

DECLARATION OF CONDOMINIUM  
FOR  
CARDINAL PLACE RETAIL CENTER

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

ARTICLE 1

SUBMISSION; DEFINITIONS

Section 1.1. Submission of Property. EASTWOOD DEVELOPERS, L.L.C., a limited liability company formed pursuant to §57C-2-20 of the General Statutes of North Carolina, with an address of 428 Eastwood Road, Wilmington, North Carolina 28403 ("Declarant"), the owner in fee simple of the real estate described in Exhibit "A", located within the County of New Hanover, and State of North Carolina, hereby submits such real estate, including all improvements, to be constructed thereon, together with all 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 "CARDINAL PLACE RETAIL CENTER".

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 "Cardinal Place Retail Center Condominium Association, Inc.", a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of Unit Owners formed pursuant to Section 47C-3-101 of the Condominium Act.

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

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

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

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

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

(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".

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

h. "Declarant" means Eastwood Developers, L.L.C., its successors and/or assigns as defined in Section 47C-1-103(9) of the Condominium Act.

i. "Development Rights" means any rights reserved by the Declarant under Article 6 of this Declaration to create Units, Common Elements, and Limited Common Elements within the Condominium and to withdraw real estate from the Condominium.

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

(i) one hundred twenty (120) days after conveyance of ninety percent (90%) of the Units which may be created, to Unit Owners other than a Declarant;

(ii) two (2) 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.

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 percent (50%) of the votes in the Association.

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

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

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

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 Plat Book 11, Page 23 through \_\_\_\_\_, 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. "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.

x. "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 an Association, and any other consensual lien or title retention contract intended as security for an obligation.

y. "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;

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

a.a. "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.

b.b. "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.

## ARTICLE 2

### DEVELOPMENT PLANS; BOUNDARIES

Section 2.1. Maximum Number of Units. The Condominium will contain a maximum of eight (8) Units.

a. A survey of the land to be developed has been recorded simultaneously herewith in condominium Plat Book 11 at Page 23.

b. ~~The~~ ~~Improvements~~ ~~2.2.7~~ shall be constructed by the Declarant substantially in accordance with the plans and specification heretofore prepared by Bruce J. Marek, P.E., which are recorded in condominium Plat Book 11 at page 23. The condominium will be comprised of one building containing one ground level. The Building will contain eight (8) units. The square footage of each unit is set forth on attached Exhibit "C." The condominium will also include automobile parking areas and other facilities located substantially as shown on the plans and specifications. Use of parking areas will be permitted subject to the rules and regulations of the Condominium Association.

c. This Declaration may be amended by filing such additional plans as may be required to describe adequately the completion of all improvements. Such completion may be shown by a certificate of an architect or engineer certifying that the improvements have been constructed substantially as herein represented, or designating any changes made. Such plans or certificate when signed and acknowledged by the Declarant shall in themselves constitute an amendment of this Declaration, notwithstanding the procedures for amendment described elsewhere in this Declaration.

d. Various easements have been granted and reserved through the condominium property as shown on Condominium Plat Book 11 at page 23.

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

a. Upper Boundaries: The horizontal plane of the unfinished lower surfaces of the ceiling extended to an intersection with the vertical perimeter boundaries.

b. Lower Boundary: The horizontal plane of the undecorated or unfinished upper surfaces of the floor extended to an intersection with the vertical perimeter boundaries.

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; the unfinished inner surfaces of closed windows and closed perimeter doors; 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, above, and will also include the spaces and Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.

e. Exclusions: Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Subsections 2.2a, b, and c, above; and all chutes, pipes, flues, ducts, wires, conduits, 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 that are detached or semidetached from the building containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their non-contiguity.

