

RECORDED
AND
VERIFIED
MKH

BK895PG825

Drawn by and mail to:
Jameson P. Wells, P.A.
1100 S. Tryon St., Suite 301
Charlotte, NC 28203

DECLARATION OF CONDOMINIUM
8700 BARAKA PLACE CONDOMINIUMS

Filed for record
Date 8-15-96
Time 11:41 a clock
JUDY G. PRICE, Register of Deeds
Union County, Marree, North Carolina

ARTICLE 1. SUBMISSION; DEFINITIONS

Section 1.1. Submission of Property. Elderwoods, Inc., a North Carolina Corporation ("Declarant"), owner in fee simple of the real estate described in Exhibit A, located within Union County, North Carolina, hereby submits such real estate, including all improvements, easements, rights and appurtenances therunto belonging to the provisions of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act ("Condominium Act"), and hereby creates with respect to said real estate a condominium to be known as "8700 Baraka Place Condominiums" ("Condominium").

Section 1.2. Definitions. As used in the Condominium Documents, the following words and phrases shall have the following meanings:

a. "Allocated interests" means the undivided interest in the Common Elements and Common Expense liability, and votes in the Association, allocated to Units in the Condominium. The Allocated interests are described in Article 7 of this Declaration and are shown on Exhibit B.

b. "Association" means 8700 Baraka Place Condominiums of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

c. "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

d. "Common Elements" means all portions of the Condominium other than the Units.

e. "Common Expenses" means the expenses made by or financial liabilities of the Association. These include:

(1) expenses of administration, maintenance, repair or replacement of the Common Elements;

(11) expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;

(111) expenses agreed upon as Common Expenses by the Association; and

BM895PG826

(iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

f. "Condominium" means the real estate described in Exhibit A subject to this Declaration, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

g. "Declarant" means Elderwoods, Inc., a North Carolina Corporation or its successor as defined in Section 47C-1-103(9) of the Condominium Act.

h. "Development Rights" means the rights or combination of rights reserved by the Declarant under Article 6 of this Declaration to add real estate to the Condominium, to create Units, Common Elements, and Limited Common Elements within the Condominium, to subdivide Units or convert Units into Common Elements, or to withdraw real estate from the Condominium.

i. "Declarant Control Period" means the period prior to the earlier of:

(i) one hundred twenty (120) days after conveyance to Unit Owners other than a Declarant of seventy-five percent (75%) of the Unit which may be created under this Declaration;

(ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business;

(iii) two (2) years after any right to add real estate to the Condominium, including any Units or improvements located thereon was last exercised;

(iv) five (5) years after the first Unit is conveyed to a Unit Owner other than a Declarant.

j. "Director" means a member of the Executive Board.

k. "Condominium Documents" means this Declaration, the Plans and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Rules and Regulations of certification accompanying a Condominium Document is a part of that Condominium Document.

BK895PG827

l. "Eligible Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("first Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its first Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article 16 only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

m. "Executive Board" means the board of directors of the Association.

n. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.

o. "Limited Common Elements" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Sections 47C-2-102 (2) & (4) of the Condominium Act. The limited Common Elements in the Condominium are described in Article 3 of this Declaration.

p. "Majority or Majority of Unit Owners" means the owners of more than fifty percent (50%) of the votes in the Association.

q. "Manager" means a person, firm or corporation employed or engaged to perform management services for the Condominium and the Association.

r. "Notice" and "Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

s. "Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

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

U. "Plats and Plans" means the Plats and Plans recorded simultaneously with this Declaration in Condominium Book Q-1, at pages 75 through 95 and constituting a part hereof, as the same may be amended from time to time.

V. "Property" means the land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

W. "Public Offering Statement" means the current document prepared pursuant to Section 47C-4-103 of the Condominium Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a purchase agreement, if and as required by said Section 47C-4-103 of the Condominium Act.

X. "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of Unit Owners and persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.

Y. "Security Interest" means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

Z. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to:

- (i) complete improvements indicated on the Plats and Plans filed with the Declaration;
- (ii) exercise any Development Rights;
- (iii) maintain sales offices, management offices, signs advertising the Condominium, and models;
- (iv) use easements through the Common Elements for the purpose of making improvements within the Condominium or within real estate that may be added to the Condominium; or

BK895PG829

(v) appoint or remove any office of the Association or any Executive Board member during the Declarant Control Period.

aa. "Trustee" means the entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

bb. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.2 of this Declaration.

cc. "Unit Owner" means the Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

ARTICLE 2. MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1. Maximum Number of Units. The Condominium upon creation contains thirteen (13) Units. The Declarant reserves the right to construct a total of eighteen additional units.

