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RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM
ATLANTIC TOWERS CONDOMINIUM

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WESTMINSTER COMPANY, a North Carolina corporation, hereinafter called "**Declarant**" being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47A of the General Statutes of North Carolina as amended, known as the "Unit Ownership Act", and to that end does hereby publish and declare that all of the said property to be known as "**Atlantic Towers Condominium**" is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following conditions, covenants, restrictions, uses, limitations and obligations, all of which shall be deemed to run with the land and shall be a burden and benefit to **Declarant**, its successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. **DEFINITIONS.** Unless it it plainly evident from the context that a different meaning is intended, as used herein:

A. "**Act**" or "**Unit Ownership Act**" means the statutory provisions set forth in Chapter 47A of the North Carolina General Statutes under which the condominium is established.

B. "**Assessment**" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

C. "**Association**" means **Atlantic Towers Assn., Inc.**, the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.

D. "**Board of Directors**" or "**Board**" means the Board of Directors of the Association, and "**Director**" means a member of the Board.

E. "**By-Laws**" means the by-laws for the government of the condominium as they exist from time to time.

F. "**Common Areas and Facilities**" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in paragraph 5.

G. "**Common Expenses**" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

H. "**Common Profits**" means the balance of all revenue of the Association remaining after deduction of common expenses.

I. "**Condominium Documents**" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

J. "**Declaration**" means this instrument as it may be from time to time amended or supplemented.

K. "**Limited Common Areas and Facilities**" means and includes 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 defined herein.

Draftsman: **DAVID C. BAREFOOT**
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110 North Fifth Avenue/Post Office Box 89
Wilmington, North Carolina 28402

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L. **"Management Firm"** shall mean the company or firm responsible for the management of the condominium under a Management Agreement with the Association. The terms "Managing Agent" and "Management Firm", as used herein, shall be synonymous with the term "Management Agent" as herein defined.

M. **"Property"** means and includes the land described in Exhibit "A", attached hereto and incorporated herein by reference, together with any buildings and improvements located thereon.

N. **"Unit" or "Condominium Unit"** means a part of the property which is to be subject to private ownership, as designated on the exhibits attached to this Declaration and as further defined in the Act.

O. **"Unit Owner" or "Owner"** means a person or entity, or any combination thereof, who owns a unit.

2. **DESCRIPTION OF PROPERTY.** All that certain tract or parcel of land with the building and improvements thereon erected or to be erected, situate, lying and being in the Town of Carolina Beach, County of New Hanover, State of North Carolina, and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

3. **DESCRIPTION OF BUILDING.** The Declarant has constructed, or will construct, upon the property described in Exhibit "A" attached hereto, one multi-unit building to be used for residential and lodging accommodation purposes. A plat of survey of property by Jack G. Stocks, R.L.S., showing the location of said building is attached hereto and made a part hereof as Exhibit "B". The building is more particularly described in the plans thereof, a copy of which plans is attached hereto as Exhibit "C" and made a part hereof, showing all particulars of the buildings as required by law. The building has eleven (11) stories and is constructed of Type I Fireproof Construction as defined by the North Carolina Building Code and consists principally of reinforced concrete, concrete block and masonry. The building has a gross area of 125,125 square feet divided into 137 individual condominium units and common areas and facilities herein described. In addition, the building has common outside parking areas, swimming pool, landscaped areas and other appurtenances and facilities. The First floor has eight single bedroom units of approximately the same size, with a reception area for check-in purposes, an executive office, with restrooms, a lounge and grill area, a game room, a laundry area, storage spaces, electrical and plumbing spaces, stairs and elevator. The Fourth Floor contains twelve (12) single bedroom units and one (1) two bedroom unit with storage space and elevator spaces. The remaining floors, with the exception of the Eleventh Floor, each contain eleven (11) single bedroom units of approximately the same size, with two (2) two-bedroom units, a storage space and elevator spaces. The Eleventh Floor contains nine (9) single bedroom units, two (2) two bedroom units and one (1) three bedroom unit with a storage space and elevator spaces.

