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WAKE COUNTY, NC 158
LAURA M RIDDICK
REGISTER OF DEEDS
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DECLARATION FOR
THE COTTAGES AT WHITAKER CONDOMINIUM
PURSUANT TO
CHAPTER 47C OF THE NORTH CAROLINA GENERAL STATUTES
THE NORTH CAROLINA CONDOMINUM ACT
BY
THE COTTAGES LLC,
A NORTH CAROLINA LIMITED LIABILITY COMPANY

Prepared by and Return To:
Alison R. Cayton,
Manning, Fulton & Skinner, P.A.
Box 133 WCRD

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DECLARATION
FOR
THE COTTAGES AT WHITAKER CONDOMINIUM
PURSUANT TO
CHAPTER 47C OF THE NORTH CAROLINA GENERAL STATUTES,
THE NORTH CAROLINA CONDOMINIUM ACT
[Wake County Register of Deeds Condominium File No. 368]

The Cottages LLC, a North Carolina limited liability company, with its principal place of business located at 2600 Fairview Road, Suite 100, Raleigh North Carolina, 27608, hereinafter defined as "Declarant", does hereby make, declare and establish this Declaration of Condominium as, and for, the plan of ownership of The Cottages at Whitaker Condominium, being the property and improvements hereinafter described.

W I T N E S S E T H :

WHEREAS, the Declarant is the owner of certain real property in Wake County, North Carolina, more particularly described and defined in Exhibit A attached hereto and made a part hereof (hereinafter called "Property"); and

WHEREAS, the Declarant intends to divide the improvements on the Property into Condominium Units as defined under the provisions of the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and to sell and convey said Units to purchasers subject to the covenants, conditions and restrictions herein reserved.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit A attached hereto 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 and 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.

1.

ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

Declarant does hereby submit that Property described in Exhibit "A" attached hereto and the improvements and appurtenances thereto to the form of condominium ownership pursuant to the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) as the same now exists or may be hereafter amended, and hereby declares that the Property shall be subject to the uses, restrictions, covenants, easements, limitations, obligations, and governing authority set forth in this Declaration of Condominium and as the same may be hereafter amended.

That the Property and improvements thereon shall be known as The Cottages at Whitaker Condominium (hereinafter referred to as "Condominium").

2.

DESCRIPTION OF PROPERTY AND IMPROVEMENTS

2.01 Property. The legal description of the Property on which the buildings and

improvements are to be located is set forth in Exhibit "A" to this Declaration, along with a list of encumbrances thereon.

2.02 Unit Designations. The unit designation of each Condominium Unit, location, floor plan and typical description are set forth on the Condominium Unit Ownership File which number is referenced at the top of the first page of this Declaration recorded in the Office of the Register of Deeds of Wake County, North Carolina.

2.03 Other Descriptions. Actual building locations, Limited Common Areas, Common Areas, utility lines, ground elevations, building elevations, and other land and construction information shall be found in the Condominium Unit Ownership File which number is referenced at the top of the first page of this Declaration recorded in the Office of the Register of Deeds of Wake County, North Carolina.

3.

DEFINITIONS

The following shall be definitions applicable to this Declaration:

3.01 "Allocated Interests" means the undivided interests in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit as shown on Exhibit "B" attached hereto.

3.02 "Association" or "Unit Owners' Association" means that non-profit corporation, the name of which shall be The Cottages at Whitaker Owners Association, Inc. and which shall manage the Common Elements of the Condominium as specified in this Declaration, its Articles of Incorporation and corporate Bylaws.

3.03 "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the directors of the Association, and on behalf of the Association, as prescribed in its Articles of Incorporation and Bylaws.

3.04 "Building" means a structure constructed or erected on the Property which contains one or more Condominium Units.

3.05 "Bylaws" means the Bylaws of the Association as they now or hereafter exist.

3.06 "Common Elements" shall mean and comprise all of the Condominium other than the Condominium Units as herein defined, and appurtenances thereto.

3.07 "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including, but not limited to:

(1) All sums lawfully assessed against the Unit Owners by the Association;

(2) Expenses of administration, maintenance, repair, or replacement of the Common Elements;

(3) Expenses agreed upon as Common Expenses by the Association;

(4) Expenses declared to be Common Expenses by the provisions of the North Carolina

Condominium Act, by the Declaration or by the Bylaws;

(5) Hazard, and such other insurance premiums as the Declaration and/or Bylaws may require the Association to purchase;

(6) Taxes and public assessments levied against the Common Elements not otherwise assessed against the Units;

(7) Any utilities which are Common Expenses as determined by the Association;

3.08 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit.

3.09 "Common Profits" means the balance of all assessment income and other income, rents, profits, and revenues from the Common Elements remaining after the deduction of the Common Expenses or reserves therefor;

3.10 "Common Surplus" means all funds and other assets of the Association, including excess receipts of the Association from assessments, rents, profits and revenues from whatever source in excess of the Common Expense.

3.11 "Condominium" shall mean all Condominium Units, the Common Elements and any Limited Common Elements, as said terms are herein defined, and all appurtenances, all comprising the Property described on Exhibit "A" attached hereto and the improvements thereon.

3.12 "Condominium Unit" or "Unit", as the term is used herein shall mean and comprise each of the separately addressed Units which are designated and which shall be the physical portion of the Condominium designated for separate ownership or occupancy in the Condominium Unit Ownership File which number is referenced at the top of the first page of this Declaration recorded in the Office of the Register of Deeds of Wake County, North Carolina. The boundaries of each unit shall be the wall, ceiling and floor as the same are defined in the North Carolina Condominium Act.

3.13 "Declarant" means the named Declarant on page one (l) hereof, and its successors and assigns to whom any of its rights hereunder are expressly transferred, in whole or in part, or who succeeds to any Special Declarant Right;

3.14 "Declarant Control Period" or "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of (i) two years after all Declarants have ceased to offer units for sale in the ordinary course of business, (ii) two years after any development right to add new units was last exercised, (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five (75%) of the Units (including Units which may be created pursuant to special declarant rights) to Unit Owners other than a Declarant, or (iv) five (5) years following conveyance of the first Unit.

3.15 "Declaration" means this instrument, as amended and duly recorded, by which the Property is submitted to the provisions of the North Carolina Condominium Act, and as it, from time to time, may be amended;

3.16 "Development Rights" means those rights, if any, reserved by Declarant herein to add real estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide Units, convert Units into Common Elements, to withdraw any part of the Property from the Condominium, or other rights as may be provided in the North

Carolina Condominium Act, all as reserved in Section Five (5) herein.

3.17 "Lessee" means any person entitled to present possession of a leased Unit, whether lessee, sublessee or assignee.

3.18 "Institutional Lender" shall be as defined in Section 31.

3.19 "Limited Common Elements" are certain portions of the Common Elements allocated or reserved by the Declaration for the use of a particular Condominium Unit or Units to the exclusion of other Units. Limited Common Elements and the Condominium Units to which they are reserved are described as follows:

(A) Any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the boundary of a Unit and which serves only that Unit are Limited Common Elements and allotted to the Unit they serve. Any of the foregoing which lies partially within and without a Unit and serves more than one Unit is a Common Element.

(B) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, all exterior doors, exterior glass surfaces, windows, door frames, thresholds and fixtures designed to serve a single Unit, but located outside the Unit's boundaries, as defined herein, are Limited Common Elements allotted to the Unit which they serve.

