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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T. CHRISTIAN  
NEW HANOVER COUNTY, NC  
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RETURNED TO *W. Salmage Jones*

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF CONDOMINIUM  
COTTAGES AT SUNSET  
(A CONDOMINIUM)**

**TFT & CO., INC.**, 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 47C of the General Statutes of North Carolina, as amended, known as the "North Carolina Condominium Act", and to that end does hereby publish and declare that all of the said property to be known as "**COTTAGES AT SUNSET (A CONDOMINIUM)**" is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following conditions, covenants, restrictions, uses, limitations and objections, 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.

**ARTICLE I  
DEFINITIONS**

- A. Act or North Carolina Condominium Act means the statutory provisions set forth in Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act, 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 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 Bylaws 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. Building or Buildings shall mean all structures and improvements now or hereafter erected upon the property.

G. Common Areas and Facilities means the portion of the condominium property owned, in undivided interest, by all of the owners.

H. 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.

I. Common Profits means the balance of all revenue of the Association remaining after deduction of common expenses.

J. Condominium means real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

K. Condominium Documents means this Declaration, the By-Laws, the Rules and Regulations of the Association 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.

L. Declarant means TFT Co., Inc., A North Carolina Corporation, its successors and assigns.

M. Declaration means this instrument as it may be from time to time amended or supplemented.

N. Eligible Mortgage Holder or Eligible Holders is defined as a holder of a first mortgage or lien on a unit that has requested notice of certain matters from the Association.

O. Limited Common Areas and Facilities means and includes those common areas facilities which are reserved for the use of a certain unit or units, to the exclusion of other units, as more specifically defined herein.

- P. Mortgagee shall mean a beneficiary under a mortgage or deed of trust.
- Q. Plans shall mean and refer to the plans and specifications of the condominium prepared by Arnold W. Carson PLS PC, and recorded under the name of the condominium in the Office of the New Hanover County Register of Deeds recorded in Condominium Plat Book 13 at Pages 313 - 314.
- R. Property means and includes the land described in Exhibit "A" to this Declaration together with any buildings and improvements located thereon.
- S. 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, shown on the plans, and as further defined in the Act.
- T. Unit Owner or Owner means a person or entity, or any combination thereof, who owns a unit.

## ARTICLE II DESCRIPTION OF PROPERTY

All of that certain tract or parcel of land with the building and improvement thereon erected, or to be erected, situate, lying and being in The Town of Wrightsville Beach, New Hanover County, North Carolina, and being more particularly described in Exhibit "A" attached hereto and incorporated by reference as though fully set forth herein. The Property is subject to those exceptions and liens set forth on Exhibit "C" attached hereto and incorporated by reference as though fully set forth herein.

## ARTICLE III DESCRIPTION OF BUILDING

The Declarant has constructed upon the property described in Exhibit "A", attached hereto, one (1) two-unit building to be used for single family residential purposes as herein provided. The location of said building upon the property is shown on the plans. In general, the building has three stories built on wooden pilings, plus a loft. The first story or ground floor consists of open space, walkways, shower for each unit, entry foyer for each unit, storage for each unit and an elevator for the top unit. The building is constructed primarily of wood frame on treated timber pilings. Each unit contains a kitchen, 3 bedrooms, 3 bathrooms and a living room. The top unit also has another bath and a loft. In addition, the building has decks which serve each unit, walkways, stairs, parking areas, HVAC units and other appurtenances, as are more particularly delineated on the plans.

ARTICLE IV  
**UNIT DESIGNATION AND DESCRIPTION**

A. Designation. The unit designation of each unit, its location and dimensions, are set forth on plans. Each unit is identified as either Unit A or Unit B.

B. Description. The legal description of each unit shall consist as either Unit A or Unit B which identifies such unit as shown on the plans. Each unit is bounded both as to horizontal and vertical boundaries by the interior unfinished surface of its perimeter walls, ceiling joists and floor joists which are shown on said plans.

C. Number. There may be no more than 2 units.

ARTICLE V  
**COMMON AREAS AND FACILITIES**

A. The common areas and facilities generally shall mean and refer to all of the real property, described in ARTICLE II, and all of the improvements and facilities thereon which are not units, and which are not items of personal property owned, held and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common area and facilities shall include, but not be limited to, the following:

1. All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, and exterior walls and interior load bearing walls, including party walls between the units.

