

MAY 30 4 26 PM '85

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVERDECLARATION OF CONDOMINIUM
WINDWARD TOWNHOUSES

TERRY TURNER, INC., a North Carolina corporation, hereinafter called "Declarant" being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47A of the General Statutes of North Carolina as amended, known as the "Unit Ownership Act", and to that end does hereby publish and declare that all of the said property to be known as "WINDWARD TOWNHOUSES" is and shall be held, conveyed, hypothecated, 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 a burden and benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

171

1. DEFINITIONS. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

A. "Act" or "Unit Ownership Act" means the statutory provisions set forth in Chapter 47A of the North Carolina General Statutes under which the condominium is established.

B. "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owners by the Association.

C. "Association" means the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.

D. "Board of Directors" or "Board" means the Board of Directors of the Association, and "Director" means a member of the Board.

E. "By-Laws" means the by-laws for the government of the condominium as they exist from time to time. A copy of the initial By-Laws are hereto attached as Exhibit D and incorporated herein by reference.

F. "Building" shall mean the structure and improvements now or hereafter erected upon the property.

G. "Common Areas and Facilities" and "Common Elements" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in paragraph 5.

H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

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

J. "Condominium Documents" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

RETURNED TO

Draftsman: DAVID C. BAREFOOT
BURNEY, BURNEY, BAREFOOT, BAIN & CROUCH
110 North Fifth Avenue/Post Office Box 89
Wilmington, North Carolina 28402

K. "Declarant" means TERRY TURNER, INC., a North Carolina corporation, its successors and assigns.

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

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

N. "Limited Common Areas and Facilities" means and includes 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 defined paragraph 6 herein.

O. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

P. "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.

Q. "Unit" or "Condominium Unit" means a part of the property which is to be subject to private ownership, as designated on the exhibits attached to this Declaration and as further defined in the Act.

R. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, who owns a unit.

2. **DESCRIPTION OF PROPERTY.** All that certain tract or parcel of land with the building and improvements thereon erected or to be erected, situated, lying and being in the Town of Wrightsville Beach, New Hanover County, North Carolina being more particularly described upon "Exhibit A" hereto attached and by reference made a part hereof.

3. **DESCRIPTION OF BUILDINGS.** The Declarant has constructed, or will construct, upon the property described in Exhibit "A" attached hereto, one four-unit multi-family building, to be used for residential and lodging accomodation purposes as herein provided. A plat of survey of property by Jack G. Stocks, R.L.S., showing the location of said building is attached hereto and made a part hereof as Exhibit "B". The building is more particularly described in the plans thereof, a copy of which plans is hereto attached as Exhibit "C" and made a part hereof, showing all particulars of the building as required by law. The building is futher described as follows:

In general, the building has two stories and is constructed of wood frame on timber piles and has approximately 6,000 square feet of enclosed living area divided into 4 units with approximately 1,500 square feet of enclosed living area each.

In addition, each unit has a separate parking area underneath it on the ground level with a separate storage area appurtenant to each unit.

4. **UNIT DESIGNATION AND DESCRIPTION.**

A. **DESIGNATION.** The unit designation of each unit, its location and dimensions, is set forth in Exhibit "C" hereto attached and made a part hereof. Each unit is identified by a number followed by a letter designating the unit location in the building.

B. **DESCRIPTION.** The legal description of each unit shall consist of the single-digit number and letter combination which identifies such unit as shown on the plat hereto attached as Exhibit "C". 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 construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided one-fourth interest in the common areas and facilities. The percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all units.

5. COMMON AREAS AND FACILITIES.

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

(1) All of the real property more particularly described in Exhibit "A" attached hereto, reference to which is hereby made for a more particular description.

(2) All foundations, columns, girders, beams, supports, roof, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except nonload bearing partition walls wholly within a unit) of the buildings.

(3) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.

B. The undivided share in the common elements or common areas which are appurtenant to a unit:

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

(2) Cannot be conveyed or encumbered except together with the unit.