Section 2.2. Boundaries. Boundaries of each Unit created by this Declaration are shown on the Plans and Plans as follows:

a. Upper Boundary: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams, and rafters and of closed fireplace dampers, extended to an intersection with the vertical perimeter boundaries.

b. Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, seals and structural components.

c. Vertical Perimeter Boundary: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of the masonry walls; the unfinished surfaces of the interior trim, fireplaces (if any), and thresholds along perimeter walls and floors; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost

RM895PS830

unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

d. Inclusions: Each Unit will include the spaces and improvements lying within the boundaries described in Subsections 2.2a, b, and c, above, and will also include the spaces and improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, water detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.

e. Exclusions: Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and improvements lying outside of boundaries described in Subsections 2.2a, b, and c, above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. Non-Contiguous Portions: Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated outside the boundaries of the Unit or in buildings or structures that are detached or semidetached from the buildings containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their noncontiguity.

g. Inconsistency with the Plans and Plans: If this definition is inconsistent with the Plans and Plans, then this definition will control.

ARTICLE 3.

LIMITED COMMON ELEMENTS

The following portions of the Common Elements are limited Common Elements assigned to the Units as stated:

a. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a limited Common Element, the portion to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

b. Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios and each exterior door

BK895P6831

and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

c. Scoops and steps and walls at or around the door openings at the entrances to each building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access.

d. Attic space above each Unit with an attic, the use of which is limited to the Unit beneath it.

e. Stairways, the use of which is limited to certain Units as shown on the Plans and Plans.

f. Chimneys, the use of which is limited to the Unit in which its fireplace is located. In the event of a multiple fire chimney, each fire will be a limited Common Element allocated to the Unit containing its fireplace while the chimney will be a limited Common Element allocated to both Units.

g. Utility areas, the use of which is limited to the Unit or Units as shown on the Plans and Plans.

h. Storm windows and storm doors, if any, will be limited Common Elements of the Unit to which they service.

i. Certain planting areas and patios and decks, the use of which is limited to the Unit or Units which they adjoin as shown on the Plans and Plans.

j. Exterior surfaces, trim, siding, doors and windows will be the limited Common Elements allocated to the Units sheltered.

k. Mailboxes, nameplates, and exterior lighting affixed to the building will be limited Common Elements allocated to the Unit served.

ARTICLE 4.

MAINTENANCE, REPAIR AND REPLACEMENT

Section 4.1. Common Elements. The Association will maintain, repair and replace all of the Common Elements. Declarations of the limited Common Elements which are required by the Owners.

Section 4.2. Units. Each Unit Owner shall maintain, repair and replace, at such Unit Owner's own expense, all portions of the Unit Owner's Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

BK895P6832

Section 4.3. Limited Common Elements. Any Common heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units to which the Limited Common Element is assigned.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on, trim, siding, doors and windows will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board upon approval by the covenants control committee, if any. In the event such additional component or element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment under this Section, after Notice and Hearing.

If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed among the Units to which it is assigned in proportion to the Allocated Interests in the common expenses for such Units.

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with their Allocated Interests in the Common Expenses.

Each Unit Owner shall be responsible for removing all snow, leaves and debris from all patios and balconies which are Limited Common Elements appurtenant to such Unit Owner's Unit. If any such Limited Common Element is appurtenant to two or more Units, the Owners of those Units will be jointly responsible for such removal.

Section 4.4. Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires and equipment, provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 4.5. Repairs Resulting from Negligence. Each Unit Owner will reimburse the Association for any damages to any

BK895PG833

other Unit or to the Common Elements caused intentionally, negligently or by such Unit Owner's failure to properly maintain, repair or make replacements to such Unit Owner's Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is incurred as a result of such misconduct, it will be assessed by the Association following Notice and Hearing.

ARTICLE 5. SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

Those portions of the Common Elements shown as parking spaces on the Plats and Plans may be subsequently allocated as limited Common Elements in accordance with Subsection 6.1b and Article 10 of this Declaration, or may be assigned by Rules and Regulations of the Executive Board, or may be limited in part to use by Unit Owners or their guests only by Rules and Regulations.

ARTICLE 6. DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 6.1. Reservation of Development Rights. The Declarant reserves the following Development Rights:

a. The right by amendment, to withdraw real estate from the Condominium in the locations shown as "Subject To Development Rights" on the Plats and Plans.

b. The right by amendment, to add real estate to the Condominium and Units, Common Elements, and limited Common Elements shown as "Subject to Development Rights" on the Plats and Plans.