(C) Any pipe, wire, wiring, conduit, electrical circuit, panel or switch, plumbing, junction box, switch box, drain, water line or pipe, water heater or meter designed to serve a single Unit but located either wholly or partly outside of the Unit boundaries, as defined herein, or outside of the Building, are Limited Common Elements allotted to the Unit which they serve.

(D) Any air handling ducts or drains, condenser ducts, drains or components, whether for heating or cooling designed to serve a single Unit but located either wholly or partly outside of the Unit boundaries, as defined herein, or outside of the Building, are Limited Common Elements allotted to the Unit which they serve.

Maintenance and repair of a Limited Common Element, including the costs thereof, shall be the responsibility of the Owner, or if more than one, Owners, of the Unit or Units to which it is allocated. The Board however, shall be permitted to determine whether the Association shall undertake the responsibility of the maintenance and repair of any Limited Common Element and the costs thereof.

No Limited Common Element may be altered or reallocated without the unanimous consent of all Unit Owners whose Units are affected. Any Unit Owners who reallocate a Limited Common Element as among themselves shall first seek and obtain approval from the Board of Directors. Any reallocation of a Limited Common Element, upon approval by the Board, shall be evidenced by an amendment to this Declaration executed by the Unit Owners affected and evidencing executed approval by the Association which amendment shall be recorded before it shall become effective. The Unit Owners affected by the reallocation shall pay the cost and expense of preparation of the amendment and the recording thereof; however, the form and substance of the amendment shall be first approved by the Board of Directors or the counsel for the Association.

Common Elements not designated or allocated as Limited Common Elements may not be so

allocated to Unit Owners except upon written unanimous consent of all Unit Owners in the Condominium. Any such allocation shall be evidenced by a recorded amendment as set forth above.

3.20 "Majority" or "majority of unit owners" means the owners of more than fifty percent (50%) of the aggregate allocated interests in the Common Elements as established by this Declaration, in person or by proxy at a duly called meeting of the members of the Association;

3.21 "Mortgage" means a mortgage or deed of trust;

3.22 "Mortgagee" means a mortgagee or the owner and holder of a promissory note and deed of trust which describes a Unit or Units as the security property.

3.23 "North Carolina Condominium Act" or "Act" means the provisions of Chapter 47C of the North Carolina General Statutes as the same now exists or may hereafter be amended, or any new enactment in substitution or replacement thereof as the same by law may be applied to this Condominium.

3.24 "Person" means any individual, corporation, partnership, association, business trust, estate, trust, joint venture, government or any subdivision or agency thereof, or other legal or commercial entity.

3.25 "Plans" means the plans of the Buildings and Property filed with this Declaration and located in the Condominium File in the Office of the Register of Deeds in the County in which this Declaration is filed showing thereon graphically all particulars of the buildings and the Units.

3.26 "Property" means the real estate described on Exhibit "A" (and the real estate described on Exhibit "A-I", if added by Declarant pursuant to rights reserved therein) together with the buildings, structures and improvements thereon, or hereafter constructed thereon and all easements, rights, privileges and appurtenances belonging thereto, or in any way pertaining thereto which is herein submitted to the provisions of the North Carolina Condominium Act.

3.27 "Special Declarant Rights" means those rights, including Development Rights, permitted by the North Carolina Condominium Act and specified in Section Six (6) herein.

3.28 "Unit Designation" means the identifying number, letter, symbol or combination thereof designating a Condominium Unit and set forth in this Declaration.

3.29 "Unit Owner" or "Owner" means Declarant or any other person, or any combination thereof, who owns a Condominium Unit, but excludes any person having an interest in a Unit solely for security purposes.

4.

OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT ALLOCATED INTEREST IN COMMON ELEMENTS

4.01 Ownership Interest. Each Condominium Unit shall be held, 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 Condominium Unit, an undivided allocated interest in the Common Elements. The undivided allocated interest appurtenant to each Condominium Unit shall be on a pro-rata basis as set out in Exhibit "B" attached hereto and made a

part hereof.

4.02 Change in Allocated Interests. Except such reallocations as may be required by law, as may arise in the case of condemnation as set forth in Section 40 herein, as may result from a casualty loss as specified in Section 24 herein, or as may occur because of exercise of any Development Rights reserved by Declarant herein, if any, the Allocated Interests in the Common Elements allotted to each Unit shall not be changed except with the unanimous consent of all of the Owners of all of the Condominium Units and with the consent of all of the Institutional Lenders, as defined in Section 31 hereof, holding first mortgages or deeds of trust on the Condominium Units.

4.03 No Division of Common Elements. The Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements by an Owner made without the Condominium Unit to which that interest is allocated is void.

5.

DECLARANT DEVELOPMENT RIGHTS RESERVED

Declarant reserves unto itself, its successors and assigns, as Declarant, the right to add to the Condominium, and to the property described on Exhibit A, all or any part of that real estate described on Exhibit A-l attached to this Declaration (herein called "Additional Property"). In adding all or any part of the Additional Property Declarant reserves the right to divide the Additional Property into additional units and to establish additional Common Elements and to designate additional Limited Common Elements on the Additional Property at locations determined by Declarant. 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 Additional Property and, generally, to develop the Additional Property without encumbrance of this Declaration until such time as the Additional Property is subjected to the terms and conditions of this Declaration.

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

The method of adding the Additional Property, 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 create condominiums on the Additional Property in two (2) phases; however, no assurance is given that as to the method of phasing or the specific areas within the Additional Property that will be included in each phase or the order of phasing.

There is no specific time within which any portion or all of the Additional Property shall be added to the Condominium, except that all property to be added shall be done within five (5) years of the date of the sale of the first Unit in that Property described in Exhibit "A".

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

All additional Units created on the Additional 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 Additional Property.

Any improvements, buildings and Units that may be created upon the Additional Property, or a portion thereof, will be compatible with the other buildings and Units in the Condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size.

In addition to the improvements, buildings and Units that may be erected upon the Additional Property, or a portion thereof, the other improvements and Common Elements that may be made or created upon, or within, the Additional 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 Additional Property that is not added to the Condominium.

Upon the exercise of such development rights creating new units and additional common elements, Declarant 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 Section 4.01 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.

6.

SPECIAL DECLARANT RIGHTS RESERVED

6.01 The Declarant reserves the following Special Declarant Rights with respect to the Condominium:

(A) All of those rights of Declarant, if any, reserved as Declarant Development Rights pursuant to Section 5 herein.

(B) The right to complete the Condominium in accordance with the Plans filed contemporaneously herewith as an Exhibit to this Declaration and as a part of the Unit Ownership File identified on page 1 hereof.

(C) The right to maintain sales or management offices at the Condominium along with appropriate signs for advertising the sale of Units and the location of such office. Such office shall be at a location selected by Declarant and may be a Unit occupancy

or may be a separate standing office located on the Common Elements. The size of the office shall be as determined by Declarant and may be relocated by Declarant, at its discretion. Declarant reserves the right to use a Unit for a sales office and a model for exhibition to prospective purchasers. If Declarant shall construct a sales office in the Common Elements, the same shall be removed by Declarant within thirty (30) days of the sale of the last Unit or the office shall then become part of the Common Elements.

(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.