4. **UNIT DESIGNATION AND DESCRIPTION.**

A. **DESIGNATION.** The unit designation of each unit, its location and dimensions, is set forth in Exhibit "C" hereto attached and made a part hereof.

B. **DESCRIPTION.** The legal description of each unit shall consist of a three-digit number which identifies such unit as shown on the plat hereto attached as Exhibit "C". Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, subject to such encroachments as are contained in the building, whether the same now exists or may be caused or created by construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration. The floor plan of the nine (9) levels of the building, hereto attached as Exhibit "C", shows the location and arrangement of each of the units. There are six (6) types of units which are more particularly described as follows:

(1) A Suite 1 unit shall have an approximate gross floor space area of 563 square feet and shall consist of the following rooms: a combination living-dining-kitchen area, one bedroom, one closet, one bathroom, one bunk bed area, and one mechanical closet.

(2) A Suite 2 unit shall have an approximate gross floor space area of 580 square feet and shall consist of the following rooms: a combination living-dining-kitchen area, one bedroom, one closet, one bathroom, one bunk bed area, and one mechanical closet.

(3) A Suite 3 unit shall have an approximate gross floor space area of 579 square feet and shall consist of the following rooms: a combination living-dining-kitchen area, one bedroom, one closet, one bathroom, and one mechanical closet.

(4) A Suite 4 unit shall have an approximate gross floor space area of 580 square feet and shall consist of the following rooms: a combination living-dining-kitchen area, one bedroom, one closet, one bathroom, one bunk bed area, and one mechanical closet.

(5) A Suite 5 unit shall have an approximate gross floor space area of 861 square feet and shall consist of the following rooms: a combination living-dining-kitchen area, two bedrooms, two bathrooms, two closets, one owner's closet and one mechanical closet.

(6) A Suite 6 shall have an approximate gross floor space area of 844 square feet and shall consist of the following rooms: a combination living-dining-kitchen area, two bedrooms, two bathrooms, two closets, one owner's closet and one mechanical closet.

5. COMMON AREAS AND FACILITIES.

A. The common areas and facilities consist of the following:

(1) The land submitted to condominium ownership on which the building is erected and all lands surrounding the building as is described in Paragraph 2 above.

(2) All foundations, columns, girders, beams, supports, roofs, concrete floors, main walls, exterior walls and interior walls except those non-load bearing partition walls, non-common chases and suspended ceilings wholly within a unit.

(3) The elevators, elevators shafts, tanks, pumps, motors, fans, compressors and control equipment.

(4) The halls, corridors, lobbies, stairs, stairways, entrances and exits of the building.

(5) The storage spaces and those areas or spaces on the first floor shown as laundry, games, concess. (concessions), office, lounge, reception, T's (restrooms), plumbing on Exhibit "C" hereto attached, and all of the yards, driveways and parking areas.

(6) All central and appurtenant installations and facilities for utility services, including but not limited to, power, water, gas, refrigeration, heating, air conditioning, telephone, sewer, irrigation, trash disposal and incineration (including pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common area or units) and all other mechanical equipment spaces, plumbing equipment spaces, electrical equipment spaces, except that the telephone system and furniture, fixtures and equipment located in the common areas shall not be owned as common areas or common property, if leased from commercial lessors.

(7) All other parts of the property and all apparatus and installations existing in the building or upon the property for common use or necessary or convenient to the enjoyment, existence, maintenance or safety of the property, including but not limited to the swimming pool.

B. (1) The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

(2) A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

C. The undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit "D" and is attached hereto and made a part hereof.

6. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are as follows:

A. All non-load bearing walls located entirely within the unit.

B. All materials, including but not limited to, studs, sheetrock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on, the inside surfaces of perimeter walls, floors and ceilings of the unit.

