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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

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DECLARATION OF CONDOMINIUM

PHASE I

WRIGHTSVILLE SHORE TOWNHOUSES,  
A CONDOMINIUM

TERRY TURNER, INC., a North Carolina corporation, hereinafter called "Declarant" being the owner in fee simple of the property described on Exhibit "A" hereto attached and incorporated by reference, hereby submits said property to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act", and to that end does hereby publish and declare that all of the said property to be known as "WRIGHTSVILLE SHORE TOWNHOUSES, A CONDOMINIUM" 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.

WHEREAS, the Declarant owns property located in the Town of Wrightsville Beach, New Hanover County, North Carolina. The Declarant reserves the right, without the obligation, to annex all or any part of said Additional Real Estate shown and designated as "Future Development" upon Exhibit "B" hereto attached and incorporated by reference (herein "Additional Real Estate"), upon the execution and recordation of Supplemental Declarations by the Declarant, and upon such execution and recordation of such Supplemental Declarations, such additional land shall automatically be included within the Condominium created by this Declaration and such action shall require no approval or other action by either the unit owners, the Board of Directors, or the members of the Association, or by any other person or entity as hereinafter more particularly provided.

1. **DEFINITIONS.** Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

A. **Act.** The North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

B. **Additional Real Estate.** The real estate shown and designated as "Future Development" on Exhibit "B" hereto attached, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate, all or portions of which may be annexed to this Condominium as Phase II and Phase III, by Supplemental Declaration, as herein provided.

C. **Allocated Interests.** The undivided interests in the Common Elements, the common expense liability, and role in the Association allocated to each unit.

D. **Assessment.** A share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

E. **Association.** The non-profit Corporation to be known as Wrightsville Shore Townhouses HOA, Inc., 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.

F. **Board of Directors or Board.** The Board of Directors of the Association, and "Director" means a member of the Board.

RETURNED TO *CNC*  
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G. **By-Laws.** 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 "F" and made a part hereof by reference.

H. **Building or Buildings.** All structures and improvements now or hereafter erected upon the property.

I. **Common Elements.** All portions of the Condominium other than the units.

J. **Common Expenses.** Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

K. **Common Expense Liability.** The liability for common expenses allocated to each unit pursuant to the Act and this Declaration.

L. **Condominium.** The real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, all of which is submitted to condominium ownership by this Declaration, and any additions thereto annexed by Supplemental Declaration.

M. **Condominium Documents.** This Declaration, the By-Laws, 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.

N. **Declarant.** TERRY TURNER, INC., its grantees, successors and assigns, if such successors and assigns acquire more than one unit for purposes of development.

O. **Declaration.** This instrument as it may be from time to time amended or supplemented.

P. **Development Rights.** Those rights hereby reserved by the Declarant to add real estate to the Condominium, to create units, common elements or limited common elements within the Condominium.

Q. **Eligible Mortgage Holder or Eligible Holders.** The holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

R. **Limited Common Elements.** Those portions of the common elements which are allocated for the exclusive use of one or more units, as more specifically defined herein.

S. **Mortgagee.** A beneficiary under a mortgage or Deed of Trust.

T. **Phase I.** The real property described in Exhibit "A" together with the buildings and all other improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith submitted to the Condominium Ownership Act by this Declaration.

U. **Plans.** The plans and specifications of the condominium prepared by Harry Watkins, Registered Architect, attached hereto as Exhibit "C", and recorded or to be recorded in the Office of the Register of Deeds of New Hanover County.

V. **Property.** The real estate described in Exhibit "A", together with any buildings and improvements located thereon, and such of the additional real estate, together with any buildings and improvements thereon as may be subsequently subjected to this Declaration by annexation in the manner herein provided.

W. **Supplemental Declaration.** A document filed by Declarant to annex all or a portion of the real property designated as "Future Development" on Exhibit "B" hereto attached to this Condominium in the manner provided herein.

X. **Unit or Condominium Unit.** 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.

Y. **Unit Owner or Owner.** 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 buildings and improvements thereon erected or to be erected, situate, lying and being in New Hanover County, North Carolina, and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; also, all that certain real property designated as "Future Development on Exhibit "B" hereto attached, or any part thereof, together with the buildings and improvements which may be erected or constructed thereon, if annexed to **WRIGHTSVILLE SHORE TOWNHOUSES**, by Supplemental Declarations.

3. **EXPANSION OF CONDOMINIUM.**

A. By this Declaration the **Declarant** submits only the land described in Exhibit "A", together with the improvements thereon, and the same shall be known as Phase I of **WRIGHTSVILLE SHORE TOWNHOUSES**. Nevertheless, **Declarant** hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion of the additional real estate designated as "Future Development" on Exhibit "B" hereto attached. Phases II and III, if developed would each contain 2 units. No assurances are made in regard to the order in which such units maybe added.

