents, representatives or assigns, during the period that Declarant has any Condominium Unit for sale, or to "For Sale" or "For Rent" signs complying with rules and regulations adopted by the Executive Board, or to any notice or other advertisement posted on any community bulletin board by an Owner or his licensed real estate broker or agent or to a "For Sale" sign posted by a Mortgagee who becomes the Owner as purchaser at a Foreclosure sale conducted with respect to a Mortgage or a transferee pursuant to any proceeding in lieu thereof, subject to reasonable rules and regulations established by the Executive Board with respect to such "For Sale" sign.

C. Pets. No animal, livestock or poultry of any kind shall be raised or kept in any Unit or upon the Common Elements, except that a reasonable number of dogs, cats and other generally recognized household pets may be kept and maintained thereon, provided that such pets shall not be a danger or menace to others, that they are not kept or maintained for any commercial purposes or in such a manner to be offensive or dangerous to the residents of the Condominium and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable laws, ordinances and regulations of the State of North Carolina, Wake County and the City of Raleigh, and (ii) such reasonable rules and regulations as the Executive Board may adopt from time to time. In the event of a dispute over whether an animal is a permitted household pet for purposes hereunder, the determination of the Declarant during the Declarant Control Period and thereafter by the Executive Board shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Executive Board shall have the absolute power to prohibit any particular pet from being kept on any part of the Condominium, including inside a Unit, if the Executive Board in its sole and absolute discretion determines that the pet is dangerous, a nuisance, or otherwise has a negative impact on the Condominium. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, except that such a structure may be constructed or maintained with any balcony, deck, patio, terrace area or other Limited Common Elements if the same shall be approved in advance in writing by the Executive Board. Pets shall be under leash when walked or exercised in any portion of the Common Elements. No pet shall be permitted to leave its droppings on any portion of the Common Elements, and the Owner of such pet shall immediately remove the droppings.

ARTICLE XV.
RIGHT OF ENTRY INTO UNITS IN EMERGENCIES

In case of any emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Executive Board of the Association, or any other person authorized by it, or the managing agent, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

ARTICLE XVI.
RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS

Whenever it may be necessary to enter any Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements, including the Limited Common Elements, the Owner of each Unit shall permit other Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

ARTICLE XVII.
LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY UNITS; NO RIGHT TO ALTER COMMON ELEMENTS

A. An Owner of a Unit may make improvements or alterations to his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium.

B. Notwithstanding the foregoing, no recessed lighting shall be permitted in any Unit.

C. The Association, through its Executive Board or an architectural control committee appointed by the Executive Board, shall regulate the external design, appearance, use, location and maintenance of the Condominium and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. No Owner shall cause any improvements, alterations, repairs or changes to be made to the exterior of the Condominium (including painting or other decoration, the installation of electrical wiring, television or radio antennae or satellite dishes, or any other objects or devices which may protrude through the walls or roof of the Condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No Owner shall cause any object to be fixed to the Common Elements (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or to any Limited Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Executive Board being first had and obtained. No Owner shall cause any improvements, alterations, repairs or changes to be made to the Common Elements (including but not limited to painting) or to any Limited Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Executive Board being first had and obtained.

D. Any Owner desiring to make any improvement, alteration or change described above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Executive Board which shall evaluate such plans and specifications in light of the purpose of this Article as set forth above. As a condition to the granting of approval of any request made under this Article, the Executive Board may require that the Owner requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Executive Board. Thereafter, the Owner and any subsequent Owner of the Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth in Article XXVII of this Declaration, and subject to the lien rights described in said Article.

E. Notwithstanding the foregoing provisions of this Article, any improvements or alterations are subject to the provisions of the Restrictive Covenants.

ARTICLE XVIII.
PROHIBITION AGAINST RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

Owners owning adjoining Units may not relocate the boundaries between such Units.

ARTICLE XIX.
RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR; RIGHT OF ASSOCIATION TO GRANT PERMITS, LICENSES AND EASEMENTS

The Association shall have the right to make or cause to be made such alterations or improvements to the Common Elements, including Limited Common Elements (including the right to grant and establish upon, over and across the Common Elements such permits, licenses and easements as are necessary or desirable for the proper operation of the Condominium and for providing services and utilities to the Units and the Common Elements) which do not materially prejudice the rights of the Owner of any Unit in the use and enjoyment of his Unit, provided the making of such alterations and improvements are approved by the Executive Board of the Association, and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Unit or Units, then the cost of making, maintaining, repairing and insuring such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Unit or Units exclusively or substantially benefitted, the assessment to be levied in such proportion as may be determined by the Executive Board of the Association.