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

C. Each unit owner shall own an undivided one-fourth interest in the common areas and facilities which are appurtenant to each unit.

6. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are as follows:

A. Those areas shown upon "Exhibit C" hereto attached as limited common areas.

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

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

D. 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.

E. All air handling units, ducts and components and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

1289 0917

F. The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

7. **USE.** The buildings and each of the units shall be used for residential purposes only, which shall include the rental of any units by the owner(s) thereof for residential and lodging accommodations pursuant to 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 are intended and for all purposes incident to the use and occupancy of his or her unit, and such right shall be appurtenant to and run with his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The uses contemplated by this paragraph cannot be changed, amended or modified without the written consent of the owners of all units. 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 usage for the purpose of selling units within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease.

8. **PROCESS AGENT.** Terry F. Turner, c/o Windward Townhouses, 2 East Greensboro Street, Wrightsville Beach, North Carolina, 28480, is hereby designated as the person to receive Service of Process in any action provided for in the act. The Board of Directors may change the Process Agent by filing a Declaration of Change in the Office of the Register of Deeds of New Hanover County, North Carolina.

9. **MAINTENANCE AND REPAIRS.**

A. All painting, decorating, 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 or neglect of a unit owner, in which case, the expense will be charged to such unit owner.

B. 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, and to the doors and windows opening into the unit, and to the electrical (not in the walls), plumbing (not in the walls), heating and air conditioning fixtures within the unit or belonging to the unit owner 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 at his own expense is occasioned by any loss or damage which is covered by any insurance maintained enforced by the Association, the proceeds of the insurance received by the Association shall be used for such maintenance, repair or replacement. In such case, the unit owner shall be required to pay the portion of the cost of such maintenance, repair and replacement which exceeds the amount of insurance coverage applicable thereto or is subject to a deductible clause in such insurance. Any replacement or substitution of any doors, windows, fixtures and equipment shall be compatible with any common areas and facilities affected thereby.

C. Garages and private gardens, which are accessible only from a particular unit, shall be maintained and repaired by the owner who has the exclusive use of the same, at his own expense, except as herein otherwise provided.

D. All parts of a 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 underwriters of the insurance for 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, maintain or replace as may be required pursuant to the Condominium Documents or to a determination by the Board or its designated agent that such failure will endanger or impair the value of the common areas and facilities of any unit, or the limited common areas and facilities belonging to another owner, the same may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association at the expense of the unit owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

10. EASEMENTS.

A. Each unit owner shall have an easement in common with the other owners of all other units to use pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Association shall have the right to be exercised by the Board of Directors or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the condominium to inspect the same, to remove violations therefrom and to maintain, repair or replace the common facilities, if any, contained therein or elsewhere in the building.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common areas and facilities, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common areas; each unit owner hereby grants to the Board, or its designee, an irrevocable power of attorney to execute, acknowledge and record for and in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon other unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or common elements so encroaching so long as all or any part of the building containing such unit or common elements so encroaching shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the common elements if such encroachment occurred due to the willful conduct of said owner or owners.

E. In case of emergency originating in or threatening any unit or the limited common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

F. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

11. PARTITIONING. The common areas and facilities shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof, unless the property has been removed from the provisions of the Act. Nothing herein contained, however, shall be deemed to prevent ownership of a dwelling unit by the entireties, jointly, or in common, or in any other form permitted by law.

12. COMMON EXPENSES, COMMON PROFITS. The unit owners are bound to contribute pro rata one-fourth each toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. No unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common areas and facilities or by the abandonment of the unit belonging to him.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonable necessary and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the Condominium Documents, shall be distributed among the unit owners according to the percentages for unit ownership, which shall be twenty-five per cent for each unit owned.

13. **TAXES.** Each condominium unit and its one-fourth undivided interest in the common areas and facilities, 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, special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

14. **LIENS.**

A. With the exception of liens which may result from the initial construction of these condominiums, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

B. No labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Condominium Documents or expressly authorized by the Board, in which event, same might be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

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

D. 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 unit owners shall be also the personal obligation of the owner at the time the assessment fell due. Such personal obligations shall not pass to successors in title unless assumed by them or required by local law.