C. All doors, windows, screens, ventilation fans and vents located entirely within the unit or extending into the unit from the perimeter walls, floors or ceilings thereof.

D. All air handling units, ducts and components and all water, power, telephone television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

E. The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

7. **USE.** The building and each of the units shall be used for residential and lodging accommodation purposes, and other uses reasonably incidental thereto, including meetings by persons owning or occupying such units, and offices for the sale or rental of units and their furnishings. All guests for rooms rented must sign in at a registration desk located in the main office. There shall be no obstruction of the common area. Nothing shall be stored in the common area without the prior consent of the managing agent or Board of Directors. Nothing shall be done or kept in any unit or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the management Firm or Board of Directors. No sign of any kind shall be displayed to the public view on or from any unit or the common area without the prior consent of the Management Firm or Board of Directors. No animals, livestock or poultry of any kind shall be raised, bred or kept in any unit or in the common area except as may be permitted by the rules and regulations adopted by the Association. No noxious or offensive activity shall be carried on in any unit or in the common area, nor shall anything be done therein which may be or become an annoyance to the other owners. There shall be no violation of the rules for the use of the common area adopted by the Board of Directors. So long as the **Declarant** shall retain ownership of any units, it may utilize any such unit or units for sales or rentals offices, models or other usage for the purpose of selling or renting units within said project. The **Declarant** may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the **Declarant**, its successors and assigns shall immediately cease. Co-ownership of units shall not be prohibited.

8. **PROCESS AGENT.** H. R. Pearson, c/o Atlantic Towers Condominium, U.S. Highway #421 South, Carolina Beach, New Hanover County, North Carolina 28428, (mailing address: Post Office Box 1337, Carolina Beach, North Carolina 28428), is hereby designated as the person to receive service of process in any action provided for in the Act. The Board of Directors may change the process agent by filing a Declaration of Change in the Office of the Register of Deeds of New Hanover County, North Carolina.

9. **MAINTENANCE.**

A. All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the owner. Any replacements or substitution of such fixtures and equipment shall be compatible with any common areas and facilities affected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment.

B. All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the insurance underwriters of the insurance for the common areas and facilities when so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the Condominium Documents or a determination by the Board or its designated common areas and facilities belonging to another owner, may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced

by the Association at the expense of the unit owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

10. EASEMENTS.

A. Each unit owner shall have an easement in common with the other owners of all other units to use pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Association shall have the right to be exercised by the Board of Directors or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the condominium to inspect the same, to remove violations therefrom and to maintain, repair or replace the common facilities, if any, contained therein or elsewhere in the building.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common areas and facilities, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements 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 common areas; each unit owner hereby grants to the Board, or the Management Firm, an irrevocable power of attorney to execute, acknowledge and record for and 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 by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon another unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration), valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or unit or common elements so encroaching so long as all or any part of the building containing such unit or common elements so encroaching shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the common elements if such encroachment occurred due to the willful conduct of said owner or owners.

E. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved and intended for such purposes, for all unit owners of units in **Atlantic Towers Condominium**, their guests, families, invitees, lessees, the Association, the **Declarant**, its successors and assigns.

F. In case of emergency originating in or threatening any unit or the common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

G. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

11. **PARTITIONING.** The common area and facilities shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof, unless the property has been removed from the provisions of the Act. Nothing herein contained, however, shall be deemed to prevent ownership of a dwelling unit by the entireties, jointly, or in common, or in any other form permitted by law.

12. **COMMON EXPENSES, COMMON PROFITS.** The unit owners are bound to contribute pro rata, in the percentages computed according to Chapter 47A of North Carolina General Statute which percentages are set forth in Exhibit "D" hereto attached, toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. The cost of leasing the telephone system serving the Property and common area furniture, fixtures and equipment shall be considered common expenses if the same are leased from commercial lessors. 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 the abandonment of the unit belonging to him.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonable necessary and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the Condominium Documents, shall be distributed among the unit owners according to the percentages for each unit set forth in Exhibit "D".