ARTICLE XX.
MAINTENANCE AND REPAIR BY OWNERS OF UNITS

Every Owner shall perform promptly all maintenance and repair work within his Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans or other appliances or equipment, including any utility fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of any and all walls, ceilings and floors within his Unit including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Unit. Whenever the maintenance, repair and replacement of any item for which the Owner of a Unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

ARTICLE XXI.
MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements (including the Limited Common Elements), including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility and other services to the Units and said Common Elements, and should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Owner, his immediate family, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner who is responsible for the act causing the damage (whether done by himself or by his family, tenants, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

Notwithstanding the foregoing, all exterior lighting is and shall be leased from the public utility provider (currently Carolina Power and Light Company) and shall not be the property of the Association or any Owner, unless same is purchased by the Association.

ARTICLE XXII.
AUTHORITY TO PURCHASE INSURANCE

Insurance policies upon the Condominium (other than title insurance) shall be purchased by the Association in the name of the Association, as trustee for the Owners, for the benefit of the Owners and their respective mortgagees, as their interests may appear, and shall provide for the issuance of certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust on a Unit.

Such insurance policies must provide that:

1. Each 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;

2. To the extent available without additional premium, the insurer waives its right to subrogation under the policy against any Owner, members of his household, the Association and their respective servants, agents and guests;

3. No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

4. If, at any time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy described in this Article, the Association's policy provides primary insurance; and

5. The insurer issuing the policy may not cancel, refuse to renew or substantially revise the policy until thirty (30) days after notice of the proposed cancellation, non-renewal or revision has been mailed to the Association and to each Owner and first mortgage holder or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued, all such notices to be sent such parties at their respective last-known addresses.

Each Owner may obtain insurance, at his own expense, affording coverage upon his Unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

ARTICLE XXIII.
INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE PROCEEDS

A. Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium, meaning the Units and Common Elements:

1. Casualty insurance covering the buildings and all improvements upon the land and all personal property included within the Condominium property, except personal property owned by the Owners, shall be procured in an amount equal to one hundred percent (100%) insurable replacement value thereof (exclusive of excavation, streets and exterior parking spaces) as determined annually. Such policy shall contain an Agreed Amount Endorsement or an Inflation Guard Endorsement, if available. By way of illustration and not of limitation, such casualty insurance shall cover fixtures, installations or additions, or equal replacements thereof, comprising a part of the building within each individual Unit (as that term is defined in Article III hereof) in accordance with the original Condominium plans and specifications. In determining the amount of coverage for such fixtures, installations or additions, the Executive Board of the Association shall annually set the standard allowance for such items as carpeting, bathroom and kitchen cabinets, wall covering, vinyl floor covering, ceramic tile, built-in kitchen appliances, built-in bookshelves, etc., which were included in the original Condominium plans and specifications. By way of illustration and not of limitation such casualty insurance shall not cover furniture, furnishings or other personal property owned by, used by or in the care, custody, or control of a Owner (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Unit by the Owner thereof at his expense. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief. The maximum deductible amount under any policy shall be one percent (1%) of the face amount of the policy; provided, however, that in no event shall the total amount of insurance after application of any deductibles be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date. Funds to cover deductible amounts shall be included in the operating reserve account maintained by the Association.

2. Comprehensive general liability insurance insuring the Association in an amount not less than One Million Dollars ($1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Association or of any Owners to an Owner.

3. The Executive Board shall maintain fidelity coverage against dishonest acts by the Association's officers, Executive Board members, trustees and employees, and all others who are responsible for handling funds of the Association. The professional management person or firm employed to manage the Association shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of this paragraph. If the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or Executive Board members of the Association can and do directly receive or disburse the monies of the Association), then the Executive Board shall provide the coverage set forth in this paragraph.

Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves and budgeted special assessments; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

B. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses, to be assessed and collected from all of the Owners of Units in proportion to each Unit's share in the Allocated Interests, unless otherwise specifically allocated by the Executive Board, in its sole discretion.

C. If the insurance described in this Article is not reasonably available, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

D. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, 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. The Association shall hold such proceeds in trust for the benefit of the Association, the Owners and their respective mortgagees in the following shares:

1. Proceeds on account of damage to Common Elements: in undivided shares for each Owner and his mortgagee, if any, which shares as to each Unit are shown on Exhibit "B" attached hereto, or as may be amended from time to time.

2. Proceeds on account of damages to Units shall be held in the following undivided shares:

a. Partial destruction when the Condominium is to be restored: for the owners of damaged Units in proportion to the costs of repairing the damage suffered by each damaged Unit; or

b. Total destruction of the Condominium or where the Condominium is not to be restored: for all Owners, the share of each being set forth in Exhibit "B," as amended from time to time.

E. In the event a mortgagee endorsement has been issued as to a Unit, the share of the Owner shall be held for the mortgagee and the Owner as their interests may appear, but nothing herein shall be construed so as to give any mortgagee the right to participate in the determination of reconstruction or repair.

F. Proceeds of insurance policies received by the Association for damages to Units shall be distributed to or for the benefit of the beneficial Owners in the following manner:

1. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners of the damaged Units, in proportion to each Unit's share of Allocated Interests in the Common Elements, all remittances to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by it.

2. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners of the damaged Units, in proportion to each Unit's share of Allocated Interests in the Common Elements, remittances to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by it.

ARTICLE XXIV.
RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

A. If any part of the Condominium shall be damaged by casualty, the damaged area shall be reconstructed or repaired unless:

1. The Condominium is terminated as provided in Article XXIX hereof; or

2. Repair or replacement would violate any state or local health or safety statute or ordinance; or

3. The Owners, by a vote of Owners entitled to cast at least eighty percent (80%) of the votes of the Association (including one hundred percent (100%) of the Owners of Units which shall not be rebuilt or whose Limited Common Elements shall not be restored) determine not to rebuild or restore all or any portion of the damaged area; or

4. Institutional Lenders (as defined in Article XXXII of this Declaration) representing at least fifty-one percent (51%) of the Allocated Interests subject to mortgages

held by Institutional Lenders, determine not to rebuild or restore all or any portion of the damaged area.

B. Any reconstruction or repair shall be performed substantially in accordance with the plans and specifications shown on the Condominium Plan.

C. If the damage is only to those parts of one or more Units for which the responsibility for maintenance and repair is that of the Owner, then the Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Executive Board deems necessary or appropriate.

E. When the damage is to both Common Elements and Units or to Common Elements only, the insurance proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Elements and the balance to the cost of repairing the Units.

F. In the event less than all of the damaged area is to be repaired or restored, the insurance proceeds shall be utilized and/or distributed as follows:

1. Proceeds attributable to damaged Common Elements shall be used to restore such Common Elements to a condition compatible with the remainder of the Condominium;

2. Proceeds attributable to Units and to Limited Common Elements which are not rebuilt or restored shall be distributed to the Owners of Units which are not rebuilt or restored and to the owners of Units appurtenant to the damaged Limited Common Elements, in proportion to the damage to such Unit and/or Limited Common Elements and to the mortgagees of all such Units, as their interests may appear; and

3. Any remaining proceeds shall be distributed among all Owners and mortgagees, as their interests may appear, in proportion to the Allocated Interests of each Owner's Unit.

G. Each Owner shall be deemed to have delegated to the Executive Board of the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

H. All remittances to Owners and their mortgagees shall be payable jointly to them.

I. In the event that Owners vote not to rebuild a damaged Unit, that Unit's Allocated Interests shall be automatically reallocated among the remaining Units at the time of such vote. The

Association shall prepare, execute and record an amendment to the Declaration reflecting such reallocation.

J. The cost of repair or replacement of a Common Element in excess of insurance proceeds and reserves is a Common Expense of the Association.

ARTICLE XXV.
CONDEMNATION OF COMMON ELEMENTS OR UNITS

A. In the event a Unit or a portion thereof is acquired by eminent domain, the condemnation award therefor shall be paid to the Owner. In such an event, if the condemning authority does not acquire the Unit's share of Allocated Interests in the Common Elements, that Unit's Allocated Interests are automatically reallocated as provided in N.C. Gen. Stat. Section 47C-1-107 and in accordance with the basis for allocation provided in this Declaration. The Association shall prepare, execute and record an amendment to the Declaration reflecting such reallocation. Any portion of a Unit remaining after condemnation which may not practically or lawfully be used for residential purposes shall thereafter be a part of the Common Elements.

B. In the event a portion of the Common Elements is acquired by eminent domain, any portion of the condemnation award attributable to the taking of Limited Common Elements shall be paid to the Association as trustee for Unit Owners, and the Association shall apportion the award among the Owners of Units to which such Limited Common Elements were allocated at the time of the taking, in shares of equal value, or in such other proportion as the Association, in its reasonable discretion, shall determine.

C. In the event a portion of the Common Elements is acquired by eminent domain, any portion of the condemnation award not payable to Owners under Paragraph B of this Article shall be paid to the Association.

D. The Association is hereby be designated to represent the unit owners, as attorney-in-fact, in any related proceedings, negotiations, settlements, or agreements.

ARTICLE XXVI.
ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of the Owners of all of the Units. In the event of the sale or transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. Further, the Owner of each Unit shall notify the Association of the names of the parties holding any mortgage on his Unit, the amount of such mortgages and the recording information which shall be pertinent to identify the mortgages. The holder of any mortgage upon any Unit may, if it so desires, notify the Association of the existence of the mortgage held by such party and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

ARTICLE XXVII.
ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To administer properly the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Units, costs and expenses which are sometimes herein referred to as "Common Expenses." It is specifically provided, without limitation, that ad valorem taxes, public assessments and government liens levied against the Common Elements are Common Expenses. To provide the funds necessary for such proper operation, management and capital improvement, the Association is hereby granted the right to make, levy and collect assessments against the Owners and their Units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management of and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Units, including the Declarant.

