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RECORDED AND VERIFIED
MARY SUE BOTS
REGISTER OF DEEDS
NEW HANOVER CO. NC.

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Prepared by: Siegel & Hochuli
5710 Oleander Drive, Ste. 112
Wilmington, NC 28403

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATIONS OF UNIT OWNERSHIP
AND COVENANTS, CONDITIONS AND
RESTRICTIONS OF
3 WEST HENDERSON CONDOMINIUM

THIS DECLARATION OF UNIT OWNERSHIP, made this 5th day
of January, 1994 by Potter Builders, Inc., P.O. Box
12444, Charlotte, NC 28220-2444, hereinafter called "Declarant";

000100

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in the Town of Wrightsville Beach, New Hanover County, North Carolina, which is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

WHEREAS, Declarant has constructed or will construct on this real property certain improvements, more fully described hereafter, which real estate and improvements Declarant desires to submit to condominium ownership;

NOW, THEREFORE, Declarant declares its intention, by the filing of this Declaration, to submit, and does hereby submit, the above-described real property and improvements thereon to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes, as a unit ownership project to be named 3 West Henderson Condominium; and further publishes and declares that all of the property described herein is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved, subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the conversion of said property into a condominium facility, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DEFINITIONS. Certain terms in this Declaration and in the Articles of Incorporation and Bylaws appended hereto shall be defined as follows, unless the context clearly indicates a different meaning therefor:

a. "Act" means the provisions of the North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

- b. "Allocated interests" means the undivided interests in the common elements, the common expense liability and votes in the association allocated to each unit.
- c. "Association" means 3 West Henderson Condominium Unit Owners Association, Inc., which is an entity comprised of all owners of units in 3 West Henderson Condominiums.
- d. "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against a unit owner by the Association.
- e. "Building" means the building currently existing upon the real property described in Exhibit "A" and which houses the condominium units.
- f. "Board of Directors" or "Board" means the Board of Directors of the Association or its agents, which shall be the executive board of the Association, as defined in N.C.G.S. 47C-1-103(13). "Director" means a member of the Board.
- g. "Bylaws" means the bylaws of the Association providing for the government and administration of the Association. "Articles" means the Articles of Incorporation of the Association.
- h. "Common Element" means the portion of the condominium property owned in common by all of the unit owners, as more specifically set forth herein.
- i. "Common expenses" means the expenses incurred by the Association the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the common areas and facilities as well as any other expense incurred by the Association which is and declared to be a common expense by the Association, this Declaration, the Bylaws of the Act.
- j. "Common profits" means the balance of all income, rents, profits and revenues of the Association remaining after the deduction of the common expenses.
- k. "Condominium project" or "Project" means the entire proposed development consisting of all the land, the building and other "property" as that term is herein defined.
- l. "Declarant" means Potter Builders, Inc., their successors and assigns.
- m. "Declaration" means this instrument as it may from time to time be lawfully amended or supplemented.
- n. "Limited Common Element" means those common areas and facilities which are reserved for the use of a certain unit or units to the exclusion of other units, as more specifically identified herein.

o. "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

p. "Property" means and includes the land, the building, all improvements and structures thereon and all articles of personal property intended for use in connection therewith which are submitted to condominium ownership by this Declaration.

q. "Real Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto.

r. "Unit" or "Condominium Unit" shall mean that enclosed space within the building as shown on the building plans described in the Declaration, together with any additional area or space accompanying the same and described herein, which is intended for private ownership and to be sold as a dwelling unit pursuant to the Declaration and the Act. The enclosed space representing each unit shall be bounded by the interior surface material of its perimeter walls, ceilings and floors. Each unit is defined to include:

(a) all non-load bearing partition walls located entirely within the above-defined enclosed space;

(b) all interior finished surfaces of the perimeter walls and ceilings;

(c) all carpet, vinyl, wood floor or other decorative floor covering;

(d) all windows, window frames, exterior doors, and exterior door frames;

(e) all heating and air conditioning equipment and accompanying ducts and components (if separate for each unit);

(f) all wires, ducts pipes, lines and other facilities for the furnishing of utility services located within the above-defined enclosed space, but specifically excluding all wires, ducts, pipes and other facilities which lie within the above-defined enclosed space but are for the common use of one or more other units in the project.

s. "Unit Designation" means the number thereof which designates a unit within the condominium.

t. "Unit Owner" means a person, corporation, partnership, association, trust, other legal entity, or any combination thereof, in whose name or names the title to or an interest in the title to any unit is vested, excluding those who own or hold such title or interest under the terms of any mortgage or deed of trust or other similar instrument for the purposes of securing the payment of an indebtedness or the performance of an obligation.