E. All liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, 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 first lien mortgage in the Office of the Register of Deeds of New Hanover County, North Carolina. A lien for common expense assessments shall not be affected by any sale or transfer of a unit estate, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer. However, any such delinquent assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all unit estates as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit estate from the lien of, any assessments made thereafter.

15. **NATURE OF INTEREST IN UNIT.**

A. Every unit together with its undivided common interest in the common areas and facilities, shall for all purposes be a separate parcel of real property, and the unit owner thereof shall be entitled to the exclusive ownership and possession of such unit subject only to the Condominium Documents and the covenants, restrictions, easements, regulations, resolutions and decisions adopted pursuant thereto.

B. The owner shall be entitled to use the common areas and facilities in accordance with the purpose for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the owners of other units.

16. INSURANCE.

A. Amount and Scope of Insurance. The Board of Directors shall be required to obtain and maintain, to the extent obtainable, the following insurance (herein "the Master Policy"): (1) Fire insurance with extended coverage insuring the buildings containing the units (including all units and the standard fixtures and installations initially installed by Declarant and replacements thereof, but excluding fixtures, alterations, installations or additions situated within a portion of the Property exclusively used by an individual unit owner and made or acquired at the expense of an individual unit owner of that portion of the Property) for the interest of the Association, the Board of Directors, the 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; and (2) 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. However, 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. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas and legal liability arising out of law suits related to employment contracts of the Owners Association. Each unit owner may obtain additional insurance upon his unit, at his own expense, for his personal liability and personal property located within his unit, not covered by the Master Policy. Such insurance shall not be brought into competition with or diminish the coverage under the Master Policy and shall contain waivers of subrogation as to any claims against the Association, other unit owners, and their respective servants, agents and guests.

B. Insurance Provisions. The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the unit owners and their employees, agents, tenants and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the named insured and all mortgagees.

(4) Coverage will not be prejudiced by act or neglect of the unit owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

(5) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual unit owners.

(6) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any unit owner or any mortgagee.

C. Premiums. All insurance policy premiums on the property and for the benefit of the Association purchased by the Board or the Managing Agent and any deductibles payable by the Association upon loss shall be a common expense.

1289 0921

D. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the By-Laws and for the benefit of the unit owners and their mortgagers in the following shares:

(1) Proceeds on account of damage to common areas and facilities 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.

(2) Proceeds on account of damages to units shall be held in the following undivided shares:

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

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

(c) In the event a mortgagee endoresment has been issued with respect to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their respective interests may appear.

E. Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "AAA" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the unit owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustee. The originals of all such policies and the endorsements thereto shall be deposited with the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the unit owners at least ten days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee at any time.

17. DISTRIBUTION OF INSURANCE PROCEEDS. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. Expense of Trust. All reasonable expenses of the insurance trustee shall be first paid or provision made therefor.

B. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, in accordance with the Act, the remaining proceeds shall be paid to defray the cost thereof as provided in Paragraph 19 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

C. Failure to Reconstruct or Repair. If it is determined, as provided in Paragraph 19 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, including lienholders of record.

18. DAMAGE AND DESTRUCTION. Except as hereinafter provided, damage to or destruction of the common areas and facilities, and to the extent insurance proceeds are available, limited common areas and facilities, shall be promptly repaired and restored by the Board using the proceeds of any insurance available for those purposes, and the unit owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities. Provided, however, if more than two of the units be destroyed by fire or other casualty

and the owners of 75% of the units including all of the units not to be rebuilt, or 100% of the owners assigned to the limited common elements not to be rebuilt, resolve not to proceed with reconstruction or restoration, then in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47A-25 of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall be substantially in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and by eligible holders holding mortgages on units which have at least 51% of the votes of units subject to eligible holder mortgages.

