

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

JUL 30 10 16 AM '85

STATE OF NORTH CAROLINA : DECLARATION OF CONDOMINIUM
COUNTY OF NEW HANOVER : HAWTHORNE COURT CONDOMINIUM
: PHASE I

Now comes WILMINGTON INVESTMENT, INC., a North Carolina corporation, hereinafter referred to as "Declarant", being the owner in fee simple of the property hereinafter described and hereby submits said property to condominium ownership pursuant to Chapter 47A of the General Statutes of North Carolina as amended, said statute being commonly known as the "Unit Ownership Act", and does hereby publish and declare that all of said property to be known as "HAWTHORNE COURT CONDOMINIUM PHASE I" is to be held, conveyed, encumbered, used, occupied and improved subject to the following conditions, covenants, restrictions, uses, limitations and obligations, all of which shall be deemed to run with the land and shall be of benefit and burden to the Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the property and improvements, their grantees, successors, executors, administrators, heirs, devisees and assigns.

ARTICLE I

DEFINITIONS:

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Unless it is plainly evident from the context that a different meaning is intended, the following terms shall be used as follows:

1. Act or Unit Ownership Act shall mean the statutory provisions set forth in Chapter 47A of the General Statutes of North Carolina.
2. Assessment shall be the share of funds assessed against the unit owners by the Association for the payment of common expenses as provided herein.
3. Association shall refer to the H. C. Homeowner's Association, a non-profit corporation, organized under the laws of the State of North Carolina which shall include all unit owners and shall act in accordance with its Articles of Incorporation, By-Laws and this Declaration.

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4. Board of Directors or Board shall mean the Board of Directors of H. C. Homeowner's Association.

5. By-Laws shall refer to the By-Laws of H. C. Homeowner's Association. A copy of the initial By-Laws of said Association are attached hereto as Exhibit C and incorporated by reference herein.

6. Buildings shall mean the structures and improvements now or hereafter erected upon the property.

7. Common areas and common elements shall mean the portion of the condominium property owned by all of the owners, as more specifically set forth herein.

8. Common expenses shall mean the expenses of administration, maintenance, operation, repair and replacement, including the funding of any capital reserve fund established for such maintenance, repair and replacement of the common areas and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Unit Ownership Act.

9. Common profits shall mean the balance of all revenues of the Association remaining after deducting the common expenses.

10. Condominium documents shall mean this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations of the Association and all other documents and regulations promulgated in connection with this condominium, as the same shall be amended from time to time.

11. Declarant means Wilmington Investment, Inc., a North Carolina corporation, its successors and assigns.

12. Declaration shall mean this instrument, as it may be amended from time to time.

13. Eligible mortgage holder or eligible holder shall mean the holder of the first mortgage or lien on a unit who has requested notice of certain matters from the Association.

14. Limited common areas and facilities shall mean those common areas and facilities which are reserved for the use of a certain unit or

units, to the exclusion of other units, as more specifically hereinafter defined.

15. Mortgagee shall mean the beneficiary of a mortgage or deed of trust.

16. Property means and includes the land described in Exhibit A, attached hereto and incorporated herein by reference together with any buildings and improvements located thereon together with all or any part of that property described in Exhibit B which may be brought within the scope of this Declaration pursuant to those provisions hereinafter set forth.

17. Unit or condominium unit shall mean that portion of the property which is subject to unit ownership as defined in the Act and in this Declaration.

18. Unit owner or owner means the person or entity who owns the unit.

ARTICLE II

DESCRIPTION OF THE PROPERTY

This Declaration shall be applicable to all that tract or parcel or land together with the buildings and improvements located thereon or hereinafter located thereon, situate, lying and being in the City of Wilmington, New Hanover County, North Carolina, more particularly described on Exhibit A, attached hereto and incorporated by reference herein. The Declarant may acquire additional adjacent property described in Exhibit B, attached hereto and incorporated by reference herein and upon the obtaining of said property and the submission of said property to the terms and conditions of this Declaration as hereinafter provided, said property shall also be subject to the terms and conditions contained herein. The Declarant shall have no obligation to submit any additional property to this Declaration, but in the event said property is submitted Declarant covenants and agrees that no more

than 39 additional units will be subjected to this Declaration making a total of 48 units subject to the Declaration. All additional submissions to this Declaration shall be made if at all, on or before December 31, 1990.

In the event the Declarant does subject additional lands and units to the provisions of this Declaration, the construction of improvements shall be consistent with the design and quality of those units initially governed by the provisions of this Declaration.

The Declarant acknowledges that the Act makes no specific provision for the submission of additional units to the declaration of unit ownership and provides that the ratio of the undivided interest in the common areas shall have a permanent character and shall not be altered except by the unanimous consent of all unit owners expressed in an amended declaration. To this end, it is specifically provided that all unit owners, by acceptance of a conveyance from the Declarant, and their heirs, successors and assigns, shall be deemed to have irrevocably nominated and appointed the Declarant or its assignee as said owner's duly appointed attorney in fact solely for the purpose of consenting to the amendment of this Declaration to subject additional property described on Exhibit B to its provisions, consistent with the limitations stated above, and to modify the undivided interest in the common areas, provided that such undivided interest of each unit owner at the time of such amendment shall be the approximate relation that the fair market value of the unit at the date of the amendment bears to the then aggregate fair market value of all units then subjected to the Declaration as amended. This power of attorney shall continue despite any incompetence or other disability of the part of the unit owner.

ARTICLE III

DESCRIPTION OF BUILDING

The Declarant has constructed, or will construct upon the property described in Exhibit A, attached hereto, one (1), nine (9) unit

multi-family building, to be used for residential purposes as herein provided. A plat of the survey of the property by Robert H. Goslee & Associates, R.L.S., showing the location of said building is attached hereto as Exhibit D and incorporated by reference herein. The building is more particularly described in the plans thereof, a copy of said plans being attached hereto as Exhibit E and incorporated by reference herein, said plans showing all particulars of the building as required by the Act and any other appropriate law.

In general, the building contains three stories and is constructed of wood, brick, concrete, stucco and other similar materials with a shingled roof. The building contains approximately 11,385 square feet of enclosed living area and has been divided into nine (9) units. Units A-1 and A-2 contain approximately 1185 square feet of enclosed living area. Units B-2 and B-3 contain approximately 1320 square feet of enclosed living area. Units C-1 and C-3 contain approximately 1330 square feet of enclosed living area. Units A-3 and C-2 contain approximately 1185 square feet of enclosed living area. Unit B-1 contains approximately 1200 square feet of enclosed living area.

ARTICLE IV

UNIT DESIGNATION AND DESCRIPTION

1. The unit designation, their location and dimensions are as set forth in Exhibit E, attached hereto. Each unit is identified by a letter followed by a number designating the unit location in the building.

2. The legal description of each unit shall consist of the letter and number combination described in paragraph 1 above. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, subject to such encroachments as are contained in the buildings, whether the same now exist or may be caused or created by the construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration.

3. Each unit shall be conveyed and treated as an individual property, capable of independent use in fee simple ownership, and the unit owner of each unit shall also own as appurtenant to the ownership of said unit conveyed, a .11111 undivided interest in the common areas and facilities, said undivided interest being the approximate ratio of the fair market value of each unit to the aggregate fair market value of all units as determined by the Declarant.

The percentage of undivided interest in the common areas and facilities assigned to each unit shall be modified only as provided in Article II above.

ARTICLE V

COMMON AREAS AND FACILITIES

1. The common areas and facilities shall refer to all the real property, described on Exhibit A, and all of the improvements and facilities thereon which are not units, as defined above, which are not limited common areas as hereinafter defined, and which are not personal property owned, held or maintained by the unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

a. All of the real property more particularly described in Exhibit A, attached hereto and incorporated by reference herein.

b. All foundations, columns, girders, beams, supports, roof, ventilation fans and vents, elevators and elevator shafts, load bearing walls, including all exterior walls and all interior walls (except non-load bearing partition walls located wholly within a unit).

2. The undivided share in the common areas and facilities which are appurtenant to a unit:

a. Shall not be separated therefrom and shall pass with title to the unit, whether or not separately described.

b. Cannot be conveyed or encumbered except together with the unit.

c. Shall remain undivided, and no action for partition of the common areas or elements shall lie.

3. Each unit owner shall own the undivided percentage interest in the common areas and facilities set forth in Article IV above, subject to the provisions of Article II.

