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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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STATE OF NORTH CAROLINA

**DECLARATION OF CONDOMINIUM
KERR CROSSING CONDOMINIUMS**

COUNTY OF NEW HANOVER

ARTICLE I.
SUBMISSION; DEFINITIONS

Section 1.1. Submission of Property. Barker and Melvin, L.L.C., a North Carolina limited liability company ("Declarant"), 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 "Kerr Crossing Condominium" ("the Condominium").

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

a. "Allocated Interests" means the undivided interest in the Common Elements and Common Expense liability, and votes in the Association, allocated to Units in the Condominium. The Allocated Interests are described in Article 7 of this Declaration and shown on Exhibit "B".

b. "Association" means Kerr Crossing Unit Owners 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.

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

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

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

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

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

(iii) expenses agreed upon as Common Expenses by the Association; and

(iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

f. "Condominium" means the real property described in Exhibit A, subject to the Declaration of Kerr Crossing Condominiums.

g. "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 amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of the Condominium Documents.

h. "Declarant" means **Barker and Melvin, L.L.C.**, a North Carolina limited liability company or its successor as defined in Section 47C-1-103(9) of the Condominium Act.

i. "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.

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

(i) one hundred twenty (120) days after conveyance of seventy five percent (75%) of the units which may be created, to unit owners other than the Declarant;

(ii) two (2) years after the Declarant ceased to offer units for sale;

(iii) two (2) years after any development rights to add new units was last exercised; or

(iv) upon Declarant voluntarily surrendering the right to appoint and remove officers and Directors of the Executive Board before termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded

instrument executed by the Declarant, be approved by the Declarant before they become effective.

k. "Director" means a member of the Executive Board.

l. "Eligible Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a unit that has notified the Association in writing of, its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. 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.

m. "Executive Board" means the Board of Directors of the Association.

n. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.

o. "Limited Common Elements" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Section 47C-2-102(2) and (4) of the Condominium Act. The Limited Common Elements in the Condominium are described in Article 3 of this Declaration.

p. "Majority or Majority of Unit Owners" means the owners of more than fifty percent (50%) of the Allocated Interests in the Association.

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

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

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

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

u. "Plats and Plans" means the Plats and Plans recorded simultaneously with this

Declaration in the Register of Deeds for New Hanover County in Condominium Book 17, Pages 320 through 342, and constituting a part hereof, as the same may be amended from time to time.

v. "Property" means the land, all Improvements, easements, rights and appurtenances, which have been submitted pursuant to the provisions of the Condominium Act by this Declaration.

w. "Public Offering Statement" means the current document prepared pursuant to Section 47C-4-103 of the Condominium Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a purchase agreement.

x. "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 Executive Board pursuant to this Declaration.

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

z. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to: (i) complete Improvements indicated on the Plats and plans filed with the Declaration;

(ii) exercise any Development Rights;

(iii) maintain sales offices, management offices, signs advertising the Condominium, and models;

(iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium or within real estate that may be added to the Condominium; or

(v) appoint or remove any officer of the Association or any Executive Board member during the Declarant Control Period.

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

b.b. "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.

c.c. "Unit Owner" means the Declarant or other Persons who own 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.

ARTICLE 2.

MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1. Maximum Number of Units. The Condominium upon creation contains thirty six (36) units of varying sizes. The legal description for the units shall be the unit number as set out in Exhibit "B" attached hereto followed by the Building number in which the unit is located. The Declarant reserves the right to subsequently acquire properties and add those properties to the Condominium. There is no additional phases now contemplated and the rights of the Declarant to add said properties to the Condominium shall expire upon the expiration of the Declarant Control Period. The Declarant is not obligated to develop any additional phases nor construct any additional units other than the units being submitted hereunder and which have been developed on the land described on Exhibit "A" attached hereto.