2. All stairways, stairwells and stairs and their components, if any, which give access to more than one unit.

3. All yard and garden areas, parking and drive areas, sidewalks and any other amenities which serve more than one unit.

4. All installations of any facilities, apparatus, conduits, and equipment for the provision of utility service, including, but not limited to, water and sewer service, electricity, telephone, irrigation, trash disposal, and cable TV, supplied for the common use and convenience of the unit owners and which are not defined as part of the units or which are located in one unit but serve the other unit.

**ARTICLE V1**  
**LIMITED COMMON AREAS AND FACILITIES**

The limited common areas and facilities appurtenant to each unit (and which shall not be separated therefrom and shall pass with title to any unit, whether or not separately described in the deed of conveyance) are as follows:

A. Decks accessible only from a particular unit, and outside stairways, outside entries, driveways, yards, parking areas and garages serving only one unit. Each limited common area is allocated to the unit served by that limited common area, as shown on the plans.

B. Water, power, telephone, television, electricity, plumbing, gas, sewage, heat and air lines or ducts serving only a particular unit but located within the common areas and facilities.

**ARTICLE VII**  
**NATURE OF INTEREST IN UNITS & COMMON FACILITIES**

A. Every unit, together with its undivided interest in the common areas and facilities, shall for all purposes be a separate parcel of real property, capable of fee simple ownership, and the unit owner thereof shall be entitled to the exclusive ownership and possession of such unit subject only to the Condominium Documents. The units shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof. 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 except the selling of any unit in "time shares" is hereby expressly prohibited.

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. Each unit owner shall own a 50% undivided share in the common areas and facilities as set forth in Exhibit "B" attached hereto and made a part hereof, subject to the following:

1. The undivided share shall be appurtenant to the unit, shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

2. A share cannot be conveyed or encumbered except together with the unit.

3. The shares shall remain undivided, and no action for partition thereof shall lie.

**ARTICLE VIII  
USE**

A. The buildings and each of the units shall be used only for single family residential purposes, which shall include the rental of any units by the owner(s) thereof pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto. Each unit owner shall use the common areas and facilities only for purposes incidental to the use and occupancy of his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with the Condominium Documents. The uses contemplated by this Paragraph cannot be changed, amended or modified without the written consent of the owners of all units.

B. No immoral, improper, offensive, noxious or unlawful use shall be made of any unit or of the common areas and facilities, and all applicable laws, zoning ordinances and regulations of all governmental authorities shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common and limited common areas and facilities, which will increase the rate of insurance on the unit, or which will obstruct or interfere with the rights of other occupants of the other units or annoy or embarrass them, nor shall any owner undertake any use of practice which shall constitute a nuisance to any other owner of a unit, or which interferes with the peaceful possession and proper use of any other unit or the common and limited common areas and facilities.

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

D. No boats, trailers, motor homes or similar vehicles may be stored on the property, except as designated by the Board. Boats may be kept at the pier located on the Property in the designated boat slips.

E. The Unit Owners Association shall have the right to require the Unit Owner to remove any pet from their Unit if it is determined that the pet is a nuisance.

F. The use of the property shall be subject to any restrictions contained in the other Condominium Documents. These additional use restrictions shall have the same force and effect as the restrictions contained herein.

## **ARTICLE IX MAINTENANCE**

A. The association shall operate and maintain the common and limited common area and facilities as a common expense of the owners. Duties of maintenance shall include, but not be limited to, providing termite and other pest control, termite bond for the common and limited common areas and facilities, landscape upkeep, sealing and painting exterior portions of the building, and carrying the insurance provided for herein.