13. **TAXES.** Each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "D" hereto attached, 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 holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

14. **LIENS.**

A. With the exception of liens which may result from the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

B. No labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Condominium Documents or expressly authorized by the Board, in which event, same might be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

C. Unless otherwise provided by law, in the event a lien against one or more condominium units becomes effective, each owner thereof may relieve his condominium unit of the lien by paying the proportionate amount attributable to his condominium unit. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium unit.

D. Assessments against the unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed the maximum rate allowed by law, and shall create a lien to the extent of such assessment, together with interest thereon, in favor of the Association against the unit of the defaulting owner and shall be enforced as provided by the Unit Ownership Act.

E. All liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of said first lien mortgage in the Office of the Register of Deeds of New Hanover County, North Carolina.

15. NATURE OF INTEREST IN UNIT.

A. Every unit together with its undivided common interest in the common areas and facilities, shall for all purposes be a separate parcel of real property, and the unit owner thereof shall be entitled to the exclusive ownership and possession of such unit subject only to the Condominium Documents and the covenants, restrictions, easements, regulations, resolutions and decisions adopted pursuant thereto.

B. The owner shall be entitled to use the common areas and facilities in accordance with the purpose for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the owners of other units.

16. INSURANCE.

A. Amount and Scope of Insurance. All insurance policies upon the property (except personal property within a unit and limited common areas and facilities) shall be secured by the Board or by the Managing Agent if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and use as the property and the improvements thereon all under such terms and for such amounts as the responsible authority shall determine. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured's for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas and legal liability arising out of law suits related to employment contracts of the Owners Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities. In obtaining such coverage, the responsible authority shall consider the reasonable requirements of holders of first liens on individual units.

B. Insurance Provisions. The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the unit owners and their employees, agents, tenants and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees.

(4) Coverage will not be prejudiced by act or neglect of the unit owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

(5) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual unit owners.

(6) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any unit owner or any mortgagee.

C. Premiums. All insurance policy premiums on the property and for the benefit of the Association purchased by the Board or the Managing Agent and any deductibles payable by the Association upon loss shall be 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 as insurance trustee or to such attorney-at-law or institution with trust powers as may be

approved by the Board of Directors. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the By-Laws and for the benefit of the unit owners and their mortgagers in the following shares:

(1) Proceeds on account of damage to common areas and facilities shall be held in undivided shares for each unit owner and his mortgagee, if any, each unit owner's share to be the same as such unit owner's undivided interest in the common areas and facilities.

(2) Proceeds on account of damages to units shall be held in the following undivided shares:

(a) When the buildings are to be restored, for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Board of Directors.

(b) When the buildings are not to be restored, and undivided share for each unit owner, such share being the same as such unit owner's undivided interest in the common areas and facilities.

(c) In the event a mortgagee endorsement has been issued with respect to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their respective interests may appear.

E. **Policies.** All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "AAA" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the unit owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustee. The originals of all such policies and the endorsements thereto shall be deposited with the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the unit owners at least ten days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee at any time.

F. **Flood Insurance.** In addition to any flood insurance required to be maintained by the Association, each unit owner may be required to purchase and maintain individual flood insurance coverage in such amounts as may be determined by the Board of Directors and pay all premiums therefor. If an individual unit owner fails to maintain such coverage, the Association shall have an insurable interest in such unit to the extent necessary to obtain such coverage, and all premiums and expenses thereof shall be charged to such unit owner as a special assessment and collected accordingly.

17. **DISTRIBUTION OF INSURANCE PROCEEDS.** Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. **Expense of Trust.** All reasonable expenses of the insurance trustee shall be first paid or provision made therefor.

B. **Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, in accordance with the Act, the remaining proceeds shall be paid to defray the cost thereof as provided in Paragraph 18 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

C. **Failure to Reconstruct or Repair.** If it is determined, as provided in Paragraph 18 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, including lienholders of record.

18. **DAMAGE AND DESTRUCTION.** Except as hereinafter provided, damage to or destruction of the common areas and facilities, and to the extent insurance proceeds are available, limited common areas and facilities, shall be promptly repaired

and restored by the Board using the proceeds of any insurance available for those purposes, and the unit owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities; provided, however, if the building be more than two-thirds destroyed by fire or other casualty and the owners of three fourths of the units resolve not to proceed with reconstruction or restoration, then in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47A-25 of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall be substantially in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and by eligible holders holding mortgages on units which have at least 51% of the votes of units subject to eligible holder mortgages.

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all common elements, the award for such taking shall be payable to the Association, which shall represent the owners named in the proceedings. Said award shall be utilized to the extent possible for the repair restoration, replacement or improvement of the remaining common elements, if only part are taken. If all or more than two thirds of all the general common elements are taken, it shall be deemed a destruction of more than two thirds of all of the common elements and the condominium shall be terminated as provided for in this Declaration. Any funds not utilized (in the case of a partial taking or condemnation) shall be applied in payment of common expenses otherwise assessable. In the event of a taking of all or part of a unit, the award shall be made payable to the owner of such unit and his mortgagee, if any, as their respective interest may appear.

19. **RIGHTS OF ELIGIBLE MORTGAGE HOLDERS.** To the extent permitted by law, an eligible mortgage holder upon written request to the Owners Association, identifying the name and the address of the holder, will be entitled to timely written notice of:

A. Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a first mortgage held by such eligible mortgage holder.

B. Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held, by such eligible holder, which remains uncured for a period of sixty days.

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

D. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders.

E. In addition to the foregoing rights, the eligible mortgage holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina Condominium Statutes as they now exist or as may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to eligible mortgage holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible holders holding mortgages on all remaining unit estates whether existing whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to eligible holders of mortgages.

(3) If a professional management is ever used to govern the condominium, any decisions to establish self-management by the Association shall require the prior consent of owners of unit estates to which at least 67% of the votes of the Owners Association are allocated and the approval of eligible holders holding mortgages on unit estates which have at least 51% of the votes of unit estates subject to eligible holder mortgages.

20. FIDELITY BONDS.

A. General. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

B. Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

C. Other Requirements. Fidelity bonds required herein must meet the following requirements:

- (1) Fidelity bonds shall name the Association as an obligee.
- (2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.
- (3) The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.
- (4) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten days' prior written notice to the Association if a condominium project, to any insurance trustee and each eligible mortgage holder.

21. RECOMMENDATION OF RENTAL AGENTS. At the annual meeting of the Association, or such other meeting of the Association as is designated by the Board, the Board may, upon notice to the owners, recommend for the approval of the Association one or more agents for the rental of units during the forthcoming year. Prior to recommending agents for the approval of the Association, the Board shall have authority to require any agent desiring to qualify as an approved agent to submit a copy of the proposed rental agreement to be used by such agent, together with such other information as the Board may reasonably require. The Board may require, as a condition of approval, that all rental agreements incorporate such standard procedures as may be required to minimize problems of security, maintenance, quality and operation of the common areas and facilities of the property. Neither the Association nor the Board shall have, or attempt to impose as a condition of approval, any control over the commission schedule or fees charged by any approved rental agent, or the permissible period of rental, all of which shall be for the sole determination of the approved rental agent and any owner selecting such agent. Each owner shall have the absolute right to enter into any direct rental, lease or sales arrangement with renters, lessees and purchasers which shall be consistent with the Declaration, By-Laws of the Association and such other regulations as may from time to time be promulgated by the Association and/or Board. Nothing herein shall be construed as creating or authorizing any rental pooling or as requiring the rental of a unit by an owner or as restricting the owner's use of his unit. If any court of law, governmental regulatory body having appropriate jurisdiction or approved legal counsel to the Association determines that any portion of this provision is unlawful or would require registration of the offering of any unit as a security, then such portion of this provision shall be invalid until such requirement is eliminated.