Specifically, the Declarant reserves the right to accept the conveyance of a small parcel of property lying along the eastern boundary of the condominiums existing property to allow for the inclusion of the remainder of the parking lot along with some additional property surrounding the parking lot and extending to the cul-de-sac. Such property shall be approximately 175 feet by 30 feet in dimension. The property shall become additional common area of the condominium.

c. The right to subdivide Units or convert Units into Common Elements.

d. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated "Subject To Development Rights" on the Plats and Plans for the purpose of furnishing utility and other services to

BK895PG834

buildings and improvements to be constructed on the land designated "Subject to Development Rights" on the Plats and Plans. The Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Condominium for the above-mentioned purposes. The Declarant grants any such easements, Exhibit A will be amended to include reference to the recorded easement.

The Declarant further reserves the right to convey easement(s)

for two drainfields to the owners of neighboring property as shown on the Plats and Plans as "Subject to Development Rights." Such easements shall encumber the existing common area of the subdivision and shall only service lots 12 and 13 of Woodlands Service those two properties for residential purposes.

Section 6.2. Limitations on Development Rights. The Development Rights reserved in Section 6.1 are limited as follows:

- a. The Development Rights may be exercised at any or at recording of the Initial Declaration;
- b. Not more than eighteen (18) additional Units may be created under the Development Rights;
- c. The quality of construction of any buildings and the quality of those constructed pursuant to this Declaration as initially recorded.
- d. All Units and Common Elements created pursuant to same manner and to the same extent as the Units created under this Declaration as initially recorded.

e. No Development Rights may be exercised unless

approved pursuant to Section 16.5 of this Declaration.

Section 6.3. Phasing of Development Rights.

Development Rights may be exercised by Declarant with respect to different parcels of real estate at different times, and no assurances are made by the Declarant regarding the portions of the areas shown as "Subject to Development Rights" on the Plats and Plans as to the boundaries of the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed or withdrawn. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions, but no part of a portion may be withdrawn after a Unit in that portion has been conveyed to a purchaser.

BK895PG835

Section 6.4. Special Declarant Rights. T h o
Declarant reserves the following Special Declarant Rights, to the
maximum extent permitted by law, which may be exercised, where
applicable, anywhere within the Condominium;

- a. To complete improvements indicated on the plats and
plans filed with the Declaration;
- b. To exercise a Development Right reserved in the
Declaration;
- c. To maintain sales offices, management offices, signs
advertising the Condominium, and models;
- d. To use easements through the Common Elements for the
purpose of making improvements within the Condominium or within
the real estate which may be added to the Condominium;
- e. To appoint or remove an officer of the Association
or an Executive Board member during the Declarant Control Period
subject to the provisions of Section 6.9 of this Declaration.

Section 6.5. Models, Sales Offices and Management
Offices. As long as the Declarant is a Unit Owner or owns real
property subject to the Development Right to add real estate to the
Condominium, the Declarant and its duly authorized agents,
representatives and employees may maintain any Unit owned by the
Declarant or any portion of the Common Elements as a model unit or
sales office or management office in accordance with the
Condominium Act and by appropriate amendment to this Declaration or
the Plats and Plans, if required. Declarant hereby reserves the
right to remove any such model unit, sales office or management
office and such shall not be deemed a Common Element unless so
designated by Declarant in an amendment hereto.

Section 6.6. Construction: Declarant's Easements.
The Declarant reserves the right to perform repairs and
construction work, and to store materials in secure areas, in Units
and Common Elements, and the further right to control all such work
and repairs, and the right of access thereto, until its completion.
All work may be performed by the Declarant without the consent or
approval of the Executive Board. The Declarant has such an
easement through the Common Elements as may be reasonably necessary
for the purpose of discharging the Declarant's obligations for
exercising Special Declarant Rights, whether arising under the
Condominium Act or reserved in the Declaration. Such easement
includes the right to convey utility and drainage easements to
public utilities, municipalities, the State of North Carolina,
riparian owners or upland owners to fulfill the plan of
development.

BK895PG836

Section 6.7. Signs and Marketing. The Declarant reserves the right to post signs, and displays in the Common Elements to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 6.8. Declarant's Personal Property. Declarant reserves the right to retain all personal property, equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property, any and all of the goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 6.9. Declarant Control of the Association.

a. Subject to Subsection 6.9b, during the Declarant Control Period, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Declarant Board. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

b. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created (including those created under Development Rights) to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

c. Not later than the termination of the Declarant Control Period, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Executive Board members and officers shall take office upon election.

d. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 47C-3.108 of the Condominium Act, the Unit owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at

BK895PG837

a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

~~Section 6.10. Limitations on Special Declarant Rights.~~
Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant:

(i) so long as the Declarant holds a Development Right to create additional Units or Condominium; or

or (ii) so long as the Declarant owns any Unit;

(iii) seven (7) years after recording this Declaration.

~~Section 6.11. Interference with Special Declarant Rights.~~ Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

ARTICLE 7. ALLOCATED INTERESTS

~~Section 7.1. Allocation of Interests.~~ The table showing Unit numbers and their Allocated Interests is attached as Exhibit B. These interests have been allocated in accordance with the formulas set out in this Article 7. These formulas are to be used in reallocating interest if Units are added to the Condominium.