A. The Common Expense Liability allocated to each Unit shall be as follows: (i) each Land Unit shall be allocated one percent (1%); and (ii) each Developed Unit shall be allocated a fraction of the remaining percentage (i.e., 100%, less the aggregate percentage allocated to the Land Units), the numerator of which is one (1) and the denominator of which is the number of Developed Units included within the Condominium at that time. Except for those other assessments specifically permitted herein to be assessed against a Unit Owner, all assessments levied against the Unit Owners and their Condominium Units shall be uniform with respect to each type of Unit. Unless specifically otherwise provided for in this Declaration, all assessments made by the Association shall be in proportion to the Common Expense Liability of the various Units; provided, however, that any portion of the Common Expense which, in the opinion of the Executive Board, benefitted fewer than all Owners, may be assessed solely against the Owners so benefitted, in such proportions as the Executive Board, in its reasonable discretion, shall determine.

In the event utility services which are provided to Owners are charged to and paid by the Association, the cost of such utilities shall be a part of the Common Expenses and levied against each Owner in such proportions as the Executive Board, in its reasonable discretion, shall determine.

B. Assessments provided for herein shall be payable in monthly installments or such other installments as may be determined by the Executive Board of the Association. Such assessments shall commence as to all Units on the first day of the month following conveyance of the first Unit by the Declarant. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. During that portion of the Association's fiscal year from the recording of this Declaration to the end of such fiscal year, the annual Assessment applicable to each Condominium Unit shall be as set forth in the estimated budget for the

Condominium delivered to each purchaser of a Condominium Unit. Until the Association makes a Common Expense assessment, Declarant shall pay all Common Expenses.

C. In addition to the annual assessment authorized above, subject to the approval of the Unit Owners, the Executive Board may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto.

D. The Executive Board of the Association shall adopt an annual budget in advance for the following fiscal year. Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and the budget shall take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Executive Board shall keep separate, in accordance with paragraph "F" of this Article XXVII, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of a budget, the Executive Board shall provide a summary thereof to all Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget, not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless the meeting is the annual meeting of the Association, there shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting Unit Owners holding a majority of the Allocated Interest in the Common Elements reject the budget. In the event the proposed budget is rejected, the budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

E. Until December 31 of the year in which the first Unit is conveyed to an Owner, the maximum annual assessment shall be $1,800.00 for each Developed Unit. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by not more than 20% of the previous assessment without approval in accordance with Article XXX (E).

F. The Executive Board of the Association, in establishing the annual budget for operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained out of the annual Assessment as a reserve fund for replacement of and capital improvements to the Common Elements (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of portions of the Common Elements. The amount to be allocated to the Capital Improvement Fund shall be established by the Executive Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Executive Board of the Association, be expended for current operation and maintenance.

G. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner of a Unit, the same may be commingled with monies paid to the Association by the other Owners of Units. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit. When the Owner of a Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.

H. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of twelve percent (12%) per annum (or at such other rate as is specified in N.C. Gen. Stat. Section 47C-3-115(b), as amended from time to time) until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to Association. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, shall be subject to such reasonable late charge per month for each monthly assessment in arrears as the Executive Board may from time to time fix. All monies owing to the Association shall be due and payable at the main office of the Association in the State of North Carolina.

I. The Owner or Owners of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Unit while such party or parties are Owner or Owners of a Unit. In the event that any Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all late charges and costs of collecting such assessment or installment thereof and interest thereon, including reasonable attorneys' fees, whether suit be brought or not. Any Unit shall be conveyed subject to a lien for any unpaid Assessments subject to the provisions of Section 47C-3-116(f) of the Act and this Declaration, but the personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

J. No Owner of a Unit may exempt himself from liability for any assessment levied against him or his Unit by waiver of the use of enjoyment of any of the Common Elements, or by abandonment of the Unit or in any other way.

K. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and management results in benefit to all of the Owners of Units, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Owner, the Association is hereby granted a lien upon each Unit and its appurtenant Allocated Interests, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all late charges, fines and all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant Allocated Interests in the Common Elements. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed under power of sale under the laws of the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said Unit. The lien granted to the Association shall further secure such interest on the delinquent assessments, costs of collection, including but not limited to court costs and reasonable attorney's fees, advances for taxes, payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of twelve percent (12%) per annum (or at such other rate as is specified in N.C. Gen. Stat. Section 47C-3-115(b), as amended from time to time) on any advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Unit expressly subject to such lien rights, except as otherwise provided in this Declaration.

L. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the Wake County public records, in the manner provided by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, fees, charges, late charges, fines, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, it shall be satisfied of record.