ARTICLE VI

LIMITED COMMON AREAS

Limited common areas shall be described as follows:

1. Those areas shown on Exhibit E, attached hereto and incorporated by reference herein as limited common areas.

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

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

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

5. All air handling units, ducts and components and all water, power, telephone, cable televisions, electricity, plumbing, gas and sewage lines located in the unit, provided, however, that the portion of said lines located in the common compartment for the use by all owners of units shall be general common areas and facilities described above.

6. The limited common or facilities which are appurtenant to any unit shall not be separated therefrom and shall pass with title to any units, whether or not separately described.

ARTICLE VII

USE

Buildings in each of the units shall be used for residential purposes only which shall include the rental of any units for residential and lodging accommodations pursuant to the rules and regulations established by the Association. Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they were intended and for all purposes incidental to the use and occupancy of said unit. No person shall use the common areas and facilities or any part thereof in such a manner as will restrict or impair the use of said areas by others or in any manner contrary to the condominium documents and such rules and regulations as may be established from time to time by the Board of Directors. For so long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales offices, models or other uses for the purpose of selling units within the project. The Declarant may assign this limited commercial usage right to any person or entity as it may choose.

ARTICLE VIII

MAINTENANCE AND REPAIR

1. All painting, maintenance, repairs and replacements to the common areas shall be made by the Board of Directors and shall be charged to all unit owners as a common expense, except to the extent that any required work is necessitated by the negligence, misuse and neglect of a unit owner, in which case the expense shall be charged to such unit owner.

2. All painting, decorating, maintenance, repairs and replacements to any unit, other than to the common elements contained therein, whether structural or nonstructural, ordinary or extraordinary, shall be the responsibility of the unit owner and at the unit owner's expense, except that whenever the maintenance, repair and replacement of any item

for which the unit owner is obligated to maintain, replace or repair is occasioned by any loss or damage which is covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for such maintenance, repair or replacement. The unit owner shall be required to pay the portion of the cost of such maintenance, repair and replacement which exceeds the amount of the insurance coverage applicable thereto or is subject to a deductible clause in such insurance.

3. All parts of the condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the insurance company which insures the common areas and facilities when so requested in writing by the Board or its designated agent. Upon the failure of an owner to repair, replace or maintain as may be required pursuant to the condominium documents the Association may give written notice to the owner stating the repairs that must be made and a date not less than 20 days from the date of mailing in which they must be completed. If such repairs, replacement or maintenance are not made within the time allotted, the Association may cause appropriate repairs and maintenance to be made and may recover the costs of such actions by special assessment against the unit owner as provided herein and in the By-Laws. Such assessment may include the cost incurred by the Association and the abatement of any nuisance maintained by the unit owner.

ARTICLE IX

EASEMENTS

1. Each of the unit owners shall have an easement in common with the other unit owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities, including but not limited to, all sewer, water, gas, electricity, telephone and cable television lines located in the other units and serving said owner's

unit. Each unit shall be subject to an easement in favor of the owner of the other units to use all pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit.

2. The Association shall have the right, to be exercised by the Board of Directors or its designee, to enter into each unit from time to time, at reasonable hours, as may be necessary to inspect the unit, to remove violations therefrom, and to maintain, repair or replace common facilities, if any, contained therein.

3. The Declarant hereby reserves and subjects the lands which are subject to this Declaration to an easement for the use and enjoyment by the owners and occupants of the respective units for ingress and egress to and from all of the common areas and facilities pertaining to the condominium, provided, however, that the Association shall have the right to establish rules relating to parking facilities and may assign parking spaces to individual unit owners to the exclusion of other unit owners. Easements are also hereby created for the installation, use, maintenance, repair and replacement of all necessary public utilities, including, but not limited to sewer, water lines, gas, electricity, telephone and cable television for the use of the above described property.

4. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon another unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the building, or by the permissible repairs, construction or alteration of the building), easements for the maintenance of such encroachments are hereby established and shall continue to exist for so long as any part of the building containing such unit or common elements shall remain standing.

5. The Board of Directors or any person authorized by it shall have the right to enter into any unit for the purpose of remedying or abating causes of an emergency originating in or threatening any unit, common area or limited common area and for the making of any other necessary repairs not performed by the unit owners.

6. All easements and rights described herein are easements appurtenant, running with the land and shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and any other owner, purchaser, mortgagee or other person having an interest in said lands or any portion thereof.