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all common elements, the award for such taking shall be payable to the Association, which shall represent the owners named in the proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement or improvement of the remaining common elements, if only part are taken. If all or more than one half of all the general common elements are taken, it shall be deemed a destruction of more than one half of all of the common elements and the condominium shall be terminated as provided for in this Declaration. Any funds not utilized (in the case of a partial taking or condemnation) shall be applied in payment of common expenses otherwise assessable. In the event of a taking of all or part of a unit, the award shall be made payable to the owner of such unit and his mortgagee, if any, as their respective interest may appear.

19. RIGHTS OF ELIGIBLE MORTGAGE HOLDERS. To the extent permitted by law, an eligible mortgage holder upon written request to the Owners Association, identifying the name and the address of the holder, will be entitled to timely written notice of:

A. Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a first mortgage held by such eligible mortgage holder.

B. Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held, by such eligible holder, which remains uncured for a period of sixty days.

C. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners Association.

D. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders.

E. In addition to the foregoing rights, the eligible mortgage holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina Condominium Statutes as they now exist or as may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to eligible mortgage holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible holders holding mortgages on all remaining unit estates whether existing whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to eligible holders of mortgages.

(3) If a professional management is ever used to govern the condominium, any decisions to establish self-management by the Association shall require the prior consent of owners of unit estates to which at least 67% of the votes of the Owners Association are allocated and the approval of eligible holders holding mortgages on unit estates which have at least 51% of the votes of unit estates subject to eligible holder mortgages.

20. FIDELITY BONDS.

A. **General.** The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

B. **Amount of Coverage.** The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all units plus reserve funds.

C. **Other Requirements.** Fidelity bonds required herein must meet the following requirements:

- (1) Fidelity bonds shall name the Association as an obligee.
- (2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.
- (3) The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.
- (4) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten days' prior written notice to the Association if a condominium project, to any insurance trustee and each eligible mortgage holder.

21. **RECOMMENDATION OF RENTAL AGENTS.** At the annual meeting of the Association, or such other meeting of the Association as is designated by the Board, the Board may, upon notice to the owners, recommend for the approval of the Association one or more agents for the rental of units during the forthcoming year. Prior to recommending agents for the approval of the Association, the Board shall have authority to require any agent desiring to qualify as an approved agent to submit a copy of the proposed rental agreement to be used by such agent, together with such other information as the Board may reasonably require. The Board may require, as a condition of approval, that all rental agreements incorporate such standard procedures as may be required to minimize problems of security, maintenance, quality and operation of the common areas and facilities of the property. Neither the Association nor the Board shall have, or attempt to impose as a condition of approval, any control over the commission schedule or fees charged by any approved rental agent, or the permissible period of rental, all of which shall be for the sole determination of the approved rental agent and any owner selecting such agent. Each owner shall have the absolute right to enter into any direct rental, lease or sales arrangement with renters, lessors and purchasers which shall be consistent with the Declaration, By-Laws of the Association and such other regulations as may from time to time be promulgated by the Association and/or Board. Nothing herein shall be construed as creating or authorizing any rental pooling or as requiring the rental of a unit by an owner or as restricting the owner's use of his unit. If any court of law, governmental regulatory body having appropriate jurisdiction or approved legal counsel to the Association determines that any portion of this provision is unlawful or would require registration of the offering of any unit as a security, then such portion of this provision shall be invalid until such requirement is eliminated.

22. **MANAGEMENT AND CONTROL.** Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with this Declaration and the By-Laws hereto attached as Exhibit "D"; **PROVIDED, HOWEVER,** that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as all of the condominium units have been sold and conveyed by the Declarant to purchasers, or until December 31, 1987, whichever occurs first. Management and control shall be transferred to the unit owners no later than one hundred twenty (120) days after the happening of the earlier of the above events.