(E) The right to elect or name persons to the Board of Directors and to name and appoint officers of the Association and to otherwise control the activities of the Board and Association until the rights of Declarant terminate, all as specified in the Bylaws or this Declaration.

7.

RESTRICTION AGAINST FURTHER SUBDIVIDING OF CONDOMINIUM UNITS; RELOCATION OF UNIT BOUNDARIES; SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS PROHIBITED

7.01 No Division of Condominiums. No Condominium Unit may be divided or subdivided into a smaller Unit or Units, nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit, except as expressly set forth below in Section 7.04. The Allocated Interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the Allocated Interest in Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Condominium Unit.

7.02 Instruments of Conveyance. Any conveyance, mortgage or other instrument which purports to grant any title, right, interest or lien in, to or upon a Condominium Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Condominium Unit and its appurtenant Allocated Interest in Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any Condominium Unit, without limitation or exception, shall be deemed or construed to affect the entire Condominium Unit and its appurtenant Allocated Interest in the Common Elements.

7.03 Joint Ownership Not Prohibited. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant Allocated Interest in the Common Elements by more than one person as tenants in common, joint tenants, or as tenants by the entirety.

7.04 Relocation of Unit Boundaries. The boundaries of Units may be relocated by the affected Unit Owners upon application to, and approval by, the Board of Directors. Any such application must be in such form and contain such data as the Board may require detailing the relocation of the boundaries of the affected Units and the reallocation of their respective Allocated Interests. Such application shall be accompanied by a plat prepared by a North Carolina licensed

engineer or architect showing the relocation. The Board in its discretion may determine the relocation to be unreasonable. If the Board shall approve the application, or if within thirty (30) days after filing the application with the Board, the Board has not denied the application, then the Board, at the expense of the Owners affected, shall have prepared an amendment to the Declaration and the same shall be filed of record in the county in which the Condominium is located, at which time the relocation shall be effective.

8.

THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium 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 of said Condominium Units, Common Elements and Limited Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant Allocated Interest in the Common Elements, and said Condominium 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 Property constituting the Condominium.

9.

PERPETUAL NONEXCLUSIVE EASEMENT IN COMMON ELEMENTS

9.01 Common Elements. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their employees, servants, guests, invitees and lessees, for all proper and normal purposes, including, but not limited to the right of access, ingress and egress to and from all public streets and public walkways and over walkways and parking areas within the Common Elements, and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners of Condominium Units.

9.02 Rules and Regulations. Notwithstanding anything provided in this Section, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his employees, servants, invitees, guests and lessees 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 and to establish rules and regulations concerning the use of any recreation area.

9.03 Utilities. Each Unit Owner shall have an easement in common with the owners of all other Units to use all chutes, flues, pipes, wires, ducts, cables, conduits, and public utilities serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the chutes, flues, pipes, ducts, cables, wires, conduits, public utility lines, and other Common Elements serving such other Units and located in such Unit. The Board of Directors, or its agents, shall have a right of access to each Unit from time to time during reasonable hours as may be necessary to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Common Elements contained therein or accessible therefrom, and to make emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units. Each Unit Owner specifically shall have an easement to maintain all components of a heating and air conditioning system serving his Unit in their present location and as shown upon the Plans attached hereto.

9.04 Structural. Every portion of a Unit, such as bearing column, and bearing wall, which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Units and for the Common Elements.

10.

EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS

10.01 Present Encroachment. In the event that any Condominium Unit shall encroach upon any Common Element, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit then an easement appurtenant to such Common Elements for the continuance of such encroachment upon a Unit shall exist for so long as such encroachment shall naturally exist.

10.02 Encroachments on Reconstruction. If any Condominium Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and, if upon reconstruction of such Unit or Common Elements, there exist encroachments of portions of the Common Elements upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

11.

RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use or enjoyment of the Common Elements in common with the Owners of all other Condominium 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 proportional undivided interest in the Common Elements appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

12.

CONVEYANCE OR ENCUMBRANCE
OF COMMON ELEMENTS BY ASSOCIATION

12.01 Conveyance or Encumbrance Permitted. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by a Declarant agree to that action; provided, that all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Distribution of the proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Unit Owners to which it is allocated and the Association. Proceeds of the sale or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association.

12.02 Agreement Required. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in the county in which the Condominium is situated, and is effective only upon recordation.

12.03 Contract Voidable. The Association, on behalf of the Unit Owners, may contract to convey Common Elements, or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 12.01 and 12.02 above. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

12.04 Other Conveyances Void. Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

12.05 No Limitation of Access or Support. A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Unit of its rights of access and support.

13.

ADMINISTRATION OF THE CONDOMINIUM

13.01 Association. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina corporation (the "Association" as defined above), has been organized (or will be organized before sale of any Unit by Declarant), and said Association 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.

13.02 Members. The Owner or Owners of each Condominium Unit shall automatically become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant Allocated Interest in the Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other

encumbrance, to membership in said Association or to any of the rights or privileges of such membership.

13.03 Authority. 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 of Condominium, to levy and to collect assessments in the manner hereinafter provided, and to adopt, amend, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association.

13.04 Records Inspection. The Association shall make available at its office, or through its managing office, during normal business hours, and upon request, copies of the Declaration, Bylaws, and rules and regulations of the Association to Unit Owners, mortgage lenders or any Unit insurers, guarantors of such mortgage loans and holders of such mortgage loans, and shall make available during such time books, records and financial statements for inspection by those persons. The Association may make a reasonable charge for such copies. Upon written request, any holder of a first mortgage lien shall be provided a financial statement of the Association for the preceding fiscal year.

13.05 Enforcement. The Association and any Unit Owner shall have a right of action against any Unit Owner for failure to comply with any provision of the Declaration, Bylaws, Rules and Regulations or other related guideline for operation, maintenance and use of the Condominium; and any Unit Owner shall have a right of action against the Association for failure to comply with the Declaration, Bylaws, Rules and Regulations or other related guideline for operation, maintenance and use of the Condominium. Fines may be assessed by the Association in compliance with the North Carolina Condominium Act.

These rights of action for enforcement are not in derogation of existing law, but rather, to the extent needed, is in addition thereto. Such right against the Association does not, however, grant additional rights of action against the officers and directors of the Association beyond that which is permitted by law.

14.

OCCUPANCY AND USE RESTRICTIONS APPLICABLE TO CONDOMINIUM UNITS

Each Condominium Unit is hereby restricted to use by the Owner thereof, his employees, servants, guests, invitees and lessees, to those uses set forth in the Zoning Code of the governmental authority to which the Property is subject. Unit Owners may lease the entire Unit or less than the entire Unit but all leases and subleases must be in writing. Any lease agreement shall be required to provide that the terms of the lease shall be subject to the provisions of this Declaration and the Association Bylaws and its rules and regulations, and that any failure of a lessee or sublessee to comply with the terms of such documents shall be a condition of default under the lease. All leases and subleases must be filed with the Association or such information from such leases or subleases as may be prescribed by the Board shall be filed with the Association.

15.

USE OF COMMON ELEMENTS SUBJECT TO RULES
OF ASSOCIATION

The use of the Common Elements, including the Limited Common Elements, by the Owner or Owners of all Condominium Units, 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 hereafter may be prescribed and established by the Association.

16.

THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES:
RESTRICTION AGAINST NUISANCES

No immoral, improper, offensive, or unlawful use shall be made of any Condominium 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 Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium, or cause the cancellation of a policy of insurance thereon, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable odors, vibrations, sounds or noises; nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Elements. No animals, birds, livestock or poultry of any kind shall be kept or maintained in any Unit except that a maximum of two (2) dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners.

17.

RIGHT OF ENTRY INTO CONDOMINIUM UNITS

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

17.02 To Repair Common Elements. Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration, replacement or repair to any portion of the Common Elements, the Owner of each Condominium Unit shall permit, or the duly constituted and authorized Agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice, if the purpose shall not be considered an emergency.

18.

RIGHT OF OWNERS TO ALTER AND MODIFY
CONDOMINIUM UNITS: NO RIGHT TO ALTER COMMON ELEMENTS

18.01 Interior Alterations. A Unit Owner may make any improvements or alterations to his Unit that does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium without permission of the Association or any other person.

18.02 Alterations by Owner of Adjoining Units. A Unit Owner may, after acquiring an adjoining Unit, remove or alter any intervening partition between the Units or create apertures through such partition, even if the partition is a Common Element, so long as such removal, alteration or aperture construction does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal or alteration of partitions or creation of apertures shall not be a change or alteration of boundaries of the Units affected. However, a Unit Owner must first obtain permission of the Association.

18.03 Structural Alterations. No Owner of a Condominium Unit shall cause, or permit to be made, any alteration or removal of any part of the Condominium Unit or Common Elements which would impair the structural integrity or mechanical systems of the Condominiums without first having obtained permission of the Association.

18.04 Exterior Changes. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects, machines or air conditioning units 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 first having obtained permission of the Association. Air conditioner or heating units may not be mounted in a window of any Unit without the express approval of the Association.

18.05 Common Elements Changes. No Unit Owner shall cause any object to be fixed to the Common Elements or to any Limited Common Element (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Elements or Limited Common Elements without the permission of the Association being first had and obtained.

18.06 Permission of Board. The permission required of the Association in this Section shall be by written consent of the Association upon approval by a majority of the Board of Directors. The Board is authorized to appoint a Committee for the purpose of reviewing the alterations, removals and aperture construction and to make recommendations to the Board.

18.07 Standards. The Board of Directors (or any committee appointed for such purpose by the Board) in approving or disapproving any proposed change or alteration in the Condominium or any addition or change in the Common Elements shall consider such standards or criteria established by regulation, but if no regulation is issued, then shall consider that any such change or alteration shall not affect the structural or mechanical integrity of the Condominium, shall be harmonious with the appearance of the Condominium, and in congruity with the existing exterior appearance of the buildings and Common Elements, including style, color, materials, quality, texture, design, arrangement, non-obstruction of air, light, walk or drive areas and similarity with existing plantings or proposed planting plans.

19.

RIGHT OF ASSOCIATION TO ALTER AND
IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR

19.01 General. The Association shall have the right to make or cause to be made such alterations or improvements to the Common Elements which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors 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 Condominium Units.

19.02 Special Assessments. However, where any alterations and improvements to the Common Elements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against, and collected solely from, the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

20.

MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

20.01 General. Every Owner shall perform promptly all maintenance and repair work within his Condominium 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 Condominium Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all electrical, heating, air conditioning, cable television, plumbing and sewer systems within the Condominium Unit including any fixtures and/or their connections required to provide heat, air conditioning, water, light, power, telephone, cable television, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of all appliances and equipment, if any, all walls, all ceilings, and floors within his Unit including painting, decorating, carpeting and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit.

This description of the maintenance area shall in no way limit the definition of "Condominium Unit", and each Owner is expressly responsible for all maintenance within his defined Unit.

20.02 Insured Loss. Whenever the maintenance, repair and replacement of any item for which the Owner of a Condominium 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 Condominium 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 deductible provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, use, repair or replacement. If not promptly paid, the Association may assess the Owner therefor and the same shall become a lien against the Unit of the Owner as provided herein.

20.03 Limited Common Elements. The Unit Owner who has exclusive use of any Limited Common Element shall maintain such at his own expense if such expense is provided for in Section 3.19; however, if more than one Unit Owner has use of a Limited Common Element then all such owners who have such use shall jointly maintain it at their expense. Where joint users can not agree on the maintenance, then the Board of Directors may direct such maintenance to be done and assess the Owners therefor.

20.04 Doors, Windows, etc. All exterior doors, door frames and thresholds, window frames, door and window glass, storm windows and doors and screens and associated hardware, if any, are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners (except as to the decoration and painting of the exterior surfaces of such window frames,

doors, door frames and thresholds, which are the responsibility of the Association).

21.

MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION

21.01 General. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements (except Limited Common Elements where done by the allotted Owners, and those items specifically detailed to Owners for maintenance herein), including, but not limited to, those portions thereof which contribute to the support of the Buildings, all conduits, ducts, plumbing, wiring, all water lines and sewer lines outside of public rights of way and governmental easements, and other facilities located in the Common Elements for the furnishing of utility and other services to the Condominium Units and said Common Elements, such exterior painting as may be needed as a result of normal wear and tear, and all walks, driveways and parking areas, and roofs. Should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement or any Common Elements, the Association shall, at its expense, repair such incidental damage.

21.02 Insured Loss Caused by Owner. Whenever the maintenance, repair and replacement of any item which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his employees, servants, guests, invitees or lessees, 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 Unit Owner who is responsible for the act causing the damage (whether done by himself or by his employees, servants, guests, invitees or lessees) 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 deductible provision of such insurance or otherwise, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. If not promptly paid, the Association may assess the Owner therefor and the same shall become a lien against the Unit of the Owner as provided herein.

21.03 Uninsured Loss Caused by Owner. Whenever the maintenance, repair and replacement of any item which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his immediate employees, servants, guests, invitees or lessees, and such loss or damage is not covered by any insurance maintained by the Association, then the Owner shall pay the cost thereof; and, if not promptly paid upon request, the Association may assess the Owner thereof and the same shall become a lien against his Unit as provided herein.

22.

CLAIMS OF FIVE HUNDRED DOLLARS OR LESS

In cases where a claim against an Owner under Section 19 or Section 20 is five hundred dollars or less, the Owner, or the Association may request the Board of Directors to appoint an adjudicatory panel to determine whether the Unit Owner is responsible for damages to any Common Element or whether the Association is responsible for any damages to a Unit. Within twenty (20) days of the request, the affected Owner and the Association shall each appoint a member of the Association and the Owner and Association shall each agree upon a third member of the Association, which three people shall constitute the adjudicatory panel. Within thirty (30) days of the request, the

panel shall set a date and time at which the parties may be heard and give notice thereof to the parties, such hearing to be held on no less than ten (10) days notice. At the hearing the parties may present such evidence and witnesses and provide such argument as they deem appropriate. Within ten (10) days of the hearing date, the parties shall be notified by the panel of its decision.

If the decision is adverse to the Unit Owner, the liability of such Owner shall be assessed against the Owner's Unit and be secured by a lien in favor of the Association as provided herein. If the decision is adverse to the Association, then any liability of the Association may be offset by the Unit Owner against sums then and later owing the Association by the Unit Owner.

23.

INSURANCE, AUTHORITY TO PURCHASE

Insurance policies upon the Condominium (other than title insurance) shall be purchased by the Association in the name of the Managing Agent or the Association or Board of Directors of the Association, and in the name of the Association as Trustees for the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them; and, if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium 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.