B. All parts of a 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. 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. 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 when such failure will endanger or impair the value of the common areas and facilities or any unit, may, upon written notice to the owner of the nature of the required repair, maintenance or replacement, be repaired or replaced by the Association at the expense of the unit owner and shall be collected by special assessment as provided herein and in the other Condominium Documents. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

## **ARTICLE X EASEMENTS**

A. The common area and facilities shall be, and the same are, hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners of units 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. The Association shall have the exclusive right to establish Rules and Regulations pursuant to which the owner of any unit, his family, guests and invitees, may be entitled to use the common areas and facilities. 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 to inspect the same, to remove a violation therefrom and to maintain, repair or replace the common areas and facilities, if any, contained in a unit.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subject 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 and facilities; each unit owner hereby grants to the Board, 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 any other unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or common areas and facilities so encroaching so long as all or any part of the building containing such unit or common areas and facilities 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 areas and facilities if such encroachment occurred due to the willful conduct of said owner or owners.

E. 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, their successors and assigns, and any other 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.

## ARTICLE XI COMMON EXPENSES AND ASSESSMENTS

A. Common Expenses. The unit owners are bound to contribute pro rata, in the percentages set forth in Exhibit "B" 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. No

unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common and limited common area and facilities or by the abandonment of the unit belonging to him.

B. Annual Assessments. The Board of Directors of the Association shall establish a proposed annual budget for each fiscal year in advance of the annual meeting. This budget shall project all common expenses for the forthcoming year required for the performance of its duties, including a reasonable allowance for contingencies and reserves. At least ten days prior to the annual meeting, copies of the proposed budget shall be delivered to each member, together with the proposed assessments against each unit. At the annual meeting, the budget shall be submitted to the membership for approval. As approved, the budget shall constitute the basis for all regular assessments for common expenses against unit owners.

C. Capital Improvements. The Board of Directors, in establishing the annual budget, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the common and limited common areas and facilities, which capital improvement and replacement fund (capital improvement fund) shall be subject to the approval of the membership at the annual meeting. The amount collected for the capital improvement fund shall be maintained in a separate account by the Association and shall be used only to make such capital improvements. Any interest earned on monies in the capital improvement fund may, in the discretion of the Board of Directors, be expended for current operation and maintenance.

D. Apportionment of Assessments. Assessments shall be apportioned among the unit owners on the basis of their proportionate undivided interests in the common areas and facilities, as set forth in this Declaration.

E. Unit Owner's Interest in Assessments. All assessments collected by the Association shall be treated as the separate property of the Association. As monies collected for any assessment may be co-mingled. No member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest in the monies collected by the Association, except as an appurtenance to his unit. When the owner of a unit ceases to be a member of the Association by reason of transfer of ownership of the unit, the Association shall not be required to account to the owner for any share of the funds or assets of the Association which may have been paid to the Association by such owner.

F. Time of Payment. Assessments shall be payable in quarterly installments, unless otherwise determined by the Board of Directors.

G. Default. Assessments shall be in default if not paid within thirty (30) days of the due date. Delinquent assessments shall bear interest at the maximum permissible legal rate until paid and late fees assessed by the Association. Any unit

owner in default shall be obligated to pay such interest and late fees, together with all costs of collecting such assessments, including reasonable attorneys' fees.

H. Remedies for Default. If an assessment against a unit owner is not paid when due, the unpaid assessment shall constitute a lien against the unit and its appurtenant undivided interest in the common areas and facilities, which lien shall secure the unpaid assessment, and interest thereon, any expenses incurred in collecting the assessment, and any advances for taxes, and payments on account of superior mortgages, liens or encumbrances required to be advanced by the Association in order to preserve and protect its lien. This lien shall be enforceable from the time it is filed in the public records of New Hanover County, North Carolina, in the manner provided by Article 8 of Chapter 44 of the North Carolina General Statutes. The lien may be foreclosed in the manner provided by North Carolina General Statutes 47A-22 and, in any such foreclosure proceeding, the Association shall be entitled to collect a reasonable rental for the unit from the unit owner and to appoint a receiver to collect the same. In addition, and without waiving its right to foreclosure, the Association shall have the right to maintain a suit to recover unpaid assessment or to exercise any other remedies provided in the other Condominium Documents.