23. MANAGEMENT AGENT.

A. **Interim Management Agent and Assessments.** From the date of the first conveyance of title by the Declarant to a unit owner until the date of the meeting of the Association at which the management and control thereof is transferred to the unit owners, Declarant or its designee shall serve as the interim Management Agent with the responsibility for coordinating all normal management services of the Association. During the period from conveyance of title by Declarant to an owner of a unit until the meeting at which the management in control of the Association is turned over to the unit owners, the interim Management Agent shall not receive a management fee. During such period, the owners shall pay to the interim Management Agent, monthly or quarterly, at the direction of the Declarant, pro rata share of the total estimated expenses of the property.

B. **Regular Management Agent and Assessments.** Upon the transfer by Declarant of the management and control of the Association to the unit owners, at the first Association members meeting, any excess of interim assessments over the total actual Association operating expenses, shall be deposited by Declarant to the account of the Association. The Declarant shall furnish to the Association an accounting of the operating revenues and expenses. At the first Association members meeting, the Association shall adopt a new annual Association budget and shall if the members so desire, select a regular Management Agent.

C. **Time of Payment.** Each unit's monthly assessments for its pro rata share of the common expenses for the month of closing shall be payable at the time of conveyance of title to the owner by the Declarant, pro rated as of the closing date. Subsequent payments shall be due on the first day of each month, or the first day of each quarter, as may be prescribed by the Board. Payments not received when due shall be interest at the maximum permissible legal rate until paid.

24. **WORKING CAPITAL.** At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities furnishings and equipment, etc. At the time of the transfer of control and management of the Association to the unit owners by Declarant, the Declarant shall pay to the account of the Association all unused funds and shall provide an accounting of all revenues and expenditures. Amounts paid into the working capital fund are not to be considered as advanced payments of regular assessments.

25. **UNITS SUBJECT TO CONDOMINIUM DOCUMENTS.** All present and future owners, tenants and occupants of units and their guests or invitees, shall be subject to, and shall comply with the provisions of the Condominium Documents, and as the Condominium Documents may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any dwelling unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of the Condominium Documents shall entitle the Association or any other owner to seek legal and/or equitable relief, including costs and reasonable attorney's fees incurred in enforcing such compliance.

26. **AMENDMENT OF DECLARATION.** This Declaration may be amended only by a vote of not less than seventy-five per cent in common interest of all unit owners, cast at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for the County wherein the property is located. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws.

27. **TERMINATION.** Except as provided in Paragraph 19 above, this Declaration may be terminated, and the condominium property removed from the provisions of the Unit Ownership Act, only by an instrument to that effect executed by all of the unit owners and duly recorded, which said instrument shall provide that their liens be transferred to the percentage of undivided interest of the unit owners who shall own the property as tenants-in-common following such termination, which shall be the percentage of undivided interest of such unit owner in the common area.

In the event it is determined in the manner provided in Paragraph 18 hereof that the property shall not be repaired or reconstructed after fire or other casualty, the condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after fire or other casualty shall be evidenced by a certificate of the Association providing that all liens affecting all of the unit owners as set forth hereinabove, and certifying as to facts effecting the termination, which certificate shall become effective upon being duly recorded in the New Hanover County Register of Deeds.

28. **INCORPORATION OF ASSOCIATION.** It is the intention of Declarant that all rights of the Association shall be vested in a non-profit or a corporation known as WINDWARD TOWNHOUSES HOA, INC., which shall be or has been formed pursuant to the laws of the State of North Carolina and the applicable Federal laws. Such corporation shall be formed and operated in accordance with this Declaration and the By-Laws attached hereto and incorporated herein, and all governing laws, as they shall be amended from time to time.

29. **INVALIDITY.** The invalidity of any provision of this Declaration shall not impair or affect the validity and enforceability of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included.

30. **WAIVER.** No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

31. **PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON AREAS.** The common areas and facilities shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of condominium units in the condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of condominium units. Notwithstanding anything above provided in this article, WINDWARD TOWNHOUSES HOA, INC. herein identified, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any condominium unit, his family, guests and invitees, may be entitled to use the common areas and facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish rules and regulations concerning the use thereof.

32. **LAW CONTROLLING.** This Declaration and the By-Laws attached hereto shall be construed under and controlled by the laws of the State of North Carolina.