24.

INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE PROCEEDS

24.01 Insurance Required. The following insurance coverage, unless denoted to be optional, shall be maintained in full force and effect by the Association covering the operation and management of the Condominium, meaning the Condominium Units and Common Elements, to wit:

(A) Casualty. Casualty insurance covering the Common Elements and Units, including the Buildings and all improvements upon the land and all personal property owned by the Association, shall be procured in an amount equal to the insurable replacement value thereof (exclusive of excavations, foundations, streets and parking facilities and other items normally excluded from such coverage) as determined annually by the insurance company affording such coverage; and provided that such policies may be written on a co-insurance basis of not less than eighty percent (80%). Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) flood; and (c) 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. This insurance need not include improvements and betterments installed by Unit Owners.

(B) Public Liability and Property Damage. Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association insuring against death, bodily injury and property damage arising out of the use, ownership or maintenance of the Common Elements.

(C) Cross-Liability Endorsement. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.

(D) Board and Officers. Liability insurance on each officer and each of the members of the Board of Directors of the Association, together with a fidelity Bond on the treasurer of the Association, all in such amounts and in such forms as shall be required by the Association.

24.02 Premiums. Premiums upon insurance policies and bonds purchased by the Association shall be paid by the Association as a Common Expense to be assessed and collected from all of the Owners of Condominium Units.

24.03 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit 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. Any loss covered under Sections 24.01(A) and (B) shall be adjusted by the Association Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after repair or restoration, or if the Condominium is terminated.

24.04 Non-availability. If for any reason the Association is unable to obtain the casualty insurance coverage required under Section 24.01(A) or (B) above, written notice of such unavailability shall be hand-delivered or mailed to all Unit Owners.

24.05 Policy Requirements. The policies required in Section 24.01(A) and (B) must provide that:

(A) each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or Membership in the Association;

(B) the insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;

(C) no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

(D) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and,

(E) the policy may not be cancelled, nor may the insurer refuse to renew the policy until thirty (30) days after notice of such cancellation or non-renewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a mortgage or deed of trust to whom certificates have been issued at their last known address.

24.06 Restoration. Any portion of the Condominium which is damaged or destroyed, and for which insurance proceeds have been paid to the Association shall be repaired, replaced or restored promptly by the Association, and the insurance proceeds held by it used to defray the cost thereof, unless:

(A) the Condominium is terminated as by law provided; or

(B) repair, replacement or restoration would be illegal under any State or local health or safety statute, code or ordinance; or

(C) the Unit Owners decide not to rebuild by a vote of eighty percent (80%), including one hundred percent (100%) of the votes of any Owners of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt.

24.07 Excess Cost. The cost of repair, replacement or restoration in excess of the insurance proceeds and reserves is a Common Expense.

24.08 Proceeds Distribution on Unreconstructed Units or Elements. If the entire Condominium is not repaired or replaced: (l) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, and (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the Unit Owners or Lienholders, as their interest may appear, in proportion to their Common Element interest.

24.09 Allocated Interest Reallocation on Nonreconstruction. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interest is automatically reallocated upon the vote not to reconstruct as if the Unit had been condemned. In such case the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

24.10 Termination. Notwithstanding this Section 24, the provisions of Section 28 govern the distribution of insurance proceeds if the Condominium is terminated.

25.

ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

25.01 Owner Register. The Association shall at all times maintain a Register setting forth the names of the Owners of all of the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium 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 Condominium Unit.

25.02 Mortgagee Register. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit, if it so desires, may notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice the Association shall register in its records all pertinent information relating thereto.

26.

ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

26.01 Authority to Assess Owners. 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 Condominium Units. To properly administer the operation and management of the Condominiums, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses which are sometimes herein referred to as "Common Expenses." To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the Unit Owners and their Condominium 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 and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

26.02 Basis of Assessments. 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; and, unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total assessment made against all Unit Owners and their Condominium Units as the Allocated Interest in the Common Elements appurtenant to each Condominium Unit bears to the total Allocated Interest in the Common Elements appurtenant to all Condominium Units. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and the assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate Allocated Interest in Common Elements exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

26.03 Amount of Assessment.

(A) Unit Initial Maximum Assessment. To and including December 31, 2005, the maximum annual assessment shall not exceed One Thousand and Eighty and no/100 ($1,080.00) Dollars per Unit.

(B) Increase by Association. From and after December 31, 2005, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed ten (10%) percent.

(C) Increase by Members. From and after December 31, 2005, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of the members Allocated Interests who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(D) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of ten (10%) percent without the consent of members required by Subsection (C) of this Section 26.03.

(E) Board Authority. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

26.04 Manner of Payment. Assessments provided for herein shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times, as may be determined by the Board of Directors of the Association.

26.05 Assessment; Commencement; Working Capital. Such assessments shall commence for each Unit (including Units owned by Declarant) at such time as declared by the Declarant in its sole discretion. Until the Association makes a Common Expense Assessment, the Declarant shall pay all expenses.

In addition to the regular assessments to be charged and paid hereunder, the purchasing Unit Owner shall, at the time of the initial sale of each Unit by Declarant, pay to the Association a sum equal to two (2) months assessment as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the first purchasing Unit Owner from Declarant notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Unit being sold pursuant to the provisions of the first sentence hereunder.

26.06 Annual Budget. The Board of Directors of the Association shall establish an proposed Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses (including ad valorem taxes and public improvement assessments levied against the Common Elements) 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, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Section 26.08 hereof, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting 90% of all the Unit Owners rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors. The Assessment for said year shall be established based upon such Budget. Receipt of a copy of said Budget by each Owner shall not affect the liability of any Owner for such assessment.

The working capital contribution assessment is non-refundable and shall not substitute for, or be a credit against, the annual assessments provided for herein.

26.07 Modification of Assessment. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

26.08 Capital Improvement Fund. The Board of Directors of the Association, in

establishing the Annual Budget for operation, management and maintenance of the Condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of, and the making of capital improvements to the Common Elements which Capital Improvement and Replacement Fund (herein "Capital Improvement 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 personal property which may constitute a portion of the Common Elements or owned by the Association and held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements and other property owned by the Association. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements and other property owned by the Association. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his Allocated Interest in the Common Elements. However, such balance shall not be subject to withdrawal by a Unit Owner.

26.09 Accountability. 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 of Condominium, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by the other Owners of Condominium 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 Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the fund 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.

26.10 Default Interest. 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 established by the Association for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at a rate established by the Association not to exceed twelve percent (12%) per annum from the date of default until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to Association.

26.11 Late Payment Penalty. In addition to the accrual of default interest the Association may impose a penalty for non-payment of any assessment by the due date. Such penalty shall be in the amount of $25.00 for a payment that is past due more than fifteen (15) days.

26.12 Where Payable. All monies owning to Association shall be due and payable at the principal office of Association, or where otherwise directed by the Association.

26.13 Liability of Owners For Assessments and Other Charges. The Owner or Owners of

each Condominium 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 Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest and penalty on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys' fee, whether suit be brought or not.