2. DESCRIPTION OF REAL PROPERTY. The real property on which the building and improvements are or are to be located is described in Exhibit "A", attached hereto and incorporated herein by reference.

3. DESCRIPTION OF BUILDING. The building in which the units are located is described in building plans which are attached hereto as Exhibit "B" and incorporated herein by reference. The building will consist of three stories.

4. UNIT DESIGNATION AND DESCRIPTION. The unit designation of each unit and a description of its location, area, floor plan and number of rooms, are shown on the building plans attached hereto as Exhibit "B".

5. DESCRIPTION OF COMMON ELEMENTS AND FACILITIES. The common elements and facilities shall consist of all the real property described in Exhibit "A", which is subjected to the terms of this Declaration, and all of the improvements and facilities thereon which are not units as defined herein and which are not items of personal property owned, held, or maintained by unit owners. Without in any way limiting the scope thereof, the common elements and facilities shall include the following:

a. All foundations, columns, girders, beams, supports, roofs, exterior walls, interior load bearing walls, ventilation fans and vents of the building;

b. All stairways, stairwells, halls, passageways, corridors, lobbies, exits and entrances which give access to the units;

c. All yards, gardens, parking areas and swimming pools, and other amenities;

d. All installations for the provision of utility services, including, but not limited to, electricity, water, gas, refrigeration, telephone, heating, air conditioning, sewer, trash disposal, incineration, and television which are for the common use and benefit of the unit owners and which are not defined as being a part of the units;

e. All tanks, pumps, motors, fans, compressors and control equipment existing for common use.

6. ALLOCATED INTERESTS. Unless and until this project shall be expended as herein provided, the percentage of each unit owner's undivided interest in the common elements of 9 East Birmingham Condominium is set forth in Exhibit "C", attached hereto and incorporated herein by reference. This percentage is based on the relation that the total volume in square feet of each unit bears to the aggregate square feet contained in all units as of the date of this Declaration.

7. LIMITED COMMON ELEMENTS. The decks or porches adjacent

to each unit and any storage space allotted to each unit, designated in Exhibit "B" attached hereto as "limited common areas" are limited common areas for the sole use of the unit owner of a unit to which the same are adjacent or allocated as indicated on said plans.

8. NATURE AND INCIDENTS OF UNIT OWNERSHIP.

a. Nature of Interest. Every unit, together with its undivided interest in the common elements shall for all purposes be treated as a separate parcel of real property with all the incidents thereof. Each unit may be individually conveyed, leased and encumbered and may be inherited or devised by will as if it were solely and entirely independent of the other units in the building of which it forms a part. Each unit may be held and owned by more than one person, either as tenants in common or tenants by the entirety, or in any other manner recognized under State law.

b. Partitioning. No unit may be divided or subdivided into a smaller unit or units, nor shall any unit or portion thereof be added to or incorporated into any other unit unless written approval is first obtained from the Board of Directors of the Association. The common elements shall remain undivided and no unit owner or any other person shall bring an action for partition or division of any part thereof, unless the property has been removed from the provisions of the Unit Ownership Act.

c. Common Elements Appurtenant to Unit. T h e undivided interest in the common elements shall not be conveyed, encumbered, or otherwise separated from the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

d. Taxes. Each unit and its percentage of undivided interest in the common elements shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including, but not limited to, special ad valorem levies and special assessments. Each unit owner shall be liable solely for the amount of taxes on his individual unit and shall not be affected by the consequences resulting from the tax delinquency of other unit holders. Neither the buildings, the property, nor any of the common elements shall be deemed to be a separate parcel for purposes of taxation.