B. Such expansion shall occur, if at all, by the recordation of one or more amendments to this Declaration, which amendment(s) shall be executed by the **Declarant** or its successors and assigns. The recordation of any such amendment, and expansion of the Property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

C. The right and option of **Declarant** described in sub-paragraphs A and B above shall terminate on December 31, 1990, and shall be subject to the conditions, restrictions and limitations set forth in sub-paragraphs D, E, F and G of this paragraph 3.

D. If the **Declarant** adds all the land designated as "Future Development" on Exhibit "B" hereto attached, the **Declarant** covenants and agrees that no more than 4 units will be added to the Property subject to this Declaration by such expansion, making the total units not to exceed 6 in number.

E. The **Declarant** covenants and agrees that any buildings and units that maybe erected upon the additional real estate or any portion thereof will be compatible with the other building and tenants in terms of architectural style, quality of construction, principal materials employed in construction, and size. No building added shall be more that three (3) stories in height above finished grade and any building added shall be made of wood frame and wood siding.

F. If any units are added to and made subject to this Declaration by the expansion contemplated by this paragraph, the allocated interests in the common elements, (if Phases II and III are constructed), shall be as set forth in Paragraph 6-C herein.

G. Nothing herein shall be deemed to limit or alter **Declarant's** right, hereby reserved, to vary the internal layout or exterior configurations of any units hereafter constructed so long as **Declarant** substantially conforms with the provisions of this paragraph 3.

H. Every unit owner in **WRIGHTSVILLE SHORE TOWNHOUSES**, by accepting a Deed to a unit therein, thereby agrees for himself and his heirs, successors and assigns, to any expansion of the Property subject to this Declaration in accordance with the provisions of this Paragraph 3.

4. **DESCRIPTION OF BUILDINGS.** The **Declarant** has constructed, or will construct, upon the property described in Exhibit "A" attached hereto, one two-unit building to be used for residential and lodging accommodation 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 attached hereto as Exhibit "C" and made a part hereof, showing all particulars of the buildings as required by law.

In general, there is one three-story building of wood frame construction, in Phase I. The building contains approximately 3668 square feet divided into two units containing approximately 1834 square feet each.

5. 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 designating the building corresponding to the street address followed by a single letter of alphabet designating the unit in the building.

B. DESCRIPTION. The legal description of each unit shall consist of the number identifying the building plus the letter designating the 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 interest in the common elements. The percentage of undivided interest in the common elements appurtenant to each unit shall be as set forth in Exhibit "D" attached hereto and made a part hereof. Except as provided in Paragraph 3 herein, the percentage of undivided interest in the common elements assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

6. COMMON ELEMENTS.

A. The common elements 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 elements 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 stairways, stairwells and stairs and their components which give access to the units.

(4) All yard areas, parking and drive areas, and sidewalks.

(5) All installations of and facilities, apparatus, conduits, and equipment for the provision of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, and cable TV, if any, supplies for the common use and convenience of the unit owners, and which are not defined as part of the units, hereinbelow.

(6) 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 elements 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 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 elements shall lie.

C. The percentage of undivided interest of each unit owner in the common elements which are appurtenant to each unit is set forth in Exhibit "D" and is attached hereto and made a part hereof. If the additional real estate designated as "Future Development" on Exhibit "B" hereto attached, or any portion thereof, is added to and made a part of this Condominium, the ownership interest in the common elements and the liability for common expenses for each unit shall be re-allocated in proportion to the area of each unit of all units and the voting rights in the Association shall be re-allocated on the basis of equality. The effective date for said re-allocation shall be the date of recordation of the amendment to this Declaration. All improvements intended to be located within any portion of the additional real estate added to the Condominium shall be substantially completed prior to the addition of said portion of the additional real estate.

D. The common elements may be conveyed or subjected to a security interest by the Association only as provided in N.C. GS 47C-3-112.

7. **LIMITED COMMON ELEMENTS.** The limited common elements appurtenant to each unit are as follows:

A. Decks accessible only from a particular unit, outside stairways and outside entry at ground level.

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 common elements as described above.

F. The limited common elements 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.

8. **USE.** The buildings and each of the units shall be used for residential and lodging accommodation purposes, 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, and other uses reasonably incidental thereto. Each unit owner shall have the right to use the common elements 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 elements 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 or rentals offices, models or other usage for the purpose of selling or renting 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.

9. **PROCESS AGENT.** Terry F. Turner, c/o WRIGHTSVILLE SHORE TOWNHOUSES, 16 E Columbia 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.

**10. MAINTENANCE.**

A. All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained by the owner. Any replacements or substitution of such fixtures and equipment shall be compatible with any common element affected thereby. The Association shall not be responsible for repairing or maintaining, such fixtures and equipment.

