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RETURN TO: Allen and MacDonald

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION OF CONDOMINIUM
OF
EASTWOOD COMMONS OFFICE CONDOMINIUM**

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ARTICLE I: SUBMISSION; DEFINITIONS

Section 1.1. Gulf & Miller, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant"), which is the owner in fee simple of the real estate described in Exhibit "A", located within New Hanover County, North Carolina, hereby submits such real estate, including all improvements, easements, rights and appurtenances thereunto belonging to the provisions of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act ("Condominium Act"), and hereby creates with respect to said real estate a condominium to be known as "**EASTWOOD COMMONS OFFICE CONDOMINIUM**" ("Condominium").

Section 1.2 Definitions. As used in the Condominium Documents, the following words and phrases shall have the following meanings:

(a) "Eastwood Commons Office Condominium" shall mean the development comprised of the Property as defined below.

(b) "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".

(c) "Association" means EASTWOOD COMMONS OFFICE ASSOCIATION, a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

(d) "Building" shall mean and refer to one (1) two story building containing approximately 15,400 Square feet on the Property (as defined below) as shown on the Plat and Plans (as defined below).

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

(f) "Common Elements" or "Common Areas", which may be used interchangeably, means all portions of the Condominium other than the Units including, but not limited to, all exterior surfaces of buildings.

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

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

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

(iii) expenses agreed upon as Common Expenses whether annual or special 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.

(h) "Condominium" means the real property described in Exhibit "A", subject to this Declaration of Condominium.

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

(j) "Declarant" means Gulf & Miller, LLC its successors and assigns as defined in Section 47C-1-103(9) of the Condominium Act.

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

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

(m) "Eligible Mortgagee"-means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article 16 only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

(n) "Executive Board" means the Board of Directors of the Association or the Declarant until such board is formed.

(o) "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.

(p) "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.

(q) "Majority or Majority of Unit Owners" means the owners of more than fifty percent (50%) of the allocated interest in Common Elements stated as votes in the Association, as established by and set forth in this Declaration of Condominium.

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

(s) "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.

(t) "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.

(u) "Person" means an individual, corporation, business, trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

(v) "Plats and Plans" means the Plats and Plans recorded simultaneously with this Declaration in Condominium Book 12 at Pages 393 thru 397, and constituting a part hereof, as the same may be amended from time to time.

(w) "Property" means the land, all Improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration and as described in Exhibit "A", hereto attached and incorporated herein by reference.

(x) "Public Offering Statement Not Provided" means no public offering statement will be provided to the purchasers, as all units are restricted to non-residential use and purchasers will be deemed to waive the right to receive any public offering statement by the acceptance of a deed from the Declarant.

(y) "Public Offering Statement Waiver" means that the Declarant requires that all units within the condominium are restricted to non-residential use and shall be used for office and institutional use only. All purchasers by the acceptance of a deed conveying an ownership interest in a unit subject to the condominium do hereby waive the right to any public offering statement as permitted under NCGS 47C-4-101(a), and acknowledge that a public offering statement will not be provided to them.

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

(bb) "Security Interest" means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

(cc) "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) use easements through the Common Elements for the purpose of making improvements within the Condominium.

(dd) "Structure" shall mean and refer to any thing or device the placement of which upon or within the Property might affect the physical appearance thereof including by way of illustration and not limitation, improvements, buildings, sheds, covered areas, vehicular and pedestrian bridges or driveways, parking areas, trees, shrubbery, paving, fill, curbing, landscaping, fences or walls and signs.

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

(ff) "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.

(gg) "Unit Owner" means the Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

(hh) "Use" shall mean that the units within the condominium are restricted to non residential use as permitted under Section 8.1(a).