9. USE RESTRICTIONS.

a. Each unit shall be used for single-family residential purposes only, which shall include the rental of individual units by the owner. No unit shall be used for transient hotel, commercial or business purposes.

b. No immoral, improper, offensive, noxious or unlawful use shall be made of any unit or of the common elements, and all applicable laws, zoning ordinances and regulations of all

governmental authorities shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common elements, which will increase the rate of insurance on the unit, or which will obstruct or interfere with the rights of other occupants of the other units or annoy or embarrass them, nor shall any owner undertake any use or practice which shall constitute a nuisance to any other owner of a unit, or which interferes with the peaceful possession and proper use of any other unit or the common elements.

c. No owner of a unit shall permit any structural modification or alteration to be made to the unit without first obtaining the written consent of the Board of Directors of the Association, nor alter nor cause any changes to be made to the exterior of the building (including painting, installing television or radio antenna or installing signs), or in any manner alter the appearance of the exterior portion of the building without obtaining such consent. No unit owner shall fix any object to the common elements (including fences, flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the common elements or limited common elements without first obtaining the written consent of the Board of Directors of the Association.

d. The Declarant or its agent shall have the right to maintain a sales office or model unit in any of the units of its choice for the sole purpose of selling the remaining units in the project. This right will terminate upon the sale of the last unit by the Declarant.

e. The use of the property shall be subject to any restrictions contained in the Bylaws of the Association and to any Rules and Regulations established by the Board of Directors of the Association. These additional use restrictions shall have the same force and effect as the restrictions contained herein.

10. EASEMENTS.

a. In case of any emergency originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Declarant, the Board of Directors of the Association, or any other person authorized by it, or the manager, shall have the right to immediately enter the unit for the purpose of remedying or abating the cause of the emergency.

b. Each unit owner shall have an easement to use all pipes, wires, ducts, cables, conduits, public utility lines and other such facilities which are located in another unit and serve his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other such facilities which are located in such unit and serve other units. The Board of Directors of the Association shall have a right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

c. The Board of Directors may grant or assume easements, leases, or licenses for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the units or common elements. Each unit owner hereby grants to the Board of Directors, or the manager, an irrevocable power of attorney to execute, acknowledge and record for or in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

d. In the event that any unit shall encroach upon any of the common elements, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment upon the common elements or upon a unit for so long as such encroachment shall naturally exist. In the event that any portion of the common elements shall encroach upon any unit, an easement shall exist for the continuance of such encroachment of the common elements upon any unit for so long as such encroachment shall naturally exist. If any unit or any portion of the 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 the unit or the common elements in accordance with this Declaration, portions of the common elements encroach upon any unit, or any unit encroaches then such encroachment shall be permitted and a valid easement for the maintenance thereof shall exist so long as the encroachment naturally remains.

11. MANAGEMENT.

a. Generally. The management of the affairs of the project shall be the right and responsibility of the Association and said management duties shall be carried out in accordance with the terms and conditions of this Declaration, the Articles of Incorporation and the Bylaws of the Association, copies of which are attached hereto and incorporated herein by reference; provided, however, that the Association shall not be authorized to take over management rights and responsibilities until conveyance of management responsibilities to the Association, as provided in the Declaration and in the Bylaws.

b. Conveyance of Control and Management Responsibilities. Conveyance of control and management responsibilities to the Association shall take place when the units have been conveyed to unit purchasers.

c. Manager. The Board of Directors of the Association shall have the right to contract with or employ a manager for the purpose of operating, supervising, maintaining and managing the property. All the management powers and duties of the Association

may be delegated to the manager by the Board of Directors, except those which are specifically reserved to the Board of Directors by this Declaration, the Articles and Bylaws, or the Act.

12. MAINTENANCE. The respective responsibilities of the unit owners and the Association to maintain, repair and replace the property shall be as set forth in the Bylaws.

13. COMMON EXPENSES AND ASSESSMENTS. The unit owners are bound to contribute, according to their allocated interest in the common areas and facilities as set forth herein, toward the common expenses of the Association. No unit owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of the common areas and facilities or by abandonment of the unit belonging to him. The common profits of the property, if any, shall be distributed among the unit owners according to the same percentage undivided interest. Each unit owner shall be subject to an assessment from the Board of Directors for his share of the common expenses. The manner of computing and collecting this assessment is set forth in the Bylaws.

14. INSURANCE.

a. Hazard Insurance. The Board of Directors of the Association, or the manager, shall obtain insurance upon the property for the benefit of the unit owners and their mortgagees against (1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement and (2) such other hazards or risks covered for similar projects, including those covered by the standard "all risk" endorsement. Such policies shall make provision for the issuance of certificates of insurance or mortgagee endorsements to the mortgagees of unit owners, 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 unit owners, the Association and their respective servants, agents and guests. In addition to the above, the Board of Directors may obtain such other insurance coverage as they deem necessary and desirable. All liability insurance shall contain cross-liability endorsements to cover liability of the unit owners as a group to a single unit owner. Each unit owner may obtain insurance, at his own expense, affording coverage upon his own unit, his personal property and such other coverage as he may desire. All hazard insurance shall meet the minimum requirements and standards of the Federal National Mortgage Association.

b. Amount of Coverage. The Board of directors or the manager shall insure all buildings and improvements upon the land and all personal property included in the common areas and facilities in an amount equal to their maximum insurance replacement value as determined annually by the Board of Directors, or manager, with the assistance of the insurance company or companies providing coverage. This insurance coverage amount shall never be less than the total principal balance due on all mortgages outstanding on the property.

c. Premiums. All premiums on insurance policies purchased by the Board of Directors or manager and any deductibles payable in the event of loss shall be paid by the Association and chargeable to the Association as a common expense.

d. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board of Directors or manager as insurance trustee for the unit owners and their mortgagees. The insurance trustee shall have authority to deal with the insurer in the compromise and settlement of claims and to execute and deliver releases to the insurer upon the payment of claims. The insurance trustee's duty upon receipt of any insurance proceeds shall be to hold the same in trust for the benefit of the unit owners and their mortgagees.

e. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed by the insurance trustee to or for the benefit of the beneficial unit owners in the following manner:

(i) Expenses of the insurance trustee. All expenses of the insurance trustee shall be paid first.

(ii) Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds remaining after deduction of the insurance trustee's expenses shall be paid to defray the cost of such repair or reconstruction. Any proceeds remaining after defraying such costs shall be distributed to the unit owners, in accordance with each unit owner's percentage undivided interest in the common areas and facilities, as set forth in Exhibit "C". In the event a mortgagee endorsement has been issued for a condominium unit, any proceeds remitted under this section shall be payable jointly to the unit owner and the mortgagee.

(iii) Failure to reconstruct or repair. If it is determined as provided below that the damage for which the proceeds are paid will not be reconstructed or repaired, the remaining proceeds shall be distributed to the unit owners in accordance with each unit owner's percentage undivided interest in the common areas and facilities, as set forth in Exhibit "C".

f. Damage and destruction.

(i) Determination to reconstruct or repair. Damage to or destruction of the buildings and improvements, except that which is solely the responsibility of the unit owner, shall be promptly required or restored by the Board of Directors or manager, using the proceeds of insurance on the building for that purpose, and unit owners shall be liable for assessment for any deficiency in accordance with their percentage undivided interest in the common areas and facilities; provided, however, if the buildings shall be more than two-thirds destroyed and the owners of three-

fourth of the units resolve not to proceed with repair or reconstruction, then in that event, the property shall be deemed to be owned as tenants in common⁴ by the unit owners and shall be governed by the provisions of Chapter 47C of the North Carolina General Statutes and any amendments thereto. No mortgagee shall have any right to participate in the decision to reconstruct or repair the damaged property.

(ii) Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications of the original building and improvements unless other plans and specifications are unanimously approved by the unit owners.

g. Flood Insurance. If any part of the project is in a special flood hazard area, as defined by the Federal Emergency Management Agency, the owner's Association must maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover the buildings and any other property located within the designated hazard area. The amount of insurance should be at least equal to the lesser of:

(i) 100% of the current replacement cost of all buildings and other insurable property located in the flood hazard area; or

(ii) the maximum coverage available for the property under the National Flood Insurance Program.

h. Liability Insurance. The Association must maintain a comprehensive general liability insurance policy covering all common areas, public ways and any other areas that are under its supervision. The policy should provide coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence. The liability insurance should provide coverage for:

(i) bodily injury and property damage that results from the operation, maintenance or use of the projects common areas; and

(ii) any legal liability that results from law suits related to employment contracts in which the owners' Association is a party.

15. COMPLIANCE WITH DECLARATION, BYLAWS AND REGULATIONS.

a. Binding Nature of Declaration, Bylaws and Regulations. The restrictions and obligations imposed by this Declaration and the Articles and Bylaws of the Association are intended to and shall constitute covenants running with the land and shall constitute an equitable servitude upon each unit and its appurtenant undivided interest in the common areas and facilities. Each unit owner, his tenants, invitees, guests, employees, agents, grantees, successors and assigns, shall comply strictly with the

covenants set forth in this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations adopted by the Association as the same may be lawfully amended from time to time, the acceptance of a deed of conveyance, the entering into a lease, or occupancy of a unit shall constitute an agreement that the provisions of this Declaration, the Articles and Bylaws, and any Rules and Regulations are accepted and ratified by the grantee, tenant, or occupant whether or not these provisions are referred to in the deed of lease.

b. Remedies for Violation. Failure to comply with the covenants and restrictions set forth in this Declaration, the Articles, Bylaws and the Rules and Regulations shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors or manager on behalf of the Association or by an aggrieved unit owner. The Board of Directors shall also have authority to enforce such covenants and restrictions by denial of the use of the common areas and facilities to violators, by levying fines for infractions in an amount not to exceed one hundred fifty dollars (\$150.00) per offense, and by such other means as are provided in this Declaration, Bylaws, and Rules and Regulations or by law.

c. Liability for Expenses. 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 any member of his family, or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include liability for any increase in fire insurance rates occasioned by the use, misuse, occupancy, or abandonment of a unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

d. Waiver. The failure of the Association, any unit owner, or other person to enforce any right, provision, covenant, or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the unit owner to enforce such right, provision, covenants, or condition in the future.

e. Remedies Cumulative. All rights, remedies and privileges granted to the Association or the owner or owners of a unit pursuant to any terms, provisions, covenants, or conditions of this Declaration or the 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.

16. PROCESS AGENT. Michael K. Jones, whose address is 3 West Henderson Street, Wrightsville Beach, NC 28480, is hereby designated to receive service of process in any action which may be

brought under the Act. The Board of Directors may change the process agent by filing a Declaration of Change of Registered Agent in the office of Register of Deeds of New Hanover County, North Carolina.

17. MORTGAGE OF UNITS. Any unit owner may give a deed of trust or mortgage on his unit without prior notice to or authorization by the Declarant or the Board of Directors of the Association. Any rights the Association may have to place a lien upon the property of the unit owner shall be subordinate to and inferior to any deed of trust or mortgage that said unit owner has placed on his property.

18. TERMINATION. The condominium may be terminated and removed from the provisions of the Unit Ownership Act only by written agreement of all the owners of units expressed in an instrument to that effect and duly recorded, provided that the holders of all liens affecting any of the units must consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest in the property which the unit owner owns after termination. The termination shall become effective when the above instruments have been duly recorded in the public records. After termination of the condominium, the unit owners shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the units formerly owned by such unit owners shall have mortgages and liens against the respective undivided shares of the unit owners. The undivided share or interest in the property owned as tenants in common which shall appertain to each unit owner shall be the percentage of the undivided interest previously owned by such unit owner in the common areas and facilities.

19. ASSOCIATION. The Association shall be formed in accordance with Articles and Bylaws attached hereto as Exhibits "D" and "E". The Association shall have all the powers and duties set forth in the Act as well as all of the powers and duties granted to or imposed upon it by this Declaration, the Bylaws attached hereto as Exhibit "E", and the Articles attached hereto as Exhibit "D" as the same may be amended from time to time. Each unit owner, by the acceptance and recording of the deed to such unit owner's unit, appoints irrevocably the Association as herein provided, including the right to execute in such unit owner's name any and all instruments or documents necessary or reasonably required in regard thereto. The operation of the Association shall be governed by the Bylaws and Articles. No modification or amendment of the Bylaws or Articles shall be valid unless set forth in or annexed to an amendment to this Declaration, certified by the President and Secretary of the Association and recorded in the office of the Register of Deeds of New Hanover County. The Association hereby is granted authority and directed to become and remain a member of the Master Association, to pay such dues and assessments as may be levied against the Association by the Master Association, and to include such dues and assessments as part of the common expenses.

20. AMENDMENT OF DECLARATION. This Declaration may be amended by the Declarant at any time prior to the conveyance of all units without the necessity of the permission, consent or joinder of any other person or party, and thereafter at any regular or special meeting of the Association, called and convened in accordance with the Bylaws, by the affirmative vote of or written agreement signed by unit owners of units to which at least 100% of the votes in the Association are allocated, and the prior approval of holders of first mortgages on units representing 100% of the votes attributable to all units subject to first mortgages. Any holder of a first mortgage on a unit who receives a written request from the Association to approve any proposed modification and does not deliver or post to the Association a negative response within thirty (30) days following receipt of such request shall be deemed to have approved same. Notwithstanding the aforesaid, no amendment shall change, affect or alter the allocated interest in the common areas appurtenant to a unit, a unit owner's proportionate share of the common expenses or common profits, or the voting rights appurtenant to any unit create or increase special Declarant rights, increase the number of units, change the boundaries of any unit, or the uses to which a unit is restricted, in the absence of unanimous consent of the unit owners, and all holders of first mortgages on units. Further, no amendment shall be effective until certified by the President and Secretary of the Association and recorded in the office of the Register of Deeds of New Hanover County.

21. SEVERABILITY. The invalidity of any provision of this Declaration shall not impair or affect the validity and enforceability of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included.

22. LAW CONTROLLING. This Declaration, the Bylaws and any Rules and Regulations adopted thereunder shall be construed under and controlled by the laws of the State of North Carolina.

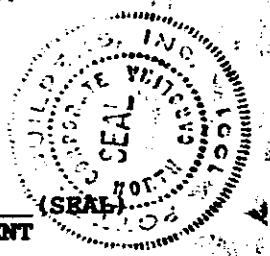
23. WARRANTIES. The Declarant disclaims any warranty or representation in connection with the condominium project, except as specifically set forth herein, and no person shall rely upon any warranty or representation not specifically made herein. Any estimates of common expenses, taxes, or other charges are deemed accurate, but no warranty or guaranty is made or intended, no may one be relied upon.

24. The rights of any owner, as provided herein, shall not include mortgagees of any property within the project unless said mortgagee obtains title to the property by means of foreclosure or other legal methods.

IN TESTIMONY WHEREOF, the Declarant has caused this Declaration to be signed in its name and duly attested and sealed, this the 5th day of January, 1994.

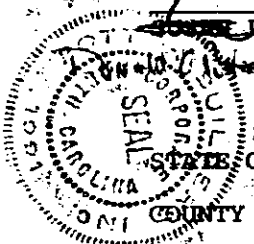
(Corporate Seal)

POTTER BUILDERS, INC.



BY: Donald C. Potter, III
DONALD POTTER, III - PRESIDENT

ATTEST: Donald C. Potter, III (SEAL)
DONALD POTTER, SECRETARY



STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I, Lori S. Wortham, a Notary Public for the aforesaid County and State, certify that Donald C. Potter personally came before me this day and acknowledged that she is Secretary of POTTER BUILDERS, INC., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Donald C. Potter, Jr. Potter as its Secretary.

Witness my hand and official stamp or seal, this 5 day of January, 1994.

Lori S. Wortham
Notary Public

My Commission Expires: _____ (Notarial Seal)
May 13, 1998



BOOK PAGE
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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

The Foregoing Certificate of Lois S. Wortham
Notary Public is certified to be
correct.

This the 19 day of January, 1994.

MARY SUE OOTS
REGISTER OF DEEDS, NEW HANOVER COUNTY

Debra M. Marshall
Deputy/Assistant