ARTICLE X

COMMON EXPENSES

The unit owners are bound to contribute toward the expenses of administration, maintenance and repair and toward any other expenses lawfully assessed by the Association in accordance with their percentage interest in the common areas set forth in Article IV above. No unit owner is exempt from contributing towards such expense by waiver of the use or enjoyment of the common areas or facilities or by the abandonment of the unit.

ARTICLE XI

COMMON PROFITS

Common profits of the Association, if any, after payment of all expenses of operation and maintenance of the property and the establishment of any reserve funds deemed necessary and appropriate by the Board of Directors in accordance with the condominium documents shall be distributed among the unit owners according to their percentage of unit ownership set forth in Article IV above.

ARTICLE XII

TAXES

Each individual unit and its undivided interest in the common areas and facilities described above 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 taxes and assessments. Each unit owner shall be liable solely for the amount of taxes against said owner's unit and undivided interest in the common areas, limited common areas and facilities and shall not be affected by the consequences resulting from the tax delinquency of any other unit owner. Neither the building, nor the property, nor any of the common areas, limited common areas and facilities, shall be deemed to be a separate parcel for the purposes of taxation.

ARTICLE XIII

LIENS

1. No liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

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

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

the Unit Ownership Act. All assessments against a unit owner shall be also the personal obligation of the unit owner at the time the assessment becomes due. The personal obligations for assessments shall not pass to successors in title unless expressly assumed by them or required to be assumed by local law.

4. Any and all liens provided for herein shall be subordinate to the lien of any first mortgage given to any lender to secure a loan, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of said mortgage in the office of the Register of Deeds of New Hanover County, North Carolina. A lien for common assessments shall not be affected by any sale or transfer of the unit, except that sale or transfer pursuant to a foreclosure of a mortgage described above shall extinguish the subordinate lien for assessments which became payable prior to such sale or transfer. Any assessment so extinguished may be reallocated and assessed to all units as a common expense. Any such sale or transfer pursuant to a foreclosure sale shall not relieve the purchaser of a unit from the lien of any future assessments.

ARTICLE XIV

INSURANCE

1. The Board of Directors shall be required to obtain and maintain the following insurance:

a. Fire Insurance with extended coverage insuring the building containing the units, including all units, fixtures and installations initially installed by the Declarant and replacements thereof, but excluding fixtures, alterations, installations or additions located within a portion of the property used exclusively by an individual unit owner and made or acquired at the expense of an individual unit owner, for the interest of the Association, the Board of Directors, unit owners and their mortgagees as their interest may appear, in an amount equal to

the maximum insurable replacement value of all buildings and improvements upon the land, subject to such deductible provision as the Board may from time to time approve.

b. Such other risks, including, but not limited to, public liability insurance as from time to time shall be customarily required by private institutional mortgage investors for projects similar in construction, location and use as the property and the improvements thereon, all under such terms and for such amounts as the Board of Directors shall determine. Public liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.

2. The Board of Directors are further authorized to obtain any additional coverage which they may deem proper and in the best interest of the Association and the unit owners, provided such insurance shall contain appropriate waivers of subrogation and shall in no way diminish the coverage under such policies as are required to be maintained by the Association.

3. Each unit owner may obtain such additional insurance upon his unit, at his own expense, as he deems appropriate provided, however, that such insurance shall contain appropriate waivers of subrogation and shall in no way diminish the coverage of those policies maintained by the Board of Directors.

4. All insurance policy premiums on the property and for the benefit of the Association, purchased by the Board or a managing agent and any deductible payable by the Association upon loss shall be a common expense.

5. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustees 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 as provided herein and in the By-Laws for the benefit of the unit owners and the mortgagees in the following shares:

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

b. Proceeds on account of damage to unit shall be held in the following undivided shares:

(1) When the building is to be restored, for the owners of damaged units and their mortgagees in proportion to the cost of repairing the damage suffered by each unit, which cost shall be determined by the Board of Directors.

(2) When the building is not to be restored, an undivided share for each unit owner and their mortgagees, such share being the same as the unit owner's undivided interest in the common areas.

6. The proceeds shall be distributed to or for the benefit of the beneficial owners in the following manner:

a. All reasonable expenses of the insurance trustee shall be paid or a provision made therefor.

b. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as provided in Article XV hereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, including lien holders of record or retained by the Association for such common expenses or purposes as the Board shall determine.

c. If no reconstruction or repair is to be performed as provided in Article XV, all remaining proceeds shall be distributed to the beneficial owners including lien holders of record.