ARTICLE 2. MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1 Number of Units. Declarant does hereby establish two (2) Units in the Building and

does designate all such units for separate ownership. Notwithstanding the foregoing, the Declarant or any subsequent owner of a Unit shall have the right to subdivide any Unit into two (2) or more Units or combine two (2) or more Units into one (1) Unit, provided that Declarant approves such subdivision or combination and that such subdivision or combination is in compliance with the Act. Declarant also reserves the right to subdivide Units, combine Units, or otherwise move or rearrange the boundaries of any Unit before such Unit is sold, but such subdivision or rearrangement shall not in any way modify or restrict the voting rights of existing owners of units or alter the percentage interest in the common areas for units theretofore conveyed by the Declarant. Reference is hereby made to the Plat and Plans for a separate description of the boundaries of each Unit, identified by number, said Plat and Plans being by this reference incorporated herein.

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

(a) **Upper Boundary:** The horizontal or sloping plane or planes of the unfinished lower surfaces of the roof or ceiling bearing structure surfaces, beams, and rafters, extended to an intersection with the vertical perimeter boundaries.

(b) **Lower Boundary:** The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, sills and structural components.

(c) **Vertical Perimeter Boundary:** The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of the masonry walls; the unfinished surfaces of the interior trim and thresholds along perimeter walls and floors; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

(d) **Inclusions:** Each Unit will include the spaces and Improvements lying within the boundaries described in Subsections 2.2(a), (b), and (c), and will also include the spaces and Improvements within such spaces including water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, from the point of entry into the Unit from any adjoining Common Areas. Moreover, included in the definition of Unit shall be all HVAC systems which exclusively serve such Unit, whether located within the Unit or beyond the perimeter boundaries of such Unit, whether or not contiguous.

(e) **Exclusions:** Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Subsections 2.2(a), (b) and (c), above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

(f) **Non-Contiguous Portions:** Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated in buildings or structures that are detached or semidetached from the buildings containing the principal occupied portion of the Units. Such special equipment and storage portions are part of the Units notwithstanding their non-contiguity with the occupied portions.

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

ARTICLE 3. LIMITED COMMON ELEMENTS

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

(a) If a chute, flue, pipe, duct, wire, conduit, bearing or non load bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the

portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

(b) Any shutters, awnings, doorsteps, stoops, entrance ways, 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) All glass surfaces appurtenant to and servicing any specific Unit, such as glass exterior doors and windows, and all exterior doors which access any specific Unit are Limited Common Elements of the Unit to which they service. Except the owner's association will maintain coverage for exterior glass breakage due to fire or such other perils listed in the owner's association policy.

(d) Nameplates, permitted signage, and exterior lighting affixed to the building for said nameplates or signage will be Limited Common Elements allocated to the Unit served.

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

ARTICLE 4. MAINTENANCE, REPAIR AND REPLACEMENT

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

Section 4.2 **Units**. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired or replaced by the Association and except for maintenance, repair and replacement for which insurance coverage is provided by the Association and as required by the Condominium Act and to this Declaration.

Section 4.3 **Limited Common Elements**. Any Common Expense associated with the maintenance, repair or replacements of heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units to which the Limited Common Element is assigned.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to or a part of exterior doors, windows and other Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Element is assigned.

No additional component or element may be attached without written consent of the Executive Board. In the event such additional component or element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment under this Section, after Notice and Hearing.

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

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with their Allocated Interests in the Common Expenses.

Section 4.4 Access. Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires and equipment, provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present

at the time.

Section 4.5 Repairs Resulting From Negligence. Each Unit Owner will reimburse the Association for any damages to any other Unit, to the Common Elements, or to Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit or Limited Common Elements appurtenant thereto. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing. A Unit Owner may request a hearing before the Board of Directors for the purpose of validating the assessment. Request for the hearing by the Unit Owner must be in writing and will be held at the next regularly scheduled board meeting.

ARTICLE 5. SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

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

ARTICLE 6. DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 6.1 Reservation of Development Rights. The Declarant reserves the following Development Rights:

(a) The right to subdivide any unit into two (2) or more units or combine two (2) or more units into one (1) unit, provided, that such subdivision or combination is in compliance with the act and provided that said subdivision or combination is prior to the sale to a third party of the unit to be subdivided or combined.

(b) The right to grant easements for utility easements to carry out the purposes of this Condominium Declaration.

Section 6.2 Construction; Declarant's Easements. The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board or any Unit Owner. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations and for exercising Special Declarant Rights, whether arising under the Condominium Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, adjoining property owners, riparian owners or upland owners to fulfill the plan of development.