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

h. The Units of the Condominium are more particularly described as follows: There are eight (8) Units. The square footage of each unit is set forth on attached Exhibit "C." Each unit shall have at least one restroom and such interior partitions and walls as the Unit Owner may elect. Limited Common Elements consisting of a rear entry drive and walkway shall be appurtenant to each Unit.

i. Units are designated by number as shown on the Plats and Plans.

j. The Declarant reserves the right to alter the boundaries between Units so long as the Declarant owns the Units so altered. Any such change shall be reflected by an amendment to the Declaration which may be executed by the Declarant alone. Notwithstanding this procedure, no such change shall increase the number of Units beyond eight (8) nor alter the boundaries of the Common Elements without amendment of this Declaration in the manner described in Article 13. The interior design and arrangement of any Unit may be changed without amending this Declaration.

k. Annexed hereto and made a part hereof as Exhibit B is a list of all Units in the building. The Unit designation, location, area, Common Elements and Limited Common Elements are shown on the floor plans of the building recorded simultaneously herewith which have been certified to be true and correct by Bruce J. Marek, P.E. The percentage of interest of each Unit in the Common Elements has been determined on the basis of the proportion which the square footage of each Unit bears to the total square footage of all Units.

### ARTICLE 3

#### LIMITED COMMON ELEMENTS

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

a. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, skylight 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, porches, terraces, and each exterior door and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

c. Stoops and steps at the entrances to a building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access.

d. Walkways, driveways and HVAC systems at the rear of the Units, the use of which is limited to the Unit in front of them as shown on the Plats and Plans.

e. Utility areas, the use of which is limited to the Unit or Units as shown on the Plats and Plans, if any.

f. Storm windows and storm doors, if any, will be Limited Common Elements of the Unit which they serve.

g. Exterior doors and windows will be Limited Common Elements allocated to the Units sheltered.

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

#### ARTICLE 4

##### MAINTENANCE, REPAIR AND REPLACEMENT

Section 4.1. Common Elements. The Association will maintain, repair and replace all of the Common Elements, 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 Expense associated with the maintenance, repair or replacement of a heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units which the Limited Common Element serves.

Common Expenses associated with the maintenance, repair or replacement of exterior doors, windows and skylights, 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.

If any such Limited Common Element serves more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units which it serves.

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 Section 7.2.b.

Each Unit Owner shall be responsible for removing all snow, leaves and debris from all doorsteps or stoops which are Limited Common Elements appurtenant to his Unit.

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 the Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or

make replacements to the Common Elements. If such expense is 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 6.1c 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 during the Development control Period:

a. The right by amendment, to allocate as Limited Common Elements not more than eight (8) of the parking spaces as shown on the Plats and Plans and assign them to a particular Unit. No assurance is given that such spaces will be allocated however.

b. 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 any Improvements. The Declarant also reserves the right to grant utility easements and to convey Improvements within those easements. If the Declarant grants any such easements, Exhibit "A" will be amended to include reference to the recorded easement.

Section 6.2. 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 and in connection therewith, to maintain on premises during the construction period construction equipment, maintenance building and a construction office.

b. To exercise a Development Right reserved in the Declaration;

c. To maintain sales offices, management offices, signs advertising the Condominium, and models;

d. To use easements through the Common Elements for the purpose of making Improvements within the Condominium;

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 6.8 of this Declaration.

Section 6.3. 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 6.4. Construction; Declarant's Easements. The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and

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

Section 6.5. 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 6.6. 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 premises that has not been represented as Property of the Association. The Declarant reserves the right to remove from the Property, any and all of the goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 6.7. Declarant Control of the Association.

a. Subject to Subsection 6.8b, 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 that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

b. Not later than one hundred eighty (180) days after conveyance of sixty-two and one-half percent (62.50%) of the Units to Unit Owners other than a Declarant, at least two members and not less than forty percent (40%) of the members of the Executive Board shall 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 five (5) 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-3-108 of the Condominium Act, the Unit Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at 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 6.8. 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 owns any Unit; or
- (ii) two (2) years after the first Unit is conveyed to a Unit Owner other than the Declarant.

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

ARTICLE 7

ALLOCATED INTERESTS

Section 7.1. Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Exhibit "B". These interests have been allocated in accordance with the formulas set out in this Article 7.

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 set out on Exhibit "B" and is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium. For the purpose of this calculation, the floor areas of attics, if any, are not to be counted.

b. Liability for the Common Expenses. Each Unit in the Condominium shall share equally in the Common Expenses of the Condominium so that the percentage of liability for the Common Expenses allocated to each Unit is calculated by dividing 100 by the total number of Units in the Condominium. 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 vote.