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

26.15 Assessments Against Specific Owners. Notwithstanding the requirement of Section 26.02 that assessments be levied against each Owner according to the Allocated Interest of each Owner, the Association shall assess:

(A) unless otherwise noted herein, any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element against the Unit or Units to which that Limited Common Element is assigned; and,

(B) any Common Expense, or portion thereof, benefiting fewer than all of the Units exclusively against the Units benefited; and,

(C) the cost of utilities, if not separately metered to each Unit, in proportion to usage if it can be reasonably determined that any Unit or Units use an unusually disproportionate share of any utility, and

(D) the cost of any judgment against the Association against only the Units in the Condominium at the time the judgment was entered in proportion to their Common Expense Liabilities; and,

(E) any Common Expense caused by the misconduct of any Unit Owner exclusively against that Unit Owner; and,

(F) any fine or penalty or interest for any delinquent assessment installment exclusively against the Unit so charged.

26.16 Reallocation. If the Common Expense Liabilities are reallocated, the Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

26.17 Assessment Lien Granted. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such Common Expenses represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant Allocated Interest in Common Elements, which lien shall secure, and does secure, the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure fines, penalties and 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 costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit and its appurtenant Allocated Interest in Common Elements. The lien granted to the Association may be filed in the manner provided in Article 8 of Chapter 44 of the General Statutes and may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, pursuant to Article 2A of Chapter 45 of the General Statutes. In any proceeding for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any Condominium 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 Condominium Unit. The lien granted to the Association shall further secure such advances for taxes, and 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 highest rate allowed by law not to exceed twelve percent (12%) per annum on any such advances made for such purpose. All persons who shall acquire, by whatever means, any interest in the ownership of any Condominium 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 Condominium Unit expressly subject to such lien rights.

26.18 Enforcement of Lien. The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Condominium is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof 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 all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied
of record.

26.19 Lien Extinguished. Except by payment, satisfaction and cancellation, a lien is extinguished only if proceedings to enforce the lien are not instituted within three (3) years after docketing in the Office of Clerk of Superior Court.

26.20 Other Remedies. This Section does not prohibit the Association from bringing an action to recover sums due it as an assessment independent of any lien filed or claimed, nor does it prohibit the Association from taking a deed in lieu of foreclosure.

26.21 Judgments. Any judgment brought hereunder to enforce the lien or the collection of any assessment must include the costs and reasonable attorney's fees for the prevailing party.

26.22 Lien Subordinate to First Mortgage. The lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust recorded before docketing the lien and the lien for real estate or other governmental taxes, but shall be superior to all other liens. Any person acquiring title to any Condominium Unit and its appurtenant Allocated Interest in Common Elements by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale resulting from such prior lien mortgage or deed of trust shall be liable and obligated only for assessments as shall accrue and become due and payable for said Condominium Unit and its appurtenant Allocated Interest in the Common Elements

subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Condominium Units, including such purchaser, his successors and assigns, as a part of the Common Expense, although 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.

26.23 Statement of Assessments Due. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit 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 by 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. The Association may charge a reasonable fee for issuance of such certificate.

26.24 Priority of Payment. In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner and such Condominium Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds, shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the Owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

26.25 Purchaser Liable For Delinquent Assessments. In any voluntary conveyance of a Condominium Unit, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amounts paid by Purchaser therefor.

26.26 Remedies. 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. All of such rights of the Association to effect collection of delinquent assessments shall be deemed cumulative.

27.

COMMON SURPLUS

Common Surplus shall be owned by the owners of all Condominium Units in the same proportion that the Allocated Interest in the Common Elements appurtenant to each Owner's Condominium Unit bears to the total of all Allocated Interests in the Common Elements appurtenant to all Condominium Units; provided, however, that said Common Surplus shall be held by the Association in the manner, and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance 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 Condominium Units in accordance with their Allocated Interest in Common Surplus as declared herein.

28.

TERMINATION

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

28.01 Consent. Except in the case where the whole of the Condominium is taken by Eminent Domain the termination of the Condominium may be effected only by agreement of eighty percent (80%) of the Allocated Interests of all Condominium Unit Owners expressed in an instrument to that effect duly recorded specifying a date after which it shall be void unless recorded prior to such date; and, provided, that the holders of all liens affecting any of the Condominium Units consent thereunto, or agree, in either case by instrument duly recorded, that their liens be transferred to the Allocated Interest of the Condominium Unit Owner in the Property as provided in Section 28.02 below. The termination shall become effective when such agreement has been recorded in the public records of the county in which the Condominium is located.

28.02 Contract For Sale at Termination; Ownership of Property. The Association, on behalf of the Unit Owners, may contract for the sale of Property in the Condominium, but the contract is not binding on the Unit Owners until approved by the Unit Owners in conformity with Section 28.01. If any Property in the Condominium is to be sold following termination, title to that Property, upon termination, vests in the Association, as trustee, for the holders of all interests in the Units. 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 continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lienholders as their interests may appear, in proportion to the respective interests of Unit Owners as provided in Section 28.07 below. Unless otherwise specified in the termination agreement, as long as the Association holds title to the Property, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Property that formerly constituted his Unit. During the period of that occupancy each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Declaration.

28.03 No sale at Termination; Ownership of Property. After termination of the Condominium where no sale has been agreed to, the Condominium Unit Owners shall own the Property as tenants in common in their respective interests as defined in Section 28.07 and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective interests of the Condominium Unit Owners. All funds held by the Association and insurance proceeds, if any, shall

be, and continue to be held, for the Unit Owners in the same proportion. While the tenancy in common ownership exists each Unit Owner and its successors in interest have an exclusive right to occupancy of his portion of the Property that formerly constituted his Unit.

The costs incurred by the Association in connection with the termination shall be a Common Expense.

28.04 Partition or Sale Following Termination. Following termination, the Property may be partitioned and sold, or sold in lieu of partition, upon the application of any former Condominium Unit Owner having an interest in the Property to the courts of the state in which the property is situate as by law provided.

28.05 Association Powers Continue. The members of the Board of Directors acting collectively as agent for all Condominium Unit Owners, shall continue to have such powers as in this Section are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

28.06 Association as Trustee. Following termination of the Condominium, the proceeds of any sale of Property, together with the assets of the Association, are held by the Association as trustee for former Unit Owners and holders of liens on the former Units, as their interests may appear. Following termination, creditors of the Association holding liens on the Units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the Association are to be treated as if they had perfected liens on the Units immediately before termination.

28.07 Owners Respective Interest on Termination. The respective interests of Unit Owners referred to in Sections 28.02, 28.03 and 28.06 are as follows:

(A) Except as provided in paragraph (B), the respective interests of Unit Owners are the fair market value of their Units, Limited Common Elements, and Common Element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and becomes final unless disapproved within 30 days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and Common Element interest by the total fair market values of all the Units and Common Elements.

(B) If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Unit Owners are their respective Common Element interests immediately before the termination.

28.08 Foreclosure of Lien on Whole Condominium Not a Termination. Foreclosure or enforcement of a lien or encumbrance against the entire Condominium does not of itself terminate the Condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the Condominium, other than withdrawable real estate, does not withdraw that portion from the Condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the Condominium, but the person taking title thereto has the right to require from the Association, upon request, an amendment excluding the real estate from the Condominium.

29.

AMENDMENT OF DECLARATION OF CONDOMINIUM

This Declaration of Condominium may be amended in the following manner.