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 ceiling 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 unfinished surfaces of the interior trim, fireplaces, and thresholds along perimeter walls; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all interior walls between separate Units.
- d. **Inclusions:** Each Unit will include the spaces and Improvements lying within the boundaries described in Subsections 2.2a, b, and c, above, and will also include the spaces and Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.
it.
- e. **Exclusions:** Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit:

The spaces and Improvements lying outside of the boundaries described in Subsections 2.2a, b, and c, above, and all chutes, pipes, flues, ducts, wires, conduits, 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 of

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 a part of the Unit notwithstanding their non-contiguity with the residential 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 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, window boxes, doorsteps, stoops, decks, porches, balconies, patios and each exterior door and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.
- c. Stoops and steps at the entrances to each building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access.
- d. Stairways, the use of which is limited to certain Units as shown on the Plats and Plans, if any.
- e. Utility areas, the use of which is limited to the Unit or Units as shown on the Plats and Plans.
- f. Storm windows and storm doors, if any, will be Limited Common Elements of the Unit to which they service.
- g. Certain patios and decks and any fence or partition enclosing them, the use of which is limited to the Unit or Units which they adjoin as shown on the Plats and Plans.
- h. Exterior doors and windows will be Limited Common Elements allocated to the Units sheltered.
- i. Mailboxes, nameplates, and exterior lighting affixed to the building will be Limited Common Elements allocated to the Unit served.

ARTICLE 4.

MAINTENANCE, REPAIR AND REPLACEMENT

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

Section 4.2. Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

Section 4.3. Limited Common Elements. Any Common Expense associated with the maintenance, repair or replacement 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, planted on or a part of patios, and fences or partitions enclosing them, decks, balconies, exterior doors and windows will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board upon approval by the covenants control committee, if any. 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 is attributable.

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.

Each Unit Owner shall be responsible for removing all snow, leaves and debris from all patios, decks, and balconies which are Limited Common Elements appurtenant to his or her Unit. If any such Limited Common Element is appurtenant to two or more Units, the owners of those Units will be jointly responsible for such removal.

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 or to the Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her

Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing.

ARTICLE 5.

SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

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

ARTICLE 6.

DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

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

a. The right by amendment, to allocate as Limited Common Elements some or all of the parking spaces assigned to particular Units. No assurance is given that such spaces will be allocated however.

b. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land anywhere in the Condominium for the purpose of furnishing utility and other services to buildings and Improvements. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the Condominium for the above-mentioned purposes. If the Declarant grants any such easements, Exhibit "A" will be amended to include reference to the recorded easement.

Section 6.2. Limitations on Development Rights. The Development Rights reserved in Section 6.1 are limited as follows:

a. The Development Rights may be exercised at any time but not more than ten (10) years after the recording of the initial Declaration;

b. No Development Rights may be exercised unless approved pursuant to Section 16.5 of this Declaration.

Section 6.3. Phasing of Development The units shown on the map entitled "KERR CROSSING CONDOMINIUMS" recorded in Condominium Book 17 Page 338 through Page 342, New Hanover Registry have been built. The Declarant may add additional phases of Kerr Crossing Condominiums. These additional phases do not have to be developed and these additional units do not have to be constructed.

Section 6.4. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Condominium:

- a. To complete Improvements indicated on the Plats and Plans filed with the Declaration as well as additional units in future phases (if built);
- b. To exercise a Development Right reserved in the Declaration;
- c. To maintain sales offices, management offices, signs advertising the Condominium, and models;
- d. To use easements through the Common Elements for the purpose of making Improvements within the Condominium;
- e. To appoint or remove an officer of the Association or an Executive Board member during the Declarant Control Period subject to the provisions of Section 6.9 of this Declaration.

Section 6.5. Models, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office or management office.

Section 6.6. Construction; Declarant's Easements. The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations for exercising special Declarant rights, whether arising under the Condominium Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, riparian owners or upland owners to fulfill the plan of development.

Section 6.7. Signs and Marketing. The Declarant reserves the right to post signs and displays in the common Elements to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 6.8. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as Property of the Association. The Declarant reserves the right to remove from the Property, and all of the goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 6.9. Declarant Control of the Association.