~~Section 7.2. Formulas for the Allocation of Interests.~~
The interests allocated to each Unit have been calculated on the following formulas:

a. Undivided interest in the Common Elements. Each Unit in the Condominium shall have an equal percentage of the undivided interest in the Common Elements.

b. Liability for the Common Expenses. Each Unit in the Condominium shall have an equal percentage of liability for the Common Expenses. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 17 of this Declaration.

c. Votes. Each Unit in the Condominium shall have one equal vote. Any specified percentage portion or fraction of Unit Owners, unless otherwise stated in the Condominium Documents, means

8K895P6838

the specified percentage, portion, or fraction of all the votes as allocated in Exhibit B.

Section 7.3. Assignment of Allocated Interests. Upon the effective date for assigning Allocated Interests to Units created pursuant to Section 6.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the Office of the Register of Deeds of each county in which the Condominium is located.

ARTICLE 8. RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 8.1. Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

a. Each Unit is restricted to residential use and such other uses as may be allowable under the then current zoning designation of the Condominium.

b. The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.
Section 8.2. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan.

A Unit may not be leased or rented for a term of less than sixty (60) days. All leases and rental agreements shall be in writing and subject to the requirements of the Condominium Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives able opportunity to cure the violation directly, prior to the commencement of an enforcement action.

ARTICLE 9. EASEMENTS AND LICENSES

All easements or licenses to which the Condominium is presently subject are recited in Exhibit A to this Declaration. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

ARTICLE 10. ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

BK895PG839

A Common Element not previously located as a Limited Common Element may be so allocated only pursuant to provisions of Article 5 of the Declaration. The allocations will be made by the Limited Common Element, specifying to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of boundaries of Units pursuant to Article 12 of this Declaration. Such amendments shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and responsible for the preparation of the amendment and the reimbursement of the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE 11. ADDITIONS, ALTERATIONS AND IMPROVEMENTS.

Section 11.1. Additions, Alterations and Improvements by Unit Owners.

a. No Unit Owner will make any structural addition, structural alteration, or structural improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c.

b. Subject to Subsection 11.1a, a Unit Owner:

(i) may make any other improvements or alterations to the interior of such Unit Owner's Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of Condominium;

(ii) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium, without permission of the Association;

(iii) after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or

IK895P6840

lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of the boundaries of any Unit.

c. A Unit Owner may submit a written request to the Executive Board for approval to do anything forbidden under Subsection 11.1a or 11.1b(14). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

d. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to persons or damage to property arising therefrom.

e. All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change. The provisions of this Section shall not apply to the Declarant in the exercise of any Special Declarant Right.

Section 11.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Sections 17.5 and 17.6 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

Section 11.3. Exterior Improvements and Landscaping Within Limited Common Elements. Unit Owners may make exterior improvements within or as a part of limited Common Elements constituting balconies or patios consisting of repainting, restaining, addition of architectural detailing, changing of doors and fenestration, planting of gardens, hedges, shrubs, construction of fences, walks, benches, and architectural conceals, provided they are undertaken with the permission of the Executive Board or a covenants control committee established for such purpose, if any, following submission of complete plans prepared by an architect or landscape architect and a review of such board or committee as to consistency with improvements originally constructed by the Declarant, and consistent with the style and character of the

BK895PC841

community. No approval will be awarded without Notice and Comment given to the Unit Owners. It is the intent to provide for limited individualization of the appearance of the buildings while retaining a character consistent with the overall plan of the Condominium community.

The applicant will pay for the cost of preparation of the application, the cost of professional review, if deemed required by the review entity, and all costs of permits and fees.

ARTICLE 12. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

Section 12.1. Application and Amendment. Subject to Article 11, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a relocation, shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by the owners of the affected Units and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 12.2. Recording Amendments. The Association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

ARTICLE 13. AMENDMENTS TO DECLARATION

Section 13.1. General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 13.4 and Article 16 of this

BK895F842

Declaration, this Declaration, including the plats and plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 13.2. Limitation of Actions. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 13.3. Recordation of Amendments. Each amendment to the Declaration must be recorded in every county in which a portion of the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 12 of this Declaration, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 13.4. Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Condominium Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of the unanimous consent of the Unit Owners.

Section 13.5. Execution of Amendments. An amendment to the Declaration required by the Condominium Act to be recorded by Declaration and the Condominium Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for this purpose, or in the absence of designation, by the president of the Association.

Section 13.6. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7. Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article 16 of this Declaration.