The lien provided for herein shall be subordinate to: (i) the lien for any first deed of trust or mortgage recorded before the delinquent assessment became due and payable; (ii) any liens and encumbrances recorded before the docketing of the lien (including any mortgage or deed of trust which is not a first lien); and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Any person, firm or corporation acquiring title to any Unit and its appurtenant Allocated Interests in the Common Elements by virtue of a foreclosure of a first deed of trust, deed in lieu of foreclosure of a first deed of trust or judicial sale relating to a first deed of trust, shall be liable and obligated only for assessments as shall accrue and become due and payable for said Unit and its Allocated Interests in the Common Elements subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In such event, any assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Units as a part of the Common Expense, including such purchaser, its heirs, successors and assigns. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure of his former Unit.

The lien herein granted to the Association will not be affected by the sale or transfer of a Unit, except in the case of a foreclosure of a Unit by the holder of a first deed of trust thereon, in which case the foreclosure will extinguish the lien for any assessments due and payable prior to the foreclosure sale, but will not relieve any subsequent Owner of the Unit from responsibility for all assessments due and payable from and after the date of the foreclosure sale.

M. Whenever any Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association as to such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

N. In any voluntary conveyance of a Unit, the purchaser thereof shall not be personally liable for any unpaid assessments owed by the seller prior to the time of such voluntary conveyance, absent an express written assumption of such liability by the purchaser.

O. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to Association.

P. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the existence of each phase of the Condominium, the Association has established a working capital fund. At the earlier of either the occupancy of a Unit or the time of the closing of the first sale of each Unit, an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association for such Unit shall be paid to the Association. The Declarant shall pay such amount in the event of an occupancy of a Unit without a sale, but the Declarant shall be entitled to be reimbursed for such amount by the purchaser thereof upon a later sale of such Unit by the Declarant. In the event of any other first a sale of a Unit, the purchaser thereof shall pay such working capital amount to the Association at closing. Declarant shall not be entitled to use working capital funds to defray any of Declarant's expenses or construction costs or to make up any budget deficits paid by Declarant. No payments made into the working capital fund shall be considered advance or current payment of regular assessments. The working capital fund shall be maintained in a segregated account by the Association.

ARTICLE XXVIII.
COMMON SURPLUS

"Common Surplus," meaning all funds and other assets of the Association (including excess of receipts of the Association, including but not limited to assessments, rents, profits and revenues from whatever source) over the amount of the Common Expenses, shall be owned by the Owners of all Units in the same proportion that the Allocated Interests in Common Elements appurtenant to each Owner's Unit bears to the total of all Allocated Interests in Common Elements appurtenant to all Units. The Common Surplus shall be held by the Association in the manner prescribed in, and subject to, the terms, provisions and conditions of this Declaration; provided, however, that the Association shall have the sole discretion as to whether any distribution of Common Surplus should be made to Owners and, if so, when. Nothing in this Article shall require periodic distributions of Common Surplus. Except for distribution of any insurance proceeds as herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Units in accordance with their Allocated Interests in the Common Elements.

ARTICLE XXIX.
TERMINATION

The Condominium shall be terminated, if at all, in the following manner:

A. Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by agreement of (I) Owners to which at least eighty percent (80%) of the votes in the Association are allocated and (ii) Institutional Lenders (as defined in Article XXXII of this Declaration) representing at least sixty-seven percent (67%) of the votes of mortgaged Units; provided, however, that an Institutional Lender shall be deemed to have consented to termination if it fails to respond to a written notice of termination within thirty (30) days following its receipt of such notice, which notice was sent by certified or registered mail, "return receipt" requested. In the event termination is approved, a termination agreement to that effect shall be executed in the same manner as a deed and duly recorded. The termination agreement shall become effective when it has been recorded in the public records of Brunswick County, North Carolina, and shall specify a date after which it will be void unless then recorded.

B. Following termination of the Condominium, the Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium, but such contract shall not be binding on the Owners until approved by agreement of Owners owning at least eighty percent (80%) of the Allocated Interests in the Common Elements and the termination agreement described above reflects such approval and is recorded as required. For purposes of any such sale following termination, title to that real estate, upon approval of sale, shall be deemed vested in the Association as Trustee for the holders of all interests in the Units and the Common Elements. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association shall continue in existence with all powers vested in the Association before the termination. Proceeds of the sale shall be held by the Association as Trustee, and must be distributed to Owners and lien holders, as their interests may appear, in proportion to the respective interests of the Owners and their mortgagees as set forth below. Unless otherwise specified in the termination agreement, as long as the Association is deemed to hold title to the real estate, each Owner and his successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Unit. During the period of that occupancy, each Owner and his successors in interest remain liable for all assessments and other obligations imposed on Owners by law and under this Declaration, and shall remain liable for all assessments and other obligations imposed on Owners by law and under this Declaration.

C. In the event the real estate constituting the Condominium is not to be sold following termination, title to the Common Elements and to all real estate in the Condominium shall vest in the Owners as tenants in common in proportion to each Unit's Allocated Interests, and all liens on such Units shall shift accordingly. While such tenancy in common exists, each Owner and his successors in interest shall have an exclusive right to occupancy of the property that formerly constituted his Unit, and shall remain liable for all assessments and other obligations imposed on Owners by law and under this Declaration.

D. Following termination, creditors of the Association holding liens on Units which were recorded prior to the effective date of termination of the Condominium, may enforce those liens in the same manner as any lienholder. All other creditors of the Association shall be treated as if they had perfected liens on the Units immediately before termination.

E. The respective ownership interests of Owners described in this Article XXIX are the fair market values of their Units and Common Element interests immediately before the termination, as determined in an appraisal prepared by one or more independent appraisers selected by the Association. The appraisal shall be distributed to the Owners and shall become final unless disapproved within thirty (30) days after distribution by Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Unit and Common Element interest by the total fair market values of all the Units, and Common Elements.

ARTICLE XXX.
AMENDMENT OF DECLARATION

This Declaration may be amended in the following manner:

A. An Amendment to this Declaration may be proposed by the Executive Board of the Association acting upon a vote of a majority of its Board Members, or by Owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated, whether meeting as members or by instrument in writing signed by them. Upon any amendment to this Declaration being proposed by the Executive Board or Owners, the proposed amendment shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed amendment. It shall be the duty of the Secretary to give to each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than fifty (50) days before the date set for such special meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his address as it appears on the records of the Association, first class postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the proposed Amendment must be approved by an affirmative vote of the members owning Units in the Condominium in order for such Amendment to become effective. Except as required by N.C. Gen. Stat. Section 47C-2-117(d), or any other provision of the Act, or as specifically provided elsewhere in this Declaration, an affirmative vote of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated shall be required. Upon adoption, such amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment, so certified and executed with the same formalities as a deed, shall be recorded in the Public Records of Wake County, North Carolina. Such amendment shall specifically refer to the recording data identifying the Declaration and shall become effective upon recordation. Thereafter, a copy of said amendment in the form in which the same was placed of record by the officers of the Association shall be delivered to the Owners of all Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment. At any meeting held to consider such amendment, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

B. Declarant shall have the right to amend this Declaration pursuant to Article V of this Declaration, without the consent or joinder of any Owners or their mortgagees.

C. The Association shall have the right to amend this Declaration pursuant to the provisions of N.C. Gen. Stat. Section 47C-1-107, Article XXIV and Article XXV of this Declaration, without the consent of any Owners or their mortgagees.

D. Except to the extent expressly permitted or required by this Declaration, consistent with the North Carolina Condominium Act, no amendment to this Declaration may create or increase additional Development Rights or Declarant's Rights, increase the number of Units allowed hereunder, or change the boundaries of any Unit, the allocated interest of a Unit, or the uses to which any Unit is restricted, without the unanimous consent of the Owners of all Units and the Institutional Lenders, as hereinafter defined.

E. No material alteration, amendment or modification of this Declaration, the Articles of Incorporation or Bylaws of the Association shall become effective without the prior written consent of Institutional Lenders (as hereinafter defined) holding first mortgage loans on Units to which at least fifty-one percent (51%) of the votes in the Association have been assigned. For the purposes of this paragraph, any amendment to the following provisions of this Declaration, the Articles of Incorporation or Bylaws shall be deemed material:

voting rights;

increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

reductions in reserves for maintenance, repair, and replacement of Common Elements;

responsibility for maintenance, repairs and replacements;

reallocation of interests in the general or limited Common Elements, or rights to their use;

redefinition of any Unit boundaries;

convertibility of Units into Common Elements or vice versa;

expansion or contraction of the Condominium, or the addition, annexations or withdrawal of property to or from the Condominium;

hazard or fidelity insurance or bond requirements;

imposition of any additional restrictions on the leasing of Units;

imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;

a decision by the Association to establish self-management if professional management had been required previously by Association documents or by an eligible mortgage holder;

restoration or repair of the Condominium (after damage or partial destruction) in manner other than that specified in this Declaration, the Articles of Incorporation or the Bylaws; or

any provisions that expressly benefit mortgage holders, insurers or guarantors.

Provided, however, that nothing in this paragraph shall be construed to require the consent of an Institutional Lender as to amendments allowed under Articles V or XXV of this Declaration. Provided further, that an Institutional Lender shall be deemed to have approved any material amendment if it fails to respond to a written notice of amendment within thirty (30) days following its receipt of such notice, which notice was sent by certified or registered mail, "return receipt" requested.

F. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Declarant shall be made without the written consent of Declarant being first had and obtained.

ARTICLE XXXI.
REMEDIES IN EVENT OF DEFAULT

The Owner of each Unit and the Association shall be governed by and shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and lawful rules and regulations and decisions of the Association as any of the same are now constituted or as they may be amended from time to time. A default by the Association or a default by the Owner of any Unit shall entitle the Association or the Owner of a Unit, as appropriate, to the following relief:

A. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles of Incorporation or Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Owner against the defaulting party, whether another Owner or the Association.