- a. Subject to Subsection 6.9b, during the Declarant Control Period, the Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive Board, The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the

Declarant, be approved by the Declarant before they become effective.

b. Not later than sixty (60) days after conveyance of twenty-five percent (**25%**) of the Units (including units in future phases) that may be conveyed to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units (including units in future phases) that may be conveyed to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

c. Not later than the termination of the Declarant Control Period, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

d. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 47C-3-108 of the Condominium Act, the Unit Owners, by a sixty-seven percent (67%) vote of Allocated Interests present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 6.10. 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) one hundred twenty (120) days after conveyance of seventy five percent (75%) of the units which may be created, to unit owners other than the Declarant;
- (ii) two (2) years after the Declarant ceased to offer units for sale;
- (iii) two (2) years after any development rights to add new units was last exercised; or
- (iv) upon Declarant voluntarily surrendering the right to appoint and remove officers and Directors of the Executive Board before termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 6.1. 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 AND VOTING RIGHTS

Unless and until this project shall be expanded as herein provided, the percentage of each unit owner's undivided interest in the common elements, common expense liability and votes in

the Association (collectively, "the Allocated Interests") is set forth in Exhibit "B", attached hereto and incorporated herein by reference. This percentage is based on the relation that the total volume in square feet of each unit bears to the aggregate square feet contained in all units as of the date of this Declaration.

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 residential use as a single family residence. A single family residence is defined as a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area.

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

Section 8.2. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan. All leases of a Unit shall be deemed to include a provision that the tenant (and sub-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. The Unit Owner must furnish a copy of the lease to the Association. A unit may not be leased for a term of less than six (6) months.

ARTICLE 9.

EASEMENTS AND LICENSES

All easements or licenses to which the Condominium is presently subject are recited in Exhibit "A" to this Declaration. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

ARTICLE 10.

ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

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

The Declarant has reserved the right, under Subsection 6.1a of this Declaration, to allocate as Limited Common Elements some or all of the parking spaces. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development

Rights period may be so allocated by the Association by amendment to this Declaration. All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plat 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 the Declaration and the Condominium Act, the Secretary shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE 11.

ADDITIONS, ALTERATIONS AND IMPROVEMENTS

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

a. No Unit Owner will make any structural addition, structural alteration, or structural Improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c. Further, no Unit Owner of any Unit other than a first floor ("ground floor") Unit shall replace or install ceramic flooring in the living room, dining room or bedroom of the Unit without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c.

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

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

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

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

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

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

Section 11.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Sections 17.5 and 17.6 of this Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

Section 11.3. Exterior Improvements and Landscaping Within Limited Common Elements. Unit Owners may make exterior Improvements within or as a part of Limited Common Elements constituting decks or balconies or patios consisting of repainting, restaining, addition of architectural detailing, changing of doors and fenestration, planting or gardens, hedges, shrubs, construction of fences, walks, benches, and architectural conceits, provided they are undertaken with the permission of the Executive Board or a covenants control committee established for such purpose, if any, following submission of complete plans prepared by an architect or landscape architect and a review of such board or committee as to consistency with Improvements originally constructed by the Declarant, and consistent with the style and character of the community. No approval will be awarded without Notice and Comment given to the Unit Owners. It is the intent to provide for limited individualization of the appearance of the buildings while retaining a character consistent with the overall plan of the Condominium community.

The applicant will pay for the cost of preparation of the application, the cost of professional review, if deemed required by the review entity, and all costs of permits and fees.

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 or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

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

ARTICLE 13.

AMENDMENTS TO DECLARATION

Section 13.1. General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 12.4 and Article 16 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners holding sixty-seven percent (67%) of the Allocated Interests in the Association.

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 grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

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

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

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

Section 13.7. Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article 16 of this Declaration.

Section 13.8. Amendments To exercise any Development Rights reserved under Section 6 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) and (b) 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.

ARTICLE 14.

AMENDMENTS TO BYLAWS

The Bylaws may be amended only by a vote of two-thirds (2/3) 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 47C2-118 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 Mortgagees. 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 than subject to First Mortgages held by Eligible Mortgagees.

Section 16.3. Notice of Actions. 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 whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;
- c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;