I. Foreclosure. The Association shall have the power to bid on the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. If the Association becomes the owner of a unit by reason of foreclosure, it shall offer said unit for sale. At such time as a sale is consummated, the Association shall deduct from the proceeds of said sale all sums of money due it for assessments and charges; the costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees; funds necessary to discharge any liens or mortgages of record, and any and all expenses incurred in the resale of the unit, which shall include, but not be limited to, advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the unit in question. All surplus monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of the subject unit, or paid to the Clerk of Superior Court in accordance with the general mortgage foreclosure laws of North Carolina.

J. Liability of Purchaser at Foreclosure Sale. When the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage, such purchaser, his successors and assigns, shall not be liable for the share of common expenses or assessments chargeable to such unit which became due prior to the acquisition of title to the unit by such purchaser. The unpaid share of the common expenses or assessments shall be absorbed and paid by the owners of all the units, including the purchaser, his successors and assigns, as common expenses, on the basis of their proportionate interest in the common areas and facilities.

K. Liability of Grantee in Voluntary Conveyance. In any voluntary conveyance of a unit, the purchaser shall be jointly and severally liable with the seller for all unpaid assessments against the seller up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefor.

L. Notice of Unpaid Assessments to Prospective Purchaser, Tenant or Mortgagee. Whenever any unit is leased, sold, or mortgaged by the owner thereof, the Board of Directors, upon written request of the unit owner, shall furnish to the proposed purchaser, tenant or mortgagee, a statement verifying the amount of unpaid assessments chargeable to the unit. The purchaser, tenant or mortgagee may rely upon such statement in concluding the proposed purchase, lease or mortgage transaction, and the Association shall be bound by such statement.

M. Common Profits. If, in any year, there is an excess of assessments and other income over common expenses, the excess (common profits) shall, unless otherwise determined by the Board of Directors, be applied to payment of the next year's assessments.

## ARTICLE XII TAXES

Each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "B" 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, ad valorem levies and special assessments. Each unit owner 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 owner. 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.

## ARTICLE XIII 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 unit.

D. Assessments against unit owners by the Association 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 § 47C-3-116 of the 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, recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, prior to the recording of said liens.

#### ARTICLE XIV 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 which shall have the authority to, and shall obtain such insurance against (i) loss or damage by fire or other hazards normally insured against, including loss by flood, wind or hail, and (ii) 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 and location. Casualty insurance policies shall be for the fair market value of the property. Liability coverage shall be for at least \$ 300,000.00 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 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 lawsuits 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 the 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 canceled 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 canceled, 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 canceled, 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.

7. Each unit owner shall be an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the Association.

8. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance coverage.

C. Premiums. All insurance premiums on the property and for the benefit of the Association purchased by the Board and any deductibles payable by the Association on account of a 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 mortgagors, as their interests may appear.

Any portion of the condominium for which insurance is required which is damaged or destroyed shall be repaired or replaced promptly by the Association unless the condominium is terminated, or repair or replacement would be illegal, or one hundred percent (100%) of the unit owners decide not to rebuild. Proceeds of insurance shall be disbursed first for the repair or restoration of the damaged property and unit holders and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

If the entire condominium is not repaired or replaced, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, and/or the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to their lienholders, as their interests may appear, and/or the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's undivided interest is automatically reallocated as if the unit had been condemned, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

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 or 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 issue by the Association to each mortgagee if any, upon request of such mortgagee at any time.

**ARTICLE XV  
DAMAGE AND DESTRUCTION**

Except as herein otherwise provided, damage to or destruction of the 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 one hundred percent (100%) of the units resolve not to proceed with reconstruction or restoration, the property shall be either (i) sold or otherwise transferred as hereinafter provided, or (ii) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47C-2-118 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 all unit owners and by all institutional lenders holding deeds of trust on the units.

**ARTICLE XVI  
EMINENT DOMAIN**

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Unless the condemner acquires the right to use the unit's interest in common elements, that unit's undivided interests are automatically reallocated to the remaining units in proportion to the respective undivided interests of those units before the taking, exclusive of the unit taken, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the re-allocations. Any remnant of a unit remaining, after part of a unit is taken under this Subsection is thereafter common area.

B. Except as provided in Subsection A, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and of its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that unit's undivided interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the Declaration, and (ii) the portion of the undivided interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective undivided interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced undivided interests.