



FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T CHRISTIAN  
NEW HANOVER COUNTY, NC  
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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM

**WELLINGTON POINT CONDOMINIUM**

**ARTICLE 1**

**SUBMISSION; DEFINITIONS**

Section 1.1. Submission of Property Terco Properties, Inc., a North Carolina corporation, with an address of P O Box 269, Somers, NY 10589 ("Declarant"), owner in fee simple of the real estate described in Exhibit "A", located within the County of New Hanover, and State of North Carolina, hereby submits such real estate, including all improvements, 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 create with respect to said real estate a condominium to be known as "WELLINGTON POINT CONDOMINIUM", a 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 "WELLINGTON POINT CONDOMINIUM ASSOCIATION, INC.," a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners formed pursuant to Section 47C-3-101 of the Condominium Act

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

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

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

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

**RETURNED TO** *Hogue, Hill, Jones*

f. "Condominium" means the real property described in Exhibit "A"

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

h. "Declarant" means TERCO PROPERTIES, INC., a North Carolina corporation or its successors or assigns as defined in Section 47C-1-103(9) of the Condominium Act

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

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

(i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the maximum number of Units which may be created to Unit Owners other than Declarant;

(ii) two years after Declarant has ceased to offer units for sale in the ordinary course of business, or

(iii) two years after any Development Right to add new units was not exercised

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 votes in the Association

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

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

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

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

u. "Plats and Plans" means the Plat and Plan recorded in Condominium Map Book 13, Page 113-114 as the same may be amended from time to time.

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

w. "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of persons within the Condominium, adopted by the Executive Board pursuant to this Declaration

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

y "Special Declarant Rights" means the rights reserved for the benefit of a Declarant in Section 6.6 hereof.

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

aa "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.

bb. "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.

## ARTICLE 2

### MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1 Maximum Number of Units. The Condominium at the time of its creation will contain eight (8) Units. The Declarant reserves the right to create up to two additional Units

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

a Upper Boundaries: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams, and rafters and the unfinished inner surfaces at sky lights, 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, the unfinished inner surfaces of closed windows and closed perimeter doors, and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units

d Inclusions Each Unit will include the spaces and Improvements lying within the boundaries described in Subsections 2.2 a, b, and c, above, and will also include the spaces and Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous

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

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

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

h. Units are designated by Unit letters A, B, C, D, E, F, G, and H as shown on the Plats and Plans.

i The Declarant reserves the right to alter the boundaries between Units so long as the Declarant owns the Units so altered. Any such change shall be reflected by an amendment to the Declaration which may be executed by the Declarant alone Notwithstanding this procedure, no such change shall increase the number of Units beyond the number ten (10) nor alter the boundaries of the Common Elements without amendment of this Declaration in the manner described in Article 13. The interior design and arrangement of any Unit may be changed without amending this Declaration.

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

### ARTICLE 3

#### LIMITED COMMON ELEMENTS

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

a. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, skylight or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

b. Any shutters, awnings, doorsteps, porches, terraces, and each exterior door and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit

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

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

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

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

g. 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 a heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units which the Limited Common Element serves

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on or a part of exterior doors, windows and skylights, will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board

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

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with Section 7.2 b

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

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

Section 4.5 Repairs Resulting from Negligence Each Unit Owner will reimburse the Association for any damages to any other Unit, to the Common Elements or to the Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing

#### ARTICLE 5

#### SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

Those portions of the Common Elements now or hereafter improved as parking spaces may be subsequently allocated as Limited Common Elements in accordance with Article 6 and Article 10 of this Declaration. Parking spaces may be assigned to Units by the Rules and Regulations or may be limited by Rules and Regulations to visitors only, handicapped or other appropriate category. The assignment of parking spaces in the Rules and Regulations shall not prohibit a subsequent allocation of parking spaces as Limited Common Elements.

#### ARTICLE 6

#### SPECIAL DECLARANT RIGHTS

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

a 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 utilities and other services to any Improvements. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements for the above-mentioned purposes

b To complete Improvements indicated on the Plats and Plans filed with the Declaration and in connection therewith, to maintain on premises during the construction period construction equipment, building materials, maintenance building and a construction office;

c To use easements through the Common Elements in accordance with N.C.G.S. 47C-2-116 for the purpose of discharging the Declarant's obligations and Special Declarant Rights, including the making of Improvements within the Condominium and 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;

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

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 6.5 of this Declaration

#### Section 6.2 Declarant Control of the Association

a. Subject to Subsection 6.5b, during the Declarant Control Period, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive Board. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

b Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units 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 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 all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 6.3 Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, and except as provided in Section 6.5 hereof, any Special Declarant Right may be exercised by the Declarant until the earlier of the following:

- (i) so long as the Declarant owns any Unit; or
- (ii) seven (7) years after recording this Declaration.

Section 6.4 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.

Section 6.5 Easement. Declarant reserves to itself, its successors and assigns, a perpetual easement, to connect to and use all water lines, water wells, stormwater lines, drainage ditches, and sanitary sewer lines within the Condominium.