Section 13.8. Amendments to Create Units or Withdraw Real Estate. To exercise any Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new plats and plans necessary to conform to the requirements of Section 47C-2-109(a), (b), and (c) of the Condominium Act or new certifications of the plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those Sections.

BK895P6843

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Section 47C-2-110(a) of the Condominium Act.

ARTICLE 14. AMENDMENTS TO BYLAWS

The Bylaws may be amended only by a vote of two-thirds (2/3) of the members of the Executive Board, following Notice and Consent to all Unit Owners, at any meeting duly called for such purpose.

ARTICLE 15. TERMINATION

Termination of the Condominium may be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.

ARTICLE 16. MORTGAGEE PROTECTION

Section 16.1. Introduction. This article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.

Section 16.2. Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding First Mortgages in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to First Mortgages held by Eligible Mortgagees.

Section 16.3. Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

a. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable;

b. Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;

BK895PG844

c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and

e. Any judgment rendered against the Association.

Section 16.4. Consent Required.

a. Changes in the Condominium Documents. Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described in this Subsection 16.4a may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. "Material" includes, but is not limited to, any provision affecting:

(i) assessments, assessment liens or subordination of assessments liens;

(ii) voting rights;

(iii) reserves for maintenance, repair and replacement of Common Elements;

(iv) responsibility for maintenance and repairs;

(v) reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Units Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action;

(vi) rights to use Common Elements and Limited Common Elements;

(vii) boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit owners and the Eligible

BK895PG845

Mortgagees holding First Mortgages in such Unit or Units must prove such action;

(viii) convertibility of Units into Common Elements or Common Elements into Units;

(ix) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;

(x) insurance or fidelity bonds;

(xi) leasing of units

(xii) imposition of restrictions on a Unit Owner's right to sell or transfer a Unit;

(xiii) establishment of self-management when professional management had been required previously by any Eligible Mortgagees;

(xiv) restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;

(xv) termination of the Condominium after occurrence of substantial destruction or condemnation; and

(xvi) the benefits of Eligible Mortgagees.

b. Actions. Notwithstanding any lower requirement permitted by the Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

(i) convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other use of the Common Elements by the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause);

895PC846

(ii) the establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(iii) the restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(iv) the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required.

(v) the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(vi) the merger of this Condominium with any other condominium;

(vii) the granting of any easement, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Condominium and excluding any leases, licenses or concessions for no more than one year);

(viii) the assignment of the future income of the Association, including its rights to receive Common Expenses assessments; and

(xi) any action taken not to repair or replace the Property.

c. The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Eligible Mortgagees.

d. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment.

Section 16.5. Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the

BK895PG847

Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

Section 16.6. Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

Section 16.7. Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

Section 16.8. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9. Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

Section 16.10. Appointment of Trustee. In the event of damage or destruction under Article 20 or 21 or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Subsection 1.2a.4. Proceeds will thereafter be distributed pursuant to Article 21 or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

ARTICLE 17. ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 17.1. Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit B to this Declaration.

Section 17.2. Common Expenses Attributable to Fewer Than All Units.

a. Any Common Expenses associated with the maintenance, repair or replacement of a limited Common Element shall be assessed against the Unit or Units to which the limited Common Element is assigned. If any such limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the limited Common Element shall be assessed among the Units to which it is

BK895P6848

assigned in proportion to the Allocated Interests in the common expenses for such Units.

b. Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from service.

c. Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

d. An assessment to pay a judgment against the Association may be made only against the Units in the Condominium Expense liabilities.

e. If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

f. Fees, charges, late charges, fines, collection costs and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments.

Section 17.3. Lien.

a. The Association has a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk of Superior Court of each county in which the Condominium is located. Fees, charges, late charges, fines and interest charged pursuant to the Condominium 24 Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute alien from the time of such filing.

b. A lien under this section is prior to all other liens and encumbrances on a Unit except:

(i) liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not

BK895PG849

affect the priority of mechanics' or materialmen's liens.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

d. This section does not prohibit an action to recover sums for which Subsection 17.3a of this section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

e. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.

f. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

g. If a holder of a first mortgage or first deed of Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and its heirs, successors and assigns shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectable from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

h. Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.4. Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting eighty percent (80%) of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5. Ratification of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the

PK895PR850

Unit Owners for ratification in the same manner as a budget under Section 17.4.

Section 17.6. Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.7. Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable monthly.

Section 17.8. Acceleration of Common Expense Assessments. In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against such Unit Owner's Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 17.10. No Waiver of Liability for Common Expenses. No Unit Owner is or may become exempt from liability for payment of the Expenses by waiver of the use and enjoyment of the Common Elements for by abandonment of the Unit against which the assessments are made.

Section 17.11. Personal Liability of Unit Owners. The owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless such successor agrees to assume the obligation.

ARTICLE 18. RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee consent described in Article 16.