B. As provided herein and in the Bylaws, each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. The Bylaws of the Association provide that the Association may fine an Owner for each violation of this Declaration, the Bylaws or the Rules and Regulations of the Association, or may assess liability for damage to Common Elements caused by an Owner, which damage is not covered by the Association's insurance. As set forth in the Bylaws, a hearing for an accused Owner must be held before an adjudicatory panel appointed by the Association, which panel shall accord to the party charged with the violation: (i) notice of the charge; (ii) opportunity to be heard and to present evidence; and (iii) a notice of the decision. Any such fine or liability assessment shall be both the personal obligation of the Owner against whom the fine is assessed and a lien upon the Unit of such owner and its appurtenant Allocated Interest, to the same extent as the assessments described in Article XXVII hereof.

D. If damage is inflicted on any Unit by an agent of the Association acting within the scope of his activities as such agent, the Association shall be liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner.

E. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

F. The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above mentioned documents shall not constitute a waiver of the right of the Association or of the Owner to enforce such right, provision, covenant or condition in the future.

G. All rights, remedies and privileges granted to the Association or the Owner of a Unit, pursuant to any terms, provisions, covenants or conditions of this Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

H. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above mentioned documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

I. The failure of an Institutional Lender, as said term is herein defined, to enforce any right, provision, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

ARTICLE XXXII.
RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

A. "Institutional Lender" or "Institutional Lenders," as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by liens on residences, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and eligible insurers and governmental guarantors. In addition to any other rights set forth in this Declaration, so long as any Institutional Lender shall hold any mortgage upon any Unit, or shall be the owner of any Unit, such Institutional Lender shall have the following rights:

1. To approve the company or companies with whom casualty insurance is placed and to be given timely written notice as to any lapse, cancellation or material modification of any insurance policy maintained by the Association.

2. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and the annual financial statement and report of the Association, prepared by an independent accountant designated by the Association, such financial

statement and report to be available within one hundred twenty (120) days following the end of the Association's previous fiscal year.

3. To be given timely written notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any material alteration, amendment or modification of this Declaration, the Articles of Incorporation or the Bylaws, as set out in Paragraph E of Article XXX of this Declaration. Such notice shall state the nature of the amendment or action being proposed.

4. To be given timely written notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Unit encumbered by a mortgage held by such Institutional Lender.

5. To be given timely written notice of any condemnation or casualty loss which affects either a material portion of the Condominium or the Unit securing its mortgage.

Whenever any Institutional Lender desires the provisions of this Declaration to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association at its registered office identifying the Unit or Units upon which such Institutional Lender holds a mortgage or mortgages, or identifying any Units owned by it, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XXXIII.
RIGHT OF DECLARANT TO DESIGNATE MEMBERS OF EXECUTIVE BOARD OF THE ASSOCIATION

Pursuant to the provisions of N.C. Gen. Stat. Section 47C-3-103, Declarant reserves the right to designate and select a majority of the persons who shall serve as Members of each Executive Board of the Association during the Declarant Control Period. For purposes of this Declaration, the "Declarant Control Period" means the period commencing on the date hereof and continuing until the earlier of (i) two years after the Declarant has ceased to offer Developed Units for sale in the ordinary course of business, (ii) two years after any development right to add new Developed Units was last exercised, (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five (75%) of the Developed Units (including the additional Developed Units which may be created pursuant to special declarant rights as set out in this Declaration) to Unit Owners other than the Declarant, or (iv) seven (7) years following conveyance of the first Developed Unit. Notwithstanding the above, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Developed Units to Unit Owners other than Declarant, at least one Member of the Executive Board (but not less than 25% of the Members of the Executive Board) shall be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Developed Units to Unit Owners other than Declarant, not less than thirty-three percent (33%) of the Members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Whenever Declarant shall be entitled to designate and select any person to serve on any Executive Board of the Association, the manner in which such person shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person selected by it to act and serve on said Executive Board and to replace such person with another person to act and serve in the place of any Board Member so removed for the remainder of the unexpired term of any Board Member so removed. Any Board Member designated and selected by Declarant need not be an Owner or a resident of the Condominium.

ARTICLE XXXIV.
CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS

The Common Elements may only be conveyed or subjected to a security interest by the Association if Owners entitled to cast at least eighty percent (80%) of the Votes of the Association, including eighty percent (80%) of the Votes allocated to Units not owned by the Declarant agree to that action; provided, however, all Owners of Units to which any Limited Common Elements or subject it to a security agreement (neither the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium nor the transfer, sale or encumbrance of an undivided interest in the Common Elements, as an appurtenance to a Unit, shall be deemed a transfer within the meaning of this paragraph), all in accordance with Section 47C-3-112 of the Act.