33. **WARRANTIES.** Declarant acknowledges that all contractual warranties set forth in the building's construction contract, of material and equipment in the unit, shall accrue to the benefit of the owner of such unit, along with all warranties, if any, provided by the manufacturer or supplier of appliances, air conditioning, heating and utility systems in the unit. **THE CLOSING OF TITLE OR OCCUPANCY OF THE UNIT SHALL CONSTITUTE AN ACKNOWLEDGMENT BY THE UNIT OWNER THAT DECLARANT MAKES NO OTHER IMPLIED OR EXPRESS WARRANTIES RELATING TO THE UNIT OR THE COMMON AREAS AND FACILITIES, EXCEPT FOR SUCH WARRANTIES AS ARE SET FORTH IN THE GENERAL WARRANTY DEED TO THE UNIT.**

1289 0926

IN TESTIMONY WHEREOF, the Declarant has caused this Declaration to be signed in its corporate name and duly attested and sealed with its corporate seal, this the 30th day of May, 1985.

TERRY TURNER, INC., a North Carolina Corporation

By: Terry Turner
President



L. Williams
Secretary

(CORPORATE SEAL)

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Laura R. Andrews, the undersigned Notary Public in and for the aforesaid County and State do hereby certify that Cassandra Williams personally appeared before me this day and acknowledged that he/she is the Asst. Secretary of TERRY TURNER, INC., a North Carolina corporation, one of the partners of TERRY TURNER, INC., a North Carolina corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested her self as its Asst. Secretary.

WITNESS my hand and notarial seal, this the 30th day of May, 1985.

My Commission Expires:

Laura R. Andrews
Notary Public

June 14, 1989



STATE OF NORTH CAROLINA)
)
COUNTY OF NEW HANOVER)

JOINDER AND CONSENT

James B. Swails, Trustee and CAROLINA SAVINGS AND LOAN ASSOCIATION, a North Carolina Banking Corporation, join in this Declaration of Condominium for Windward Townhouses for the sole purpose of subjecting and subordinating to said Declaration, the lien of that certain deed of trust to James B. Swails, Trustee, for CAROLINA SAVINGS AND LOAN ASSOCIATION, recorded in Book 1273 at Page 1892, in the Office of the Register of Deeds of New Hanover County, North Carolina.

James B. Swails (SEAL)
JAMES B. SWAILS, TRUSTEE

CAROLINA SAVINGS AND LOAN ASSOCIATION

ATTEST: By: _____
Vice President

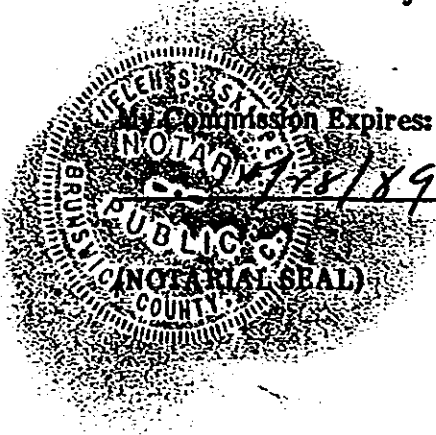
Assistant Secretary

(CORPORATE SEAL)

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Helen S. Skippen, a Notary Public of the County and State aforesaid, certify that JAMES B. SWAILS, TRUSTEE personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 30 day of May, 1985.



Helen S. Skippen
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that _____ he is _____ Secretary of CAROLINA SAVINGS AND LOAN ASSOCIATION, a North Carolina Banking Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by _____ self as its _____ Secretary.

WITNESS my hand and official stamp or seal, this _____ day of _____, 1985.

My Commission Expires:

Notary Public

(NOTARIAL SEAL)

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

The foregoing certificate(s) of Laura R. Andrews and Helen S. Skipper, Notary(ies) Public is/are certified to be correct. This the 30th day of May, 1985.

REBECCA P. TUCKER
Register of Deeds - New Hanover County

By: *Linda P. Alston*
Deputy/Assistant