DOCUMENTS ARTICLE 19. PERSONS AND UNITS SUBJECT TO THE CONDOMINIUM

BK895PG851

Section 19.1. Compliance with Condominium Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Condominium Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions of the Condominium Documents are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

Section 19.2. Adoption of Rules and Regulations. The Executive Board may adopt Rules and Regulations regarding the use and occupancy of Units affecting the Common Elements, Limited Common Elements and the activities of occupants, subject to Notice and Comment.

ARTICLE 20. INSURANCE

Section 20.1. Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2. Property Insurance.

a. Property insurance covering:

(i) the Project facilities (which term means all buildings on the Property, including the Units and all fixtures, equipment and any improvements and betterments whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the under surfaces of the lowest floors, underground pilings, pipes, flues and drains and other items normally excluded from property policies; and

(ii) all personal property owned by the Association.

b. Amounts. The Project facilities for an amount (after application of any deductions) equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased

BK895PG852

and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be \$10,000 or one percent (1%) of the policy fact amount.

The difference between the policy deductible and \$250 deductible portion \$250 as per Unit Owner affected shall be paid by each of the Unit Owner(s) suffering a loss.

C. Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

d. Other Provisions. Insurance policies required by this Section shall provide that:

(i) the insurer waives the right to subrogation under the policy against a Unit Owner, a tenant of a Unit Owner, and any employee of a Unit Owner or of a tenant of a Unit Owner.

(ii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iii) 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 policy of the Association provides primary insurance.

(iv) Loss must be adjusted with the Association.

(v) Insurance proceeds shall be paid to an insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgage.

BK895PM853

(vi) the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association or each Unit Owner and each holder of a Security Interest to whom a certificate of a Security of Insurance has been issued, or memorandum of insurance has been issued, at their respective last known addresses.

(vii) the name of the insured shall be shown, substantially, as the Association "for the use and benefit of the individual owners".

Section 20.3. Liability Insurance. Liability insurance, including medical payments insurance, liability insurance, the Executive Board but in no event less than \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

2. Other Provisions. Insurance policies carried pursuant to this section shall provide that:

(i) each Unit Owner is an insured person under the policy with respect to liability arising out of interest of the Unit Owner in the Common Elements or membership in the Association.

(ii) the insurer waives the right to subrogation under the policy against a Unit Owner, a tenant of a Unit Owner, and any employee of a Unit Owner or a tenant of a Unit Owner.

(iii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) 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 policy of the Association provides primary insurance.

(v) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to

BK895P8854

the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4. Fidelity Bonds. A blanket fidelity bond may be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services.

Section 20.5. Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for such Unit Owner's own benefit.

Section 20.6. Workers' Compensation Insurance. The Executive Board shall obtain and maintain workers' compensation insurance to meet the requirements of the laws of the State of North Carolina.

Section 20.7. Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.8. Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9. Premiums. Insurance premiums shall be a Common Expense.

ARTICLE 21. DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 21.1. Duty to Restore. A portion of the Condominium for which insurance is required under Section 47C-3-113 of the Condominium Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- a. the Condominium is terminated; or
- b. repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- c. eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned limited Common Element that will not be rebuilt, vote not to rebuild.

BK895PC855

Section 21.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specification or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4. Replacement of Less than Entire Property.

a. 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.

b. Except to the extent that other persons will be distributres

(i) the insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the owner of the Unit and the owner of the Unit to which the limited Common elements were allocated, or to lienholders, as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Element interests of all the Units.

c. If the Unit Owners vote not to rebuild a Unit, the allocated interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Condominium Act, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 21.5. Insurance Proceeds. The Trustee, or if there is no Trustee, then the Executive Board of the Association, for the Association, shall hold any insurance proceeds in trust my appear. Subject to the provision of Subsection 21.1a through Subsection 21.1c, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of the proceeds after the property has been completely repaired and restored, or the Condominium is terminated.

BK895PG856

Section 21.6. Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

- a. whether or not damaged or destroyed property is to be repaired or restored;
- b. the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

HEARING ARTICLE 22. RIGHTS TO NOTICE AND COMMENT; NOTICE AND

Section 22.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Condominium Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2. Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "Notice and Hearing", the following procedures shall be observed: the party proposing to take the action (e.g., the Executive Board, the committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative Alto give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the manner in which notice of the meeting was given.