## ARTICLE 7

### ALLOCATED INTERESTS

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

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

a. Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium. For the purpose of this calculation, the floor areas of attics, if any, are not to be counted.

b. Liability for the Common Expenses. Each Unit in the Condominium shall share equally in the Common Expenses of the Condominium so that the percentage of liability for the Common Expenses allocated to each Unit is calculated by dividing the number 100 by the total number of Units in the Condominium. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 17 of this Declaration.

c. Votes. Each Unit in the Condominium shall have one equal vote. Any specified percentage portion or fraction of Unit Owners, unless otherwise stated in the Condominium Documents, means the specified percentage, portion, or fraction of all the votes as allocated in Exhibit "B".

## ARTICLE 8

### RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 8 1 Use and Occupancy Restrictions In addition to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

a Each Unit is restricted to office use and any commercial or industrial activity permitted under applicable zoning ordinances, subject to the following:

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

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

Section 8 2 Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan

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

## ARTICLE 9

### EASEMENTS AND LICENSES

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

## ARTICLE 10

### ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

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

The Declarant has reserved the right, under Article 5 of this Declaration, to allocate parking spaces to each Unit as Limited Common Elements. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be so allocated by the Association by amendment to this Declaration. All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of

boundaries of Units pursuant to Article 12 of this Declaration. Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The Person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

## ARTICLE 11

### ADDITIONS, ALTERATIONS AND IMPROVEMENTS

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

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

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

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

(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, and

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

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

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

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

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

Section 11 2 Additions, Alterations and Improvements by Executive Board. Subject to any limitations contained 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 reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 12 2 Recording Amendments. The Association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers

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

## ARTICLE 13

### AMENDMENTS TO DECLARATION

Section 13 1 General Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 12.1 and Article 16 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated

Section 13 2. Limitation of Actions An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded

Section 13 3 Recordation of Amendments Each amendment to the Declaration must be recorded in the county in which the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 12 of this Declaration, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 13 4 Unanimous Consent Required Except to the extent expressly permitted 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 Holder of Security Interests. Amendments are subject to the consent requirements of Article 16 of this Declaration.

Section 13.8. Amendments to Create Units or Withdraw Real Estate. To exercise any Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Section 47C-2-109(a), (b), and (c) of the Condominium Act or new certifications of the Plats and Plans previously recorded if those Plats and Plans otherwise conform to the requirements of those Sections.

The amendment to the Declaration shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Section 47C-2-108 of the Condominium Act.

#### ARTICLE 14

##### AMENDMENTS TO BYLAWS

The Bylaws may be amended only by a vote of 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 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 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 then 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,

d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4, and

e Any judgment rendered against the Association

Section 16.4 Consent Required

a. Changes in the Condominium Documents Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described in this Subsection 16.4a may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. "Material" includes, but is not limited to, any provision affecting,

- (i) assessments, assessment liens or subordination of assessments liens;
- (ii) voting rights,
- (iii) reserves for maintenance, repair and replacement of Common Elements,
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action,
- (vi) rights to use Common Elements and Limited Common Elements;
- (vii) boundaries of Units except that when boundaries of only adjoining Units are involved, then only those Unit Owners and the Eligible Mortgagees holding First Mortgages in such Unit or Units must approve such action;
- (viii) convertibility of Units into Common Elements or Common Elements into Units,
- (ix) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (x) insurance or fidelity bonds,
- (xi) leasing of Units,
- (xii) imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit,
- (xiii) establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (xiv) restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents,

(xv) termination of the Condominium after occurrence of substantial destruction or condemnation, and

(xvi) the benefits of Eligible Mortgagees.

b. Actions Notwithstanding any lower requirement permitted by the Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees

(i) convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required) (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause),

(ii) the establishment of self-management when professional management had been required previously by any Eligible Mortgagee,

(iii) the restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents,

(iv) the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required,

(v) the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action,

(vi) the merger of this Condominium with any other condominium,

(vii) the granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Condominium and excluding any lease, licenses or concessions for no more than one year),

(viii) the assignment of the future income of the Association, including its rights to receive Common Expense assessments,

(ix) any action taken not to repair or replace the Property

c. The Association may not change the period for collection of regularly budgeted Common Expense assessments without the consent of all Eligible Mortgagees

d. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment

Section 16 5 Development Rights No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interest in the Development Rights consent to the exercise, abandonment, or termination

Section 16 6 Inspection of Books The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours

Section 16 7 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 16.8. 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 9 Attendance at Meetings Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

Section 16 10. 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 1.2a.a 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 Apportionment of Common Expenses Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their liability for the Common Expenses as described in Section 7 2(b) of this Declaration.

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

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

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

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

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

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

f. Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments

#### Section 17 3. Lien

a. 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, 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 attorney's fees for the prevailing party

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

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

h. Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

**Section 17.4 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 eighty percent (80%) of all Unit Owners 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 17.5 Ratification of Non-Budgeted Common Expense Assessments.** If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15) 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 17.4

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

**Section 17.7 Monthly Payment of Common Expenses.** All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable monthly.