ARTICLE XXXV.
EASEMENTS & DISCLAIMERS FOR GOVERNMENTAL AUTHORITIES

An easement is hereby established over the Common Elements for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, natural gas, cable antennae and other telecommunication lines, fire fighting, garbage collection, postal delivery, emergency, rescue and public safety activities and law enforcement activities.

Pursuant to the Raleigh City Code Section 10-3074(b), the City of Raleigh shall not be responsible for failing to provide any emergency or regular fire, police or other public service to the Condominium or any Unit when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association or the owners or occupants of the Units. Accordingly, the Executive Board of the Association is empowered and authorized to make all efforts to assure that there is adequate access to all Units at all times and to correct any blocking of access or defects in access. In addition, neither the City of Raleigh nor the State of North Carolina shall be responsible for maintaining any private street. Such responsibility shall rest with the Association and the owners of the Units in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

ARTICLE XXXVI.
DECLARATION BINDING ON ASSIGNS AND SUBSEQUENT OWNERS; DECLARANT BOUND BY CONDOMINIUM DOCUMENTS

The restrictions and burdens imposed by the covenants of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its Allocated Interests in Common Elements. This Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who may subsequently become Owners of Units in the Condominium, and their respective heirs, legal representatives, successors and assigns. When there are unsold units in the project, the Declarant, enjoys the same rights and assumes the same duties as they relate to each individual unsold unit.

Declarant shall be responsible for the payment of any assessments which may be levied by the Association against any Units owned by Declarant, and for complying with the remaining terms and provisions of this Declaration, the Articles and Bylaws in the same manner as any other Owner, except as otherwise expressly provided in this Declaration, the Articles and Bylaws.

In the event of dissolution of Declarant at a time when it is the Owner of a Unit, the rights of the Declarant under this Declaration, the Articles and Bylaws, shall pass to and may be exercised by its successors receiving ownership of any such Unit in dissolution.

ARTICLE XXXVII.
CONTRACT RIGHTS OF ASSOCIATION

The undertakings and contracts authorized by the initial Executive Board (including contracts for the management of the Condominium) shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by any Executive Board duly elected by the membership after the property identified herein has been submitted to the plan of condominium ownership, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Executive Board of the Association in accordance with all applicable condominium documents; and provided further that any undertaking or contract entered into by the Association during the time that the Declarant has the right to appoint a majority of the Executive Board shall contain a provision reserving the right of the Association to terminate such undertaking or contract without penalty upon not more than ninety (90) days written notice to the other party(ies) thereto.

ARTICLE XXXVIII.
MISCELLANEOUS PROVISIONS

A. Severability. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

B. Liberal Construction; Conflict. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration, wherever appropriate, the singular shall include the plural and the masculine gender shall include the feminine or neuter. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration. In the event of a conflict between the provisions of this Declaration and the provisions of the Articles of Incorporation or the Bylaws of the Association, the provisions of this Declaration shall prevail over the Articles of Incorporation and the Bylaws and the Articles of Incorporation shall prevail over the Bylaws.

C. FHA/VA/FNMA Approval. As long as the Declarant controls the Association, the following actions will require the prior approval of the Federal Housing Administration and/or Federal National Mortgage Association, as the case may be: Annexation of additional properties other than that defined herein as Additional Property, dedication of Common Elements, deeding in trust the Common Elements, mergers and consolidations and amendment of this Declaration.

D. Person to Receive Service of Process. The registered agent for the Association is designated as the person to receive service of process in any action which may be brought against or in relation to the Condominium as agent therefor. The initial registered agent of the Association is Michael J. Weigensberg and his address at the date of this Declaration is 3903 Edwards Mill Road, Raleigh, Wake County, N.C. 27612.

E. Recorded Liens, Encumbrances and Exceptions. The liens, encumbrances and exceptions applicable to the Condominium are listed on attached Exhibit C.

[The rest of this page is left blank. Signatures are on the following page.]

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed ~~under seal~~ by its duly authorized Manager, as of the 10th day of October, 2002.

DECLARANT:

FIRST RALEIGH DEVELOPMENT, LLC,
a N.C. limited liability company

By: **NADCO NC II, INC.,** Manager

~~(CORPORATE SEAL)~~

By: M. J. W.
Michael J. Weigensberg, President

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that **MICHAEL J. WEIGENSBERG**, personally came before me this day and acknowledged that he is President of **NADCO NC II, INC.**, a North Carolina corporation, Manager of **FIRST RALEIGH DEVELOPMENT, LLC**, a N.C. limited liability company, and that by authority duly given and as the act of the corporation as the Manager of said limited liability company, the foregoing instrument was signed in its corporate name by him as its President ~~and sealed with its corporate seal~~ for and on behalf of said limited liability company.

Witness my hand and official seal, this the 10th day of October, 2002.

(SEAL-STAMP)

Notary Public

My Commission expires: 7-11-2006

RODERICK W. O'DONOGHUE, JR.
NOTARY
PUBLIC
WAKE COUNTY, N.C.