Section 22.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by

BK895P857

filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE 23. EXECUTIVE BOARD

Section 23.1. Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Condominium Act. The Executive Board shall have, subject to the limitations and duties necessary for the administration of the affairs of the Association and of the Condominium which shall include, but not be limited to, the following:

- a. adopt and amend Bylaws, Rules and Regulations;
- b. adopt and amend budgets for revenues, expenditures and reserves;
- c. collect assessments for Common Expenses from Unit Owners;
- d. hire and discharge managing agents;
- e. hire and discharge employees, agents other than managing agents, and independent contractors;
- f. institute, defend or intervene in litigation or administrative proceeding or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Condominium;
- g. make contracts and incur liabilities;
- h. regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- i. cause additional improvements to be made as a part of the Common Elements;
- j. acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or

BK895Pg858

Personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to section 47C-3112 of the Condominium Act;

k. grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;

l. impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than limited Common Elements described in Section 47C-2-102(2) and (4) of the Condominium Act, and for services provided to Unit Owners;

m. impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, and the Rules and Regulations of the Association;

n. impose a reasonable charge for the preparation and recordation of amendments to this Declaration, and resale certificates required by Section 47C-4-109 of the Condominium Act or a statement of unpaid assessments;

o. provide for the indemnification of the Association's officers and the Executive Board and maintain directors' and officers' liability insurance;

p. assign the Association's right to future income, including the right to receive Common Expense assessments;

q. exercise any other powers conferred by this Declaration or the Bylaws;

r. exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

s. exercise any other power necessary and proper for the governance and operation of the Association; and

t. by resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under the resolution delegating administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 23.3. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend

BK895PG859

this Declaration, to terminate the Condominium or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE 24. CONDEMNATION

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

ARTICLE 25. MISCELLANEOUS

Section 25.1. Captions. The captions contained in the Condominium Documents are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the Condominium Documents nor the intent of any provision thereof.

Section 25.2. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Condominium Documents so require.

Section 25.3. Waiver. No provision contained in the Condominium Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 25.4. Invalidity. The invalidity of any provision of the Condominium Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provision of the Condominium Documents shall continue in full force and effect.

BK895P860

Section 25.5. Conflict. The Condominium Documents are intended to comply with the requirement of the Condominium Act. In the event of any conflict between the Condominium Documents and the provisions of the Condominium Act, the provisions of the Condominium Act shall control. In the event of any conflict between this Declaration and any other Condominium Document, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 14th day of August, 1996.

ELDERWOODS, INC.

By:

Edward V. Harte

President

ATTEST:

Maria L. Gell
Secretary

BK 895 PG 861

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Before me, a Notary Public, personally appeared this day March, 1996 who, being duly sworn, says that he/she is the Secretary of ELDERWOODS, INC. the corporation described in and which executed the foregoing instrument; that he/she knows the common seal of said corporation; that the foregoing instrument was executed in its corporate name by the said Secretary who affixed the common seal thereto, all by the order of the Board of Directors of said corporation and that the said instrument is the act and deed of the said corporation.

Witness my hand and notarial seal this the 14th day of August, 1996.

M. Catherine McCurt
Notary Public

My commission expires: 11-2-97
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

The foregoing certificate of M. Catherine McCurt, Notary Public of Meck. County, State of N.C., is hereby certified to be correct. This instrument was presented for registration and recorded in this office in Book 895, page 825.
This 15th day of August, 1996, at 11:40 o'clock A m.

JUDY G. PRICE
Register of Deeds

By: Judy M. Rankin, Asst.

BK895PC862

EXHIBIT A

DESCRIPTION OF REAL ESTATE

TRACT #1: BEING all of Lot 19 of Woodlands Subdivision as shown on plat recorded in Plat Cabinet B, 267A, Union County Registry, to which plat reference is hereby made for a more particular description.

TRACT #2: BEGINNING at a point on the western boundary of the right of way of Karibuni Drive, the northeast corner of Lot 16A of Woodlands Subdivision (Plat Cabinet C, File 403, Union County Registry), and running from said beginning point with Lot 16A, North 81 degrees 49 minutes 13 seconds West 197.00 feet to a point; thence continuing with Lot 16A and Lot 16B of said subdivision, South 05 degrees 47 minutes 30 seconds West 230.20 feet to a point; a common corner of Lot 16B and Lot 17A of said subdivision; thence a new line within Lot 20 of Woodlands Subdivision (Plat Cabinet B, File 267A, Union County Registry), North 74 degrees 01 minute 26 seconds West 225.48 to a point, the northeast corner of Lot 19 of Woodlands Subdivision (Plat Cabinet B, File 267A, Union County Registry); thence with Lot 19 of said subdivision, North 87 degrees 37 minutes 00 seconds West 150.40 feet to a point in the eastern boundary line of the property of A. Shannon (Plat Cabinet C, File 543, Union County Registry); thence with the Shannon property, North 02 degrees 23 minutes 00 seconds East 460.47 feet to a point, a corner of the property of G. A. Adams (Book 474, at Page 465, Union County Registry); thence with the Adams property, North 02 degrees 23 minutes 00 seconds East 115.89 feet to a point, a corner of Lot 12 of Woodlands Subdivision (Plat Cabinet B, File 267A, Union County Registry); thence with Lot 12, Lot 13 and Lot 14 of said subdivision, South 52 degrees 04 minutes 58 seconds East 414.99 feet to a point, a common corner of Lot 14 and Lot 15 of said subdivision; thence with Lot 15 as follows: (1) South 24 degrees 08 minutes 05 seconds East 110.00 feet; (2) South 81 degrees 49 minutes 13 seconds East 199.50 feet to a point on the western boundary of the right of way of Karibuni Drive (said right of way being 50 feet wide); thence with the western boundary of the right of way of Karibuni Drive, South 08 degrees 10 minutes 47 seconds West 60.00 feet to the point of BEGINNING and containing 4.226 acres, more or less, as shown on copy of unrecorded map of Survey prepared by Gordon D. Svedberg, NCRLS, date November 29, 1993, and being a portion of Lot 20 of Woodlands Subdivision (Plat Cabinet B, File 267A, Union County Registry);