29.01 General Procedure For Amendment. Except as provided otherwise in this Section 29, an Amendment or Amendments to this Declaration of Condominium may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by Unit Owners holding a majority of the Allocated Interests, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments to this Declaration of Condominium being proposed by the Board of Directors or members, such proposed Amendment or Amendments 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 ten (10) days nor later than thirty (30) days from receipt by him of the proposed Amendment or Amendments. 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 or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) 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 Post Office address as it appears on the records of the Association, the 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 Amendment or Amendments proposed must be approved by an affirmative vote of the voting members having at least sixty-seven percent (67%) of the Allocated Interests in the Common Elements, and, in addition, the Declarant so long as it is within the Declarant Control Period, in order for such Amendment or Amendments to become effective. Thereupon such Amendment or Amendments of this Declaration of Condominium 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 or Amendments, so certified and executed with the same formalities as a Deed, shall be recorded in the Public Records of the county in which the Condominium is located within ten (10) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording data identifying the Declaration of Condominium. Thereafter, a copy of said Amendment or Amendments in the form in which the same were placed of record by the Officers of Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such Amendment or Amendments.

29.02 Certain Amendments Requiring Unanimous Consent. Except as provided in Section 29.03 no amendment may create or increase Special Declarant Rights, increase the number of Units, change the Allocated Interests in the Common Elements appurtenant to each Condominium Unit, or the uses to which Units are restricted or alteration of the basis for sharing Common Expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, without the prior written consent of all of the Owners of all Condominium Units and all of the Institutional Lenders holding first mortgages or first deeds of trust on the Condominium Units.

29.03 Amendments Permitted Other Than By Action Under Section 29.01 and Section 29.02. Notwithstanding the provisions of Section 29.01 and Section 29.02, amendments to the Declaration, including reallocation of the Allocated Interests, may be prepared, executed and filed

without a vote of the member Unit Owners, or their consent, in the following cases:

(A) Nominal Amendments. By the Declarant, for so long as it controls the Board of Directors, and thereafter, the Board to conform to the requirements of any law or governmental agency having legal jurisdiction over the Condominium or to qualify the Condominium or any Units therein for mortgage or improvement loans made or insured by Federal National Mortgage Association, Veteran's Administration, United States Department of Housing and Urban Development, Government National Mortgage Association, Federal Housing Authority or any governmental agency or to comply with the requirements of law or regulations of any similar corporation or agency regarding purchase of mortgage interests in units by such entity.

(B) Amendments Prior to Sale. By the Declarant at any time prior to recording of the sale of the first Unit to an Owner by filing an Amendment in the Office of the Register of Deeds of the County in which the Condominium is located with a Certificate certifying the fact that no sale has previously occurred.

(C) Declarant Development Rights. By Declarant upon exercising any Development Right or Special Declarant Right hereunder by law provided.

(D) Eminent Domain. By the Association if a portion of the Condominium is taken by proceedings in eminent domain as by law provided.

(E) Unit Boundary Changes. By Association and affected Unit Owners upon relocation of Unit boundaries as by law provided.

(F) Unit Partition. By Association and affected Unit Owners upon subdividing or partitioning a Unit, if herein permitted, as by law provided.

(G) Limited Common Elements. By Association and affected Unit Owners upon reallocation of a Limited Common Element, as by law provided.

(H) Leasehold Estate. By Association upon termination of any Leasehold Estate, if herein permitted, as by law provided.

(I) Termination of Condominium. By Association upon termination of the Condominium, as by law provided.

29.04 Institutional Lenders. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of an Institutional Lender or Institutional Lenders shall be made without prior written consent of all Institutional Lenders holding mortgages on Condominium Units in the Condominium being first had and obtained.

29.05 Declarant Rights. 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 said party being first had and obtained.

29.06 FHA/VA Approval. During the period of Declarant Control, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Elements, and amendment of this Declaration of Covenants, Conditions and Restrictions.

29.07 Recordation. No amendment shall be effective until recorded in the County in which the Property is situate.

30.

REMEDIES IN EVENT OF DEFAULT

The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration of Condominium, and the Articles of Incorporation and Bylaws of the Association, and any rules or regulations issued pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owner of other Condominium Units to the following relief:

30.01 Actions at Law and Equity. Failure to comply with any of the terms of this Declaration of Condominium or other restrictions and regulations contained in the Articles of Incorporation or Bylaws of the Association or any rules and regulations issued pursuant thereto, 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 Unit Owner.

30.02 Liabilities of Owners. Each Unit 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 his or their guests, employees, servants, agents, invitees 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 Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver of insurance companies of rights of subrogation.

30.03 Collection or Enforcement Costs and Expenses. In any proceeding arising because of an alleged default by a Unit 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.

30.04 No Waiver. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

30.05 Cumulative Remedies. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit pursuant to any terms, provisions, covenants or conditions of the Declaration of Condominium 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.

30.06 No Waiver By Declarant. The failure of Declarant to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by this Declaration of Condominium 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.

30.07 Fines and Penalties. Notwithstanding the foregoing, and in addition thereto, any Unit Owner may be fined by the Association for failure to comply with any terms of this Declaration, the Bylaws, Articles of Incorporation or published rules and regulations in an amount not to exceed One Hundred Fifty Dollars ($150.00). If the Board should determine that it shall seek to impose fines hereunder, it shall appoint a panel of three Unit Owners, who, upon appointment, shall notify the Owner in writing of the charge against him, provide an opportunity to be heard before the panel in not less than ten (10) days, nor more than thirty (30) days, prior notice, and give notice of the decision. Any fine given to any Owner shall be assessed against the Owner and his Unit as a Common Expense and, if unpaid, shall be a lien on the Unit as provided herein.

31.

RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

"Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to Federal National Mortgage Association, Government National Mortgage Association, Veteran's Administration, Federal Housing Authority, United States Department of Housing and Urban Development, banks, savings and loan associations, insurance companies, or other reputable mortgage lenders. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Condominium Unit or Units, or shall be the owner of any Condominium Unit or Units, such Institutional Lender or Institutional Lenders shall have the following rights:

31.01 Insurance Approval. To approve the company or companies with whom casualty insurance is placed.

31.02 Records and Statements. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished upon written request at least one copy of the Annual Financial Statement and Report of the Association, prepared by the Association Treasurer or a Certified Public Accountant designated by the Association, such Financial Statement and Report to be furnished within 120 days after the end of each fiscal year.

31.03 Notice of Certain Meetings. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to this Declaration of Condominium, or the Articles of Incorporation and Bylaws of the Association, which Notice shall state the nature of the Amendment being proposed.

31.04 Notice of Owner's Default. Upon written request to be given notice of default by more than sixty (60) days by any Owner owning a Condominium Unit encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing.

31.05 Condemnation or Casualty Loss. Upon written request any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its mortgage.

31.06 Insurance Lapse. Upon written request any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

31.07 Request for Notices. Whenever any Institutional Lender or Institutional Lenders desire the provisions of this Section 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 and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Condominium Units owned by them, or any of them, 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 or Institutional Lenders.

32.

RIGHT OF DECLARANT TO REPRESENTATION
ON BOARD OF DIRECTORS OF THE ASSOCIATION

During the Period of Declarant Control, Declarant shall be entitled to designate and select persons to serve on the Board of Directors of the Association and the manner in which such person or persons shall be designated and the number thereof and the composition of the Board of Directors during such period of Declarant control shall be as provided in the Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any director designated and selected by Declarant need not be an Owner in the Condominium. However, Declarant shall be responsible for the payment of any assessments which may be levied by the Association against any Condominium Unit or Units owned by the said Declarant, and for complying with the remaining terms and provisions hereof in the same manner as any other Owner of a Condominium Unit or Units.

33.

SEVERABILITY

In the event that any of the terms, provisions, or covenants of this Declaration of Condominium 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.

34.

LIBERAL CONSTRUCTION

The provisions of this Declaration of Condominium 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 the feminine or neuter. The Section headings are for convenience of reference only and shall not be considered terms of this Declaration.

35.

DECLARATION OF CONDOMINIUM BINDING ON ASSIGNS, AND SUBSEQUENT OWNERS

The restrictions and burdens imposed by the covenants of this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Condominium Unit and its appurtenant Allocated Interest in Common Elements. This Declaration of Condominium shall be binding upon Declarant its successors and assigns, and upon all parties who may subsequently become Owners of Condominium Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

36.

EASEMENTS

36.01 Utilities. The Board of Directors may hereafter grant easements in the name of the Association for utility purposes for the benefit of the Condominium and for the benefit of any Unit, including the right to install, lay, maintain, repair and replace, waterlines, pipes, sewer lines, storm drainage facilities, telephone wires, cable television wires, and electrical conduits, wires over, under and along any portion of the Property, and the Owners of any Unit hereby grant to the Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing.

36.02 Public Service Access. 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, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

37.

DISCLAIMER BY GOVERNMENTAL AUTHORITIES

Some governmental authorities or fire or police departments refuse to be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, Association, or Unit Owners. Accordingly, the Board of Directors is hereby empowered to make all efforts to assure that there is adequate access to all Units and shall not allow any blocking of access or defects in access to remain uncorrected.

38.

PARTY WALLS

It is contemplated that some Owners of Condominium Units may erect party walls between Units which are under separate ownership, and it is therefore necessary to provide for the equitable sharing of the cost of construction and maintenance of such party wall as well as wall specifications. The Board of Directors shall have the authority to formulate, and from time to time to amend, rules and regulations governing all specifications of party walls, the sharing of costs between the Owners of adjacent Units and the arbitration of disputes relating to party walls.

The center of each party wall shall be the dividing line between adjacent Condominium Units which are under separate ownership. Such party wall shall be constructed of materials and design mutually agreeable to the adjacent Unit Owners, provided that these do not violate the rules and regulations adopted by the Board of Directors. If adjacent Unit Owners cannot mutually agree, the Board of Directors shall designate the materials and design of the party wall between Units owned by disagreeing Owners and such designation shall be binding on all parties. The cost of each such party wall shall be shared equally by those served by it and shall be paid promptly when the wall is constructed; provided, however, that the cost of utility installations within the party wall (such as plumbing and electrical) shall be born only by the Owner of the Unit served by such installations.

39.

SIGNS

All signs and numbers on entrance doors to Condominium Units shall be in conformity in size and appearance as permitted by rules and regulations adopted by the Board of Directors. Except for such entrance door signs, no signs shall be erected on the Common Elements except upon approval of the Board of Directors, and except by Declarant in the exercise of Special Declarant Rights reserved in this Declaration.

40.

CONDEMNATION

40.01 General. Whenever all or any part of the Condominium shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law.

40.02 Common Elements. If the taking is confined to the Common Elements or the Common Elements on which improvements shall have been constructed, but shall not involve a Unit or a Limited Common Element, then the award for the Common Element loss shall be payable to the Association.

40.03 Limited Common Elements. Any portion of an award in condemnation attributable to the taking of all or a portion of a Limited Common Element shall be paid to the Owner of the Unit to which the Limited Common Element was allocated or, if more than one, apportioned among the Owners of the Units to which the Limited Common Element taken was allocated.

40.04 Units.

(A) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Owner for his Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemnor acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

(B) Except as provided in subsection (A), if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (l) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit, and (2) the portion of the Allocated Interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

41.

POWER OF ATTORNEY
TO DEAL IN OWNED UNITS

Each owner, by purchase of a Unit within the Property and acceptance of the Deed therefor, grants to the Board of Directors of the Association an irrevocable power of attorney, coupled with an interest, to acquire title to, including the purchase at a foreclosure or judicial sale, or to lease, any Unit in the name of the Association, or its designee, on behalf of all Unit Owners, and to convey, sell, lease, mortgage, or otherwise deal with any such Unit so acquired or to sublease any Unit so leased by the Association. Any Unit purchased by the Association shall be held by it, or its designee, on behalf of all Unit Owners in proportion to their respective Allocated Interests in the Common Elements. The lease covering any Unit leased by the Association, or its designee, shall be held on behalf of all Unit Owners, in relation to their Allocated Interests in the Common Elements.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed in its name this 23rd day of February, 2005

THE COTTAGES LLC, a North Carolina
Limited liability company

By: _____
George O. DeLoache, Member/Manager

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I, Beverly A. Royse, a Notary Public, do hereby certify that George O. DeLoache personally appeared before me this day and acknowledged that he is Member/Manager of The Cottages LLC, a North Carolina limited liability company and further acknowledged the due execution of this Declaration on behalf of the limited liability company.

Witness my hand and official seal, this 23rd day of February, 2005.

_____
Notary Public
My Commission Expires: 12-03-2005

BEVERLY A. ROYSE
NOTARY PUBLIC
WAKE COUNTY, N.C.
My Commission Expires 12-3-2005

EXHIBIT A
TO
THAT DECLARATION FOR
THE COTTAGES AT WHITAKER CONDOMINIUM

BEING all of that 5.007 acre tract designated as Lot 1 and shown on that map entitled "Subdivision of Northside Apartments" by John Y. Phelps, Jr. Professional Land Surveyor dated September 10, 2004 and recorded in Book of Maps 2005, page 213 Wake County Registry.

SAVE AND EXCEPT, those units located on Lot 1 and designated as "25 Units Need Not Be Subjected to Declaration" as shown on that map recorded in Book of Maps 2005, page 213 Wake County Registry.

EXHIBIT A-1
TO
THAT DECLARATION FOR
THE COTTAGES AT WHITAKER CONDOMINIUM

BEING all of that 2.769 acre tract designated as Lot 2 and that 3.916 acre tract designated as Lot 3, all as shown on that map entitled "Subdivision of Northside Apartments" by John Y. Phelps, Jr. Professional Land Surveyor dated September 10, 2004 and recorded in Book of Maps 2005, page 213 Wake County Registry.

EXHIBIT B
TO THAT
DECLARATION FOR
THE COTTAGES AT WHITAKER CONDOMINIUM

All Units shall have the unit numbers and addresses shown on the plats and plans recorded simultaneously herewith in the Wake County Registry.

All buildings are one story and contain between two to five Units each. Each Unit has two bedrooms, one bathroom, a kitchen and a living room

For the 26 Units initially subjected to this Declaration, each Unit shall have an 3.85% Allocated Interest in the Common Elements, the Common Expense Liability and votes in the Association.

BOOK:011236 PAGE:00876 - 00916

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.

Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate___ of Beverly A. Royse

_____

_____

_____

_____

_____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Veronica S Jones
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
41 # of Pages

22.004–7/11/03