22. MANAGEMENT AND CONTROL. Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with this Declaration and the By-Laws hereto attached as Exhibit "F"; **Provided, However,** that the **Declarant** shall appoint the initial Board of Directors and shall appoint successors to fill any vacancies which shall occur on the Board until such time as a total of 103 condominium units have been sold and conveyed by the **Declarant** to purchasers, or until December 31, 1986, whichever occurs first. Upon the happening of either of the above events, the then existing members of the Board of Directors shall resign and an election of a new Board of Directors to assume permanent management and control shall be held within 120 days thereafter.

23. MANAGEMENT.

A. Interim Management Agent and Assessments. From the date of the first conveyance of title by the Declarant to a unit owner until the date of the first Association members' annual meeting, the Declarant or its designee shall serve as the interim Management Agent with responsibility for coordinating all normal management services of the Association. During the period from conveyance of title by Declarant to an owner of a unit until the first Association members' annual meeting (the time of determination by the Association of the new operating budget), the Interim Management Agent shall receive such management fees as shall be determined by the Board of Directors. During such period, each unit owner shall pay monthly to the Interim Management Agent the assessment set forth in Exhibit "D" to this Declaration, representing such unit's percentage of the estimated total expenses of the property (said estimated total operating expenses are set forth in Exhibit "E" to this Declaration).

B. Regular Management Agent and Assessments. Upon selection by the Association of a regular Management Agent and the holding of the first Association members' annual meeting, any excess of interim assessments over total, actual Association operating expenses shall be deposited by Declarant to the account of the Association. The interim Management Agent shall provide to the regular Management Agent an accounting of operating revenues and expenses. After adoption of the new annual Association budget, at the first Association members' meeting, the Declarant shall be subject to regular assessments for any units still owned by Declarant.

C. Time of Payment. Each unit's monthly assessment as set forth in Exhibit "D", of the common expenses for the month of closing shall be payable at the time of conveyance of title to the owner by the Declarant pro-rated as of the closing date. Subsequent payment shall be due on the first day of each month. Payments not received when due shall bear interest at the maximum permissible legal rate until paid.

24. WORKING CAPITAL. At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities furnishings and equipment, etc. At the time of selection of the regular Management Agent, the interim Management Agent shall pay to the account of the Association all unused funds and shall provide an accounting of all revenues and expenditures. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments.

25. UNITS SUBJECT TO CONDOMINIUM DOCUMENTS. All present and future owners, tenants and occupants of units and their guests or invitees, shall be subject to, and shall comply with the provisions of the Condominium Documents, and as the Condominium Documents may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any dwelling unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of the Condominium Documents shall entitle the Association or any other owner to seek legal and/or equitable relief, including costs and reasonable attorney's fees incurred in enforcing such compliance.

26. AMENDMENT OF DECLARATION. This Declaration may be amended by the vote of not less than 67% in common interest of all unit owners, cast at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for the County wherein the property is located. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws.

27. TERMINATION. Except as provided in Paragraph 18 above, this Declaration may be terminated, and the condominium property removed from the provisions of the Unit Ownership Act, only by an instrument to that effect executed by all of the unit owners and duly recorded, which said instrument shall provide that their liens be transferred to the percentage of undivided interest of the unit owners who shall own the property as tenants-in-common following such termination, which shall be the percentage of undivided interest of such unit owner in the common area.

In the event it is determined in the manner provided in Paragraph 18 hereof that the property shall not be repaired or reconstructed after fire or other casualty, the condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after fire or other casualty shall be evidenced by a certificate of the Association providing that all liens affecting all of the unit owners as set forth hereinabove, and certifying as to facts effecting the termination, which certificate shall become effective upon being duly recorded in the New Hanover County Register of Deeds.