B. 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 element when so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the Condominium Documents or a determination by the Board or its designated agent that such failure will endanger or impair the value of the common element or any unit, or the limited common element belonging to another owner, 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, including reasonable attorney fees.

**11. EASEMENTS.**

A. Each unit shall be subject to an easement in favor of all of the other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements 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 elements, if any, contained therein or elsewhere in the buildings.

B. Each unit and all common elements and limited common elements 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 elements, 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 elements; 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 case of emergency originating in or threatening any unit or the common elements, 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.

E. 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.

12. **PARTITIONING.** The common elements 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.

13. **ASSESSMENTS FOR COMMON EXPENSES.**

A. The unit owners are bound to contribute pro rata in accordance with their allocated interests set forth in Exhibit "D" hereto attached, toward the expenses of administration and of maintenance and repair of the common elements, and toward any other expenses lawfully assessed by the Association.

B. Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the Declaration provides.

C. Any common expense or portions thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited.

14. **COMMON PROFITS.** 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 each unit set forth in Exhibit "D".

15. **TAXES.** Each condominium unit and its percentages of undivided interest in the common element set forth in Exhibit "D" hereto attached, 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 elements shall be deemed to be a separate parcel for purposes of taxation.

16. **LIENS.**

A. 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 elements) except as provided in the Act.

B. No labor performed or materials furnished to the common elements 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 all as provided by the 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 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 units as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from the lien of, any assessments made thereafter.

#### 17. NATURE OF INTEREST IN UNIT.

A. Every unit together with its undivided common interest in the common elements, 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 elements 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.

#### 18. INSURANCE.

A. Amount and Scope of Insurance. All insurance policies upon the Condominium (except personal property within a unit) shall be secured by the Board or by the Managing Agent if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including 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 responsible authority shall determine. However, such 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 elements and legal liability arising out of law suits related to employment contracts of the Owners Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common elements. In obtaining such coverage, the responsible authority shall consider the reasonable requirements of holders of first liens on individual units. If the Board in its sole discretion shall determine that it is not possible or economically feasible to obtain a master policy it may obtain or require each unit owner to obtain individual policies on each of the units, providing the coverage obtained is at least equal to the coverage under a master policy.

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.

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 mortgagees in the following shares:

(1) Proceeds on account of damage to common elements 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 elements.

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

(a) When the buildings are 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 buildings are 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 endorsement 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 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.

19. **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 18 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 herein provided, 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.

20. **DAMAGE AND DESTRUCTION.** Except as hereinafter provided, damage to or destruction of the common elements, and to the extent insurance proceeds are available, limited common elements, 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 elements. **PROVIDED, HOWEVER,** if more than two thirds of the units be destroyed by fire or other casualty and the owners of 80% of the units including 100% of the units not to be rebuilt or 100% of the owners assigned to limited common elements not to be rebuilt resolve not to proceed with reconstruction or restoration, then in that event, the property shall be subject to the provisions of Section 47C-2-118 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 two thirds of all the general common elements are taken, it shall be deemed a destruction of more than two thirds 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.

21. **RIGHTS OF ELIGIBLE MORTGAGE HOLDERS.** To the extent permitted by law, an eligible mortgage holder upon written request to the 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 Act as it now exists, 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 units subject to eligible mortgage holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common elements 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 units whether existing whole or in part, and which have at least 51% of the votes of such remaining units 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 units to which at least 67% of the votes of the Association are allocated and except as otherwise provided elsewhere the approval of eligible holders holding mortgages on units which have at least 51% of the votes of units subject to eligible holder mortgages.

**22. 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.

23. **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 elements 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.

24. **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 "F"; **PROVIDED, HOWEVER,** specifically that all of those special rights of Declarant control to appoint and remove Officers and Directors are hereby reserved by Declarant until the earlier of (i) one hundred twenty (120) days after conveyance of seventy five percent (75%) of the units (including units which may be created pursuant to special Declarant rights) to unit owners other than the Declarant; (ii) two (2) years after Declarant has ceased to offer units for sale in the ordinary course of business; or (iii) two (2) years after all development rights to add new units is last exercised; or (iv) the date upon which Declarant voluntarily surrenders control of the Condominium.

25. **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 first annual meeting of the Association, Declarant or its designee shall serve as the interim Management Agent with 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 first annual meeting of the Association, (the time of determination by the Association of the new operating budget), the interim Management Agent shall not receive such management fee as provided in the budget. During such period, the owner shall pay monthly to the interim Management Agent the assessment set forth in Exhibit "D" to this Declaration, representing the unit's percentage of the estimated total expenses of the property (said estimated total operating expenses are set forth in Exhibit "E" to this Declaