

56  
2

BOOK PAGE  
2643 0423

DECLARATION  
OF  
ARBOR COURT

1999 SEP 23 PM 12: 04

000102

ARTICLE 1. SUBMISSION; DEFINITIONS

RECORDED AND VERIFIED  
MARY SUE GOTS  
REGISTER OF DEEDS  
NEW HANOVER COUNTY, NC

**Section 1.1.** Gulf, Worsley and Cowper Properties, LLC, a North Carolina ("Declarant"), owner in fee simple of the real estate described in Exhibit "A", located within New Hanover County, North Carolina, hereby submits such real estate, including all improvements, easements, rights and appurtenances thereunto 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 "ARBOR COURT" ("Condominium"). The Declarant may, but is not obligated to, add additional real estate, including improvements, easements, rights and appurtenances thereunto belonging, to this Declaration of Condominium and to the condominium form of ownership. If Declarant exercises such development right, it shall do so in one or more subsequent amendments hereto. The recording of such Amendment with an Exhibit "A" describing the real estate, including improvements easements, rights and appurtenances thereto belonging, shall, for the purposes of this condominium, be considered a supplementation and addition to the Exhibit "A" attached hereto.

**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 shown on Exhibit "B".

(b) "Association" means ARBOR COURT OWNERS ASSOCIATION, a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association 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 including, but not limited to, all exterior surfaces of buildings.

(e) "Common Expenses" means the expenses or financial liabilities for the operation of the Condominium. These include:

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

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

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

(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 property described in Exhibit "A", subject to this Declaration of Condominium.

(g) "Condominium Documents" means this Declaration, the Plats and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Rules and Regulations as they may be adopted and amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of that Condominium Document.

603584

*J. Mac Donald*

(h) "Declarant" means Gulf, Worsley and Cowper Properties, LLC its successors and assigns as defined in Section 47C-1-103(9) of the Condominium Act.

(i) "Development Rights" means the rights reserved by the Declarant under Article 6 of this Declaration to create Units, Common Elements, and Limited Common Elements within the Condominium.

(j) "Declarant Control Period" means the period prior to the earlier of:

(i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the maximum number of Units which may be created hereunder, to Unit Owners other than a Declarant;

(ii) two (2) years after Declarant or its successors or assigns have ceased to offer Units for sale in the ordinary course of business;

(iii) two (2) years after any right to add new Units was last exercised; or

(iv) fifteen (15) years after the first Unit is conveyed to a Unit Owner other than a Declarant.

(k) "Director" means a member of the Executive Board.

(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 Section 47C-2-102(2) and (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-one percent (51%) of the allocated interest in Common Elements stated as votes in the Association, as established by and set forth in Section 7.2(c) hereinbelow.

(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.

(t) "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 11 at Pages ~~324~~ through ~~328~~, 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.

(x) "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of persons within the Condominium, adopted by the Executive Board pursuant to this Declaration, as amended from time to time.

(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;

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

(vi) to grant such easements across Common Areas as Declarant deems necessary or convenient; or

(vii) amend the Bylaws of the Association during the period of Declarant Control.

(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 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 8 Units. The Declarant will not add any additional units.

**Section 2.2 Boundaries.** Boundaries of each Unit created by this Declaration are shown on the Plats and Plans as numbered Units with their identifying number and are described as follows:

(a) **Upper Boundary:** The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling or roof, as the case may be, bearing structure surfaces, beams, and rafters, 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, sills 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 and thresholds along perimeter walls and floors; and the innermost 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 2.2(a), (b), and (c), and will also include the spaces and Improvements within such spaces including water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, from the point of entry into the Unit from any adjoining Common Areas. Moreover, included in the definition of Unit shall be all HVAC systems which exclusively serve such Unit, whether located within the Unit or beyond the perimeter boundaries of such Unit, whether or not 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 the boundaries described in Subsections 2.2(a), (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 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 non-contiguity with the occupied portions.

(g) **Inconsistency with Plats and Plans:** If this definition is inconsistent with the Plats 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 or non load 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, allocated solely 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, doorsteps, stoops, entrance ways, loading docks or bays, 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) Stoops and steps 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) All glass surfaces appurtenant to and servicing any specific Unit, such as glass exterior doors and windows, and all exterior doors which access any specific Unit are Limited Common Elements of the Unit to which they service.

(e) Mailboxes, nameplates, permitted signage, and exterior lighting affixed to the building will be Limited Common Elements allocated to the Unit served.

(f) If this description of Limited Common Elements is inconsistent with the Plats and Plans, then this definition will control.

#### **ARTICLE 4. MAINTENANCE, REPAIR AND REPLACEMENT**

Section 4.1 **Common Elements**. The Association will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.

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

Section 4.3 **Limited Common Elements**. Any Common Expense associated with the maintenance, repair or replacements of 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 or a part of stoops, entranceway, loading docks or bays, exterior doors, windows and other Limited Common Elements 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. 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 equally among the Units to which it is assigned.

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 sidewalks in front of each such Unit, and all entrance ways, loading docks or bays, and other areas designated herein as Limited Common Elements appurtenant to his or her 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 other Unit, to the Common Elements, or to Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit or Limited Common Elements appurtenant thereto. 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 caused by misconduct, it will be assessed following Notice and Hearing.

**ARTICLE 5. SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS**

Those portions of the Common Elements now or hereafter improved as parking spaces may be subsequently allocated as Limited Common Elements in accordance with Subsection 6.1(c) and Article 10 of this Declaration, or may be assigned by Rules and Regulations of the Executive Board, or may be limited by Rules and Regulations to visitors only.

**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 location shown as "Future Development", or labeled "Withdrawable Land", "May Not Be Developed", or words of similar effect, on the Plats and Plans and described in Exhibit "C" attached hereto.

(b) The right by amendment to add and create Units, Common Elements, and Limited Common Elements within the Condominium in the location shown as "Development-Rights Reserved in this Area" and on the Plats and Plans and described in Exhibit "C" attached hereto.

(c) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land anywhere in the Condominium for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the land designated "Development Rights Reserved in this Area" 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. If the Declarant grants any such easements, Exhibit "A" will be amended to include reference to the recorded easement.

**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 time but not more than ten (10) years after the recording of this initial Declaration;

(b) No more additional Units may be created under the Development Rights;

(c) The quality of construction of any buildings and Improvements to be created on the Property shall be consistent with the quality of those constructed pursuant to this Declaration as initially recorded.

(d) All Units and Common Elements created pursuant to the Development Rights will be restricted to office use, as permitted under the current Ordinances for the City of Wilmington as applicable in the same manner and to the same extent as the Units created under this Declaration as initially recorded.

**Section 6.3 Phasing of Development Rights.** No assurances are made by the Declarant regarding the portions of the areas shown as "Development Rights Reserved in this Area", "Future Development", "May Not Be Developed", or words of similar effect on the Plats and Plans as to 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 sold or conveyed to a purchaser.

**Section 6.4 Special Declarant Rights.** The 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 any 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 and construction on, or other uses of adjoining properties whether or not such other use is related to or associated with the Condominium development;
- (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, 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.

**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 or any Unit Owner. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations and 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, adjoining property owners, riparian owners or upland owners to fulfill the plan of development. Additionally, Declarant hereby reserves unto itself, its successors and assigns an easement for utilities, drainage, access, ingress and regress over, across and under the tract of land shown on the survey plat attached hereto as Exhibit "C" and identified in said map as "Easement", "Access and Public Utility Easement", and "Public Utility Easement", which said easement or easements shall continue to exist and shall be maintained for the benefit of Declarant, its successors and assigns after all contemplated construction is completed.

**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.** The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium 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 6.9(b), during the Declarant Control Period, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive 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 the 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) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of all Units that may be created hereunder, to Unit Owners 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 all Units that may be created hereunder, 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 Unit- Owners. The Executive Board shall elect the officers. The 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-3108 of the Condominium Act, the Unit Owners, representing a sixty-seven percent (67%) voting interest of all persons present and entitled to vote at 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 until the earlier of the following:

- (i) so long as the Declarant holds a Development Right to create additional Units or Common Elements or to withdraw real estate from the Condominium; or
- (ii) so long as Declarant owns any Unit; or
- (iii) ten (10) 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 Intemests.** 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 interests 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.** The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative heated and cooled floor area of each Unit as compared to the heated and cooled floor area of all of the Units in the Condominium. Notwithstanding a slight difference in square footage between units A1, A2, A3, A4 and B1, B2, B3 and B4 each unit shall be assigned a 12 1/2% undivided interest in the common elements.

(b) **Liability for the Common Expenses.** Each Unit in the Condominium shall share in the Common Expenses of the Condominium in the same percentage of liability as their respective percentage of ownership in the Common Elements as established therein. 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 weighted vote in association matters. The vote attributable to each such Unit shall be stated as percentages and shall be the same as the allocated percentage ownership interest in Common Elements attributable to each such Unit as set forth in Exhibit "B".

**Section 7.3 Assignment of Allocated Interest Upon Creation of Units Pursuant to Exercise of Development Rights.** 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 New Hanover County, North Carolina.

#### **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 office use, as allowed in Commercial Services Zoning District under the current Zoning Ordinance for the City of Wilmington.

(b) The use of Units and Common Elements is subject to this Declaration, the Articles of Incorporation and Bylaws of the Association, and such Rules and Regulations as may from time to time be promulgated by the Association.

(c) Owners of Units in all buildings shall have the right only to affix letter signage to the exterior door which is the Limited Common Element serving each respective Unit.

(d) Each Unit shall share a common mobile trash receptacle. However, periodic garbage service shall be by contract between the Association and the service provider. The cost of such service shall be a Common Expense.

**Section 8.2 Restrictions on Alienation.** A Unit may not be leased or rented for a term of less than six months. 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 the landlord notice of its intent to so enforce, and a reasonable 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 and the Common Elements are 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.

Any easement areas as shown on Exhibit "A", together with any improvements thereon, shall be maintained, repaired, and as necessary, replaced by the Association. The cost of all maintenance, repairs and replacement shall be a common expense and shall be paid by the Association.

**ARTICLE 10. ALLOCATION AND REALLOCATION  
OF LIMITED COMMON ELEMENTS**

A Common Element not previously allocated 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 amendments to the Declaration, 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 amendment 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 the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for all of its costs and expenses, including but not limited to attorneys' fees, incurred in connection with the review of the amendment and the recording thereof.

**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 11.1(c).

(b) Subject to Subsection 11.1(a), a Unit Owner:

(i) may make any other Improvements or alterations to the interior of his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the 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 remove or 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 lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries.

(c) A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 11.1(a) or 11.1(b)(i). 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 the applying Unit Owner nor 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 contained elsewhere in this Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

## **ARTICLE 12. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS**

**Section 12.1 Application and Amendment.** Subject to approval of any structural changes and required permits pursuant 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 between their Units of their Allocated Interests, the application 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 those Unit Owners 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 and plans necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.

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

## **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-1-10V 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 12.1 of this Declaration, the 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 voting interests 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 Grantor's and Grantee'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 the Association, which has been adopted in accordance with this 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 that 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 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.

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-2-108 of the Condominium Act.

#### **ARTICLE 14. AMENDMENTS TO BYLAWS**

During the period of Declarant Control, as defined in Article I, Declarant may amend the Bylaws as Declarant deems necessary or convenient.

Thereafter, the Bylaws may be amended only by a vote of fifty-one percent (51%) of the members of the Executive Board, following Notice and Comment 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 Mortgages.** 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 Action.** 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 who Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of three hundred sixty-five (365) days;

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

(d) Any judgment rendered against the Association.

**Section 16.4 Inspection of Books.** The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

**Section 16.5 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 16.6 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 16.7 Attendance at Meetings.** Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

**Section 16.8 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 1.2(aa). 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.**

Any Common Expense 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 equally among the Units to which it is assigned.

(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 at the time the judgment was entered, in proportion to their Common 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 New Hanover County, North Carolina. Fees (including attorneys' fees), charges, late charges, fines and interest charged pursuant to the Condominium 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 a lien 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 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 17.3(a) 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 or deed of trust 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 trust of record, or other purchaser of a Unit, obtains title to the 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 collectible from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

(h) Any payments received by the Association in discharge of a Unit Owner's obligation may be applied first to costs, expenses, interest and, to the extent that any amounts remain, to the oldest balance due.

(i) All assessments not paid within thirty (30) days of the due date shall bear interest at the rate of 12% per annum until paid.

**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 Owners of Units representing eighty percent (80%) of all Common Elements 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 Unit Owners for ratification in the same manner as a budget under Section 17.4.

**Section 17.6 Certificate of Payment of Common Expenses 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 Quarterly Payment of Common Expenses.** All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable quarterly, or at such other interval as may be approved by the Executive Board.

**Section 17.8 Commencement of Common Expense Assessments.** Common Expense assessments shall begin on the first day of the month on which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

**Section 17.9 No Waiver of Liability Common Expenses.** No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use of enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

**Section 17.10 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 he or she 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.

#### **ARTICLE 19. PERSONS AND UNIT SUBJECT TO THE CONDOMINIUM DOCUMENTS**

**Section 19.1 Compliance with Condominium Documents.** All Unit Owners, tenants, mortgagees and occupants of Units and, to the extent applicable, all of their invitees, guests, employees and agents, 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 recorded in the office of the Register of Deeds of New Hanover county, North Carolina, 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 Association acting through its Executive Board may adopt Rules and Regulations regarding the use and occupancy of Unit affecting the Common Elements, Limited Common Elements and the activities of occupants, subject to Notice and Consent.

#### **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