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 commercial or retail commercial activity permitted under applicable zoning ordinances, subject to the following:

- (i) Designated parking areas may not be used for any purpose other than vehicular parking. No outside storage of any property shall be permitted on the Common Areas (including parking areas) or Limited Common Areas except that operative and licensed vehicles used in a trade or business conducted in a Unit may be parked overnight on any designated parking areas which have not been allocated to another Unit;
- (ii) The business of automobile, truck, boat, engine or industrial equipment repair shall not be conducted in any Unit.
- (iii) Use of a Unit for residential purposes is expressly prohibited.

b. The use of Units and Common Elements is also subject to the Bylaws and the Rules and Regulations adopted by the Association.

Section 8.2. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan.

A Unit may be leased or rented but shall remain subject to all applicable Rules and Regulations. 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, reservations, restrictions, agreements, or licenses to which the Condominium is presently subject are recited in Exhibit "A" to this Declaration. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

ARTICLE 10

ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

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.

The Declarant has reserved the right, under Subsection 6.1(c) of this Declaration, to allocate as Limited Common Elements not more than eight (8) parking spaces. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be so allocated by the Association by amendment to this Declaration. All amendments shall specify 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 its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE 11

ADDITIONS, ALTERATIONS AND IMPROVEMENTS

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

a. No Unit Owner will make any structural addition, structural alteration, or structural Improvement in or to the

Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c.

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

(i) may make any other Improvements or alterations to the interior of his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium; and

(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) may, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein, even if the partition is a Limited 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 paragraph 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 11.1a or 11.1b(ii). The Executive Board shall answer any written request for such approval, after Notice and hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

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

e. All additions, alterations and Improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

The provisions of this Section shall not apply to Declarant in the exercise of any Special Declarant Right.

Section 11.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Section 17.4 and 17.5 of 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 reallocation 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 or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

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

### ARTICLE 13

#### AMENDMENTS TO DECLARATION

Section 13.1. General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 12.1 and Article 16 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.

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

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

Section 13.4. Unanimous Consent Required. Except to the extent expressly permitted herein 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 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.

Section 13.8. Amendments to Create Units or Withdraw Real Estate. To exercise any Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration that shall include an amended Exhibit "B" reallocating the interests among the units in accordance with Article 7 of 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 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

The Bylaws may be amended only by a vote of three-fifths (3/5) 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

##### CONDEMNATION

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

#### ARTICLE 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 liability for the Common Expenses as described in Section 7.2(b) of this Declaration.

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

a. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element other than concrete walks and parking areas 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 the 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 the 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 a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against his Unit(s).

f. The initial working capital assessment, 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. Assessments shall be assessed and paid quarterly and shall be due and payable on the first day of each quarter. The association shall have a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of sixty (60) days or longer from the time the association's notice of lien is filed of record in the Office of the Clerk of Superior Court of New Hanover County, North Carolina. Fees, charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. When an assessment is payable in installments, the full amount of the assessment shall become 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 attorney's fees for the prevailing party.

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

g. If a holder of a first mortgage or first deed of 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 the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

i. Successor's Liability for Assessments. All successors, (except as provided in Section 17.3(g) above) to the fee simple title of a unit will be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, fines, interest, late charges, costs, expenses, and attorneys' (and legal assistants') fees against such unit without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor.

Section 17.4. Budget Adoption and Ratification. The Executive Committee may adopt a new annual budget that does not exceed the previous budget by more than 15% without further approval of the membership (unit owners). A proposed new budget which exceeds a 15% increase over the previous budget must be approved by 62.50% (5 units) of the votes represented at a meeting called at which a quorum is present in person or by proxy. The meeting to ratify the budget must be scheduled not less than ten (10) days, nor more than thirty (30) days after mailing of the meeting notice, together with a copy of the proposed budget, to all unit owners.

Section 17.5. Ratification of Non-Budgeted Common Expense Assessments. If the Executive Board, due to special circumstances, votes to levy a "Special" common assessment greater than 15% of the current annual operating budget, and not included in the current budget, other than enumerated in Section 17.2 of this Declaration, the Executive Board will submit such expense to the Unit Owners for ratification in the same manner as a budget under Section 17.4. Such "Special" assessment can not be levied or extended for a period longer than 12 months, nor can the "special" assessment be increased or new "special" assessments added during this period.

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

Section 17.7. Quarterly Payment of Common Expenses. All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable quarterly. The initial working capital assessment which is equal to one quarter's dues is a one time charge payable