Section 6.3 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. At such time as a unit may become available for sale or resale, only one sign, not to exceed 3x3, may be placed inside the front window of the applicable unit. No exterior signs may be posted without board written consent.

Section 6.4 Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following:

(i) so long as the Declarant holds a Development Right to create additional Units or Common Elements or to withdraw real estate from the Condominium; or

- (ii) so long as Declarant owns any Unit; or

Section 6.5 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. These formulas are to be used in reallocating interests if Units are added to the Condominium.

Section 7.2 Formulas for the Allocation of Interests. The interests allocated to each Unit have been calculated on the following formulas:

(a) **Undivided Interest in the Common Elements.** The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative heated and cooled floor area of each Unit as compared to the heated and cooled floor area of all of the Units in the Condominium.

(b) **Liability for the Common Expenses.** Each Unit in the Condominium shall share in the Common Expenses of the Condominium in the same percentage of liability as their respective percentage of ownership in the Common Elements as established therein. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 17 of this Declaration.

(c) **Votes.** Each Unit in the Condominium shall have one vote in association matters. The vote attributable to each such Unit shall be stated as in Exhibit "B" without regard to allocated percentage ownership interest in Common Elements attributable to each such Unit as set forth in Exhibit "B". Provided, if the Declarant further subdivides a unit, the vote of the subdivided unit shall be equally split between the subdivided units (i.e. if unit 200 is divided into 2 units, each new unit will have one-half (1/2) of a vote).

Section 7.3 Assignment of Allocated Interest Upon Creation of Units Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Section 6.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

ARTICLE 8. RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 8.1 Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

(a) Each Unit is restricted to general office and professional use, including, but not limited to medical, dental, legal and other professional office uses and banking or mortgage services and other institutional uses and their directly related uses along with such other related and harmonious uses as the Declarant or the Association through its Board of Directors may permit.

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

(c) Owners of Units in the Building shall have the right only to affix letter signage of an approved size to the exterior door which is the Limited Common Element serving each respective Unit and to exterior portions of the Building which are designated as Limited Common Areas.

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

(e) Additional signage, displays, etc., shall not be placed inside or outside the unit's windows. Any displays or signage determined by the Executive Board to be in violation of this Declaration or the By-Laws or rules and regulations of the Association, shall be removed within 48 hours of notice.

Section 8.2 Restrictions on Alienation. All leases and rental agreements shall be in writing and subject to the requirements of the Condominium Documents and Rules and Regulations of the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

ARTICLE 9. EASEMENTS AND LICENSES

Declarant does hereby establish, declare, and grant, for the benefit of each and every portion of the Property, as an appurtenance thereto, and to and for the benefit of Declarant, the Condominium Associations and the Owners, the following easements:

Section 9.1 Ingress/Egress. Perpetual, non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians, over, across and through all roadways, driveways, curb cuts, aisles, walkways and sidewalks located within or to be located within the Property, specifically including the right and easement of ingress and egress over, across, and through the entrances into the Property from adjoining property, as shown on the Exhibits and Condominium Plats and Plans.

Section 9.2 Parking. Perpetual, non-exclusive rights, privileges and easements to Owners, their lessees, invitees and licensees and the invitees and customers of such lessees, invitees and licensees for vehicular parking within the surface vehicular parking spaces located on the Property, provided, however, the Association shall, in the rules and regulations, establish and change from time to time, rules regarding towing and parking violations and the designation of certain parking areas for use by Owners, their employees, tenants, licensees and business visitors.

Section 9.3. Utility Easements. Reciprocal non-exclusive easements over the entire Property for the furnishing of water, electricity, storm and sanitary sewerage, gas, telephone, television, communications, security systems, other utilities and services and heating, air-conditioning and ventilation by means of pipes, wires, ducts, cables, conduits, equipment panels, mechanical equipment, heating, air conditioning and ventilation equipment and machinery, fire stairwell and other apparatus and facilities (collectively referred to as "Utility Lines") and as may hereafter be consented to in writing from time to time, by the Declarant. Unless such utilities and mechanical facilities are separate and distinct for each Unit and serve only that Unit, such utility and mechanical facilities shall be construed, maintained, repaired and replaced by the Association.