28. **INCORPORATION OF ASSOCIATION.** It is the intention of Declarant that all rights of the Association shall be vested in a non-profit or a business corporation known as **Atlantic Towers Assn., Inc.**, which shall be or has been formed pursuant to the laws of the State of North Carolina and the applicable Federal laws. Such corporation shall be formed and operated in accordance with this Declaration and the By-Laws attached hereto and incorporated herein, and all governing laws, as they shall be amended from time to time.

29. **INVALIDITY.** The invalidity of any provision of this Declarant 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 has never been included.

30. **WAIVER.** No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

31. **PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON AREAS.** The common areas and facilities shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of condominium units in the condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of condominium units. Notwithstanding anything above provided in this article, **Atlantic Towers Assn., Inc.**, herein identified, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any condominium unit, his family, guests and invitees, may be entitled to use the common areas and facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish rules and regulations concerning the use thereof.

32. **LAW CONTROLLING.** This Declaration and the By-Laws attached hereto shall be construed under and controlled by the laws of the State of North Carolina.

33. **WARRANTIES.** Declarant acknowledges that all contractual warranties set forth in the building's construction contract, of material and equipment in the unit, shall accrue to the benefit of the owner of such unit, along with all warranties, if any, provided by the manufacturer or supplier of appliances, air conditioning, heating and utility systems in the unit. **The closing of title or occupancy of the unit shall constitute an acknowledgement by the unit owner that Declarant makes no other implied or express warranties relating to the unit or the common areas and facilities, except for such warranties as are set forth in the general warranty deed to the unit.**

IN TESTIMONY WHEREOF, the Declarant has caused this Declaration to be signed in its corporate name and duly attested and sealed with its corporate seal, this the 15th day of ~~July, 1984~~ October, 1984.

Declarant:

WESTMINSTER COMPANY

By: Joseph A. Thomas
Senior Vice President

ATTEST
James G. Maide
Assistant Secretary
(CORPORATE SEAL)

EXHIBIT "A"

DECLARATION OF CONDOMINIUM

ATLANTIC TOWERS CONDOMINIUM

DESCRIPTION OF PROPERTY
(Metes and Bounds)FIRST TRACT:

BEGINNING at a point in the Eastern right of way line of 1st. Avenue (50 foot right of way), said point being located South 19 degrees 24 minutes West 100.0 feet as measured along the Eastern right of way line of 1st. Avenue from its point of intersection with the Southern right of way line of Georgia Avenue (50 foot right of way); Running thence from said beginning point South 70 degrees 36 minutes East 200.0 feet to a point in the Western edge of the Atlantic Ocean; Running thence with the Western edge of the Atlantic Ocean South 19 degrees 24 minutes West 300.0 feet to a point; Running thence North 70 degrees 36 minutes West 200.0 feet to a point in the Eastern right of way line of 1st. Avenue; Running thence with the Eastern right of way line of 1st. Avenue North 19 degrees 24 minutes East 300.0 feet to the point of beginning. Same being lots 4 thru 9 & 14 thru 19, Block 2, Wilmington Beach, map of same being recorded in Map Book 2 at Page 30 of the New Hanover County Registry.

SECOND TRACT:

BEGINNING at the point of intersection of the Southern right of way line of Georgia Avenue (50 foot right of way) with the Western right of way line of 1st. Avenue (50 foot right of way); Running thence from said beginning point with the Western right of way line of 1st. Avenue, South 19 degrees 24 minutes West 250.0 feet to a point; Running thence North 70 degrees 36 minutes West 200.0 feet to a point in the Eastern right of way line of 2nd. Avenue (50 foot right of way); Running thence with the Eastern right of way line of 2nd. Avenue North 19 degrees 24 minutes East 250.0 feet to its point of intersection with the Southern right of way line of Georgia Avenue South 70 degrees 36 minutes East 200.0 feet to the point of beginning. The same being all of lots 7 thru 16, Block 13, Wilmington Beach, map of same being recorded in Map Book 2 at Page 30 of the New Hanover County Registry.