SAVE AND EXCEPT THE FOLLOWING:

BEGINNING at an existing iron pin located on the western boundary of the right of way of Karibuni Drive (said right of way being 50 feet wide), said iron pin being the northeast corner of Lot 16A of Woodlands Subdivision (Plat Cabinet C, File 403, Union County Registry), and running from said beginning iron with the northern boundary line of Lot 16A, North 81 degrees 49 minutes 13 seconds

BK895PG863

West 197.00 feet to an existing iron pin, the northwest corner of the aforesaid lot 16A; thence North 05 degrees 47 minutes 30 seconds East 60.05 feet to an existing iron pin, the southwest corner of Lot 15 of Woodlands Subdivision (Plat Cabinet B, File 267A, Union County Registry); thence with the southern boundary line of Lot 15, South 81 degrees 49 minutes 13 seconds East 199.50 feet to an existing iron pin found on the western boundary of the right of way of Karibuni Drive, the southeast corner of the aforesaid lot 15; thence with the western boundary of the right of way of Karibuni Drive, South 08 degrees 10 minutes 47 seconds West 60.00 feet to the BEGINNING iron pin, and containing 0.273 acre, more or less, as shown on copy of unrecorded map of survey prepared by Gordon D. Svedberg, NCRLS, dated February 7, 1995, and being a portion of Lot 20 conveyed to Elderwoods, Inc. by deed recorded in Book 680, at Page 212, Union County Registry.

TRACT #3: A certain 40 foot wide non-exclusive perpetual well and water system easement, the southern and western boundary line of said easement being more particularly described as follows:

BEGINNING at an iron pin found in the northern boundary of the right of way of S.R. 1113 (known as Davis Road), a common corner of Lot 18 and Lot 20 of Woodlands Subdivision (Plat Cabinet B, File 267A, and Plat Cabinet C, File 403, Union County Registry), and running from said beginning iron pin with the northern boundary of the right of way of S.R. 1113, North 74 degrees 20 minutes 42 seconds West 131.14 feet; thence with the arc of a circular curve to the right in a northeasterly direction having a radius of 25.0 feet, an arc distance of 33.48 feet to a point; thence continuing (said right of way being 50 feet wide), North 02 degrees 23 minutes 00 seconds East 96.38 feet to a point; thence with the arc of a circular curve to the right in a northeasterly direction having a radius of 25.0 feet, an arc distance of 21.03 feet to a point; thence continuing with the arc of a circular curve to the left having a radius of 50.00 feet, an arc distance of 146.77 feet to a point on the eastern boundary line of Lot 19 of Woodlands Subdivision (Plat Cabinet B, File 267A, Union County Registry); thence with the eastern boundary line of Lot 19 of Woodlands Subdivision, North 02 degrees 23 minutes 00 seconds East 176.81 feet to a point, the northeast corner of the said Lot 19 of Woodlands Subdivision, the within described well and water system boundary begin at all points 40 feet wide and abutting the northern the eastern boundary of the right of way of S.R. 1113 (known as Davis Road) and eastern boundary of Lot 19 of Woodlands Subdivision.

BK895P6864

EXHIBIT B

TABLE OF INTERESTS

Unit No.	Percentage of Share of Common Elements	Percentage of Share of Common Expenses	Percentage of Share of the Association
A	1/13	1/13	1/13
B	1/13	1/13	1/13
C	1/13	1/13	1/13
D	1/13	1/13	1/13
E	1/13	1/13	1/13
F	1/13	1/13	1/13
G	1/13	1/13	1/13
H	1/13	1/13	1/13
J	1/13	1/13	1/13
K	1/13	1/13	1/13
L	1/13	1/13	1/13
M	1/13	1/13	1/13
N	1/13	1/13	1/13