Section 9.4. Encroachments. Reciprocal non-exclusive easements over the entire Property for minor encroachments which will not substantially interfere with the property encroached upon created by the construction, reconstruction, renovation, settling, shifting or other causes of movement and for overhangs. This easement shall be appurtenant to each Unit for the benefit of Owners thereof.

Section 9.5. Easements Shown on Map. All easements or licenses to which the Condominium and the Common Elements are presently subject are recited in Exhibit "A", or the Plats and Plans as defined in Article 1.2 (w), 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, provided said easements shall not unreasonably interfere with any rights granted to unit owners without the written consent of unit owners.

Any easement areas as described in the preceding Paragraph, together with any improvements thereon, shall be maintained, repaired, and as necessary, replaced by the Association. The cost of all maintenance, repairs and replacement shall be a common expense and shall be paid by the

Association.

Section 9.6. Construction Easement. Declarant shall have a reasonable construction easement across the Common Elements for the purpose of constructing improvements in the Units. Declarant also shall have such easements through the Common Elements as may be reasonably necessary for the purpose of exercising Special Declarant Rights as provided herein or discharging Declarant's obligations under this Declaration or the Covenants, Conditions and Restrictions.

Section 9.7. Right of Entry. The Association and its representatives shall have a right of entry upon the Units and any Common Elements, including Limited Common Elements, to effect emergency repairs, and a reasonable right of entry upon the Units to effect other repairs, improvements, replacement or maintenance as necessary.

ARTICLE 10. ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Article 5 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of boundaries of Units pursuant to Article 12 of this Declaration. Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The Person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for all of its costs and expenses, including but not limited to attorneys' fees, incurred in connection with the review of the amendment and the recording thereof.

ARTICLE 11. ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Section 11.1 Additions, Alterations and Improvements by Unit Owners.

(a) No Unit Owner will make any structural addition, structural alteration, or structural Improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1(c).

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

(i) may make any other Improvements or alterations to the interior of his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium; The owner/tenant may not penetrate any foundation exterior wall or the roof without first having received written permission from the Executive Board.

(ii) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the condominium, without permission of the Association;

(iii) after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries.

(c) A Unit Owner may submit a written request to the Executive Board for approval to do

anything that he or she is forbidden to do under Subsection 11.1(a) or 11.1(b)(i). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

(d) Any applications to any department or to any governmental authority for a permit to make any addition, alteration or Improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to the applying Unit Owner nor to any contractor, subcontractor or materialman on account of such addition, alteration or Improvement or to any person having any claim for injury to persons or damage to property arising therefrom. Costs applicable to this application shall be at the expense of applying unit owner.

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

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

Section 11.2 Additions, Alterations and Improvements by Executive Board. Subject to the limitations contained elsewhere in this Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

ARTICLE 12. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

Section 12.1 Application and Amendment. Subject to approval of any structural changes and required permits pursuant to Article 11, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a relocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the Grantor and the Grantee, and in the Grantee's Index in the name of the Association.

Section 12.2 Recording Amendments. The Association shall prepare and record plats and plans necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.

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

ARTICLE 13. AMENDMENTS TO DECLARATION

Section 13.1 General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 6 of this Declaration and Section 47C-2-110 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-117 of the Condominium Act, and except as limited by Section 12.1 of this Declaration, the Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the voting interests in the Association are allocated.

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

Section 13.3. Recordation of Amendments. Each amendment to the Declaration must be recorded in every county in which a portion of the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 12 of this Declaration, must be indexed in the Grantor's and Grantee's Index in the name of the parties executing the amendment.

Section 13.4 Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Condominium Act or this Declaration, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a unit, the Allocated Interests of a Unit, or the uses to which a unit is restricted, in the absence of the unanimous consent of the Unit Owners.

Section 13.5 Execution of Amendments. An amendment to the Declaration required by the Condominium Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Condominium Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose, or in the absence of designation, by the President of the Association.

Section 13.6 Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7 Amendments to Create Units or Withdraw Real Estate. To exercise any Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Section 47C-2-109(a), (b) and (c) of the Condominium Act or new certifications of the Plats and Plans previously recorded if those Plats and Plans otherwise conform to the requirements of those Sections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall described 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 fifty-one percent (51%) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

ARTICLE 15. TERMINATION

Termination of the Condominium may be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.

ARTICLE 16. MORTGAGEE PROTECTION

Section 16.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.

Section 16.2 Percentage of Eligible Mortgages. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding First Mortgages in Units which in the aggregate have

allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to First Mortgages held by Eligible Mortgagees.

Section 16.3 Notice of Action. The Association shall give prompt written notice to each Eligible Mortgagee of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable;

(b) Any delinquency in the payment of Common Expense assessments owed by an Owner who Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of one hundred twenty (120) days;

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

(d) Any judgment rendered against the Association.

Section 16.4 Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association by appointment during normal business hours upon twenty-four (24) hours notice.

Section 16.5 Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

Section 16.6 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

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

Section 16.8 Appointment of Trustee. In the event of damage or destruction under Article-20 or 21 or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Subsection 1.2(aa). Proceeds will thereafter be distributed pursuant to Article 21 or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the President may act as Trustee.

ARTICLE 17. ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 17.1 Creation of Lien and Personal Obligation of Assessments. Each owner of a Unit or any interest in the Property shall, by acceptance of a conveyance therefor, whether or not it shall be so expressed in any instrument of conveyance, be deemed to (i) covenant and agree to all the terms and provisions of this Declaration, and (ii) promise to pay the Association, both annual and special assessments and charges, such as are established and to be collected from time to time as hereinafter provided.

Section 17.2 Purpose of Annual Assessments. The annual assessments levied by Declarant shall be used for the improvement, maintenance, operation, repair, replacement and additions of and to the Common Facilities, including, but not limited to, the payment of insurance, the payment of ad valorem taxes on the Common Facilities, the payment of utility charges related thereto, (including water for any irrigation systems), the costs of maintaining, operating and improving streets, roads, drives and rights-of-way, the costs of maintaining, repairing and restoring the exterior of the buildings and Common Elements, the payment of capital expenditures related to the Common Facilities, such

as replacing or rebuilding any common Facility, the payment of license, permit and inspection fees, costs of street signs and markers, the costs of collecting and disposing of garbage, rubbish and the like, the costs of constructing, maintaining, repairing and replacing common utility facilities, the costs of employing security service, a property manager and maintenance personnel, any cost sharing contributions in relation to the operation, maintenance and repair of any shared facilities or amenities, the costs to prepare the Buildings, any other Structures located upon the property the Common Facilities for any storms or hurricanes, including, but not limited to, the costs of materials for clean-up and restoration after the storm or hurricane, and the costs of labor, supplies, equipment, materials, management and supervision thereof.

Section 17.3 Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit "B" to this Declaration.

Section 17.4 Common Expenses Attributable to Fewer Than All Units.

Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from service.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) An assessment to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

(e) If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

(f) Common Expense charges are due on the first day of applicable month(s) billed for and payable not later than the 10th day of the month due.

(g) 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 17.5 Lien.

(a) The Association has a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk of Superior Court of New Hanover County, North Carolina. Fees (including attorneys' fees), charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except:

(i) liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

(d) This Section does not prohibit an action to recover sums for which Subsection 17.3(a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(e) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorneys fees for the prevailing party.

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

(g) If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

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

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

Section 17.6 Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting Owners of Units representing sixty five percent (65%) of all Common Elements reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.7 Ratification of Non-Budgeted Common Expense and Special Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.6 of this Declaration, in an amount greater than ten (10%) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.6. Special Assessments less than ten (10%) of the current annual operating budget may be approved by a majority vote of the Executive Board.

Section 17.8 Certificate of Payment of Common Expenses Assessments. The Association upon written request shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within fifteen (15) business days after receipt of the request.

Section 17.9 Quarterly Payment of Common Expenses. All Common Expenses assessed under Sections 17.5 and 17.6 shall be due and payable quarterly, or at such other interval as may be approved by the Executive Board.

Section 17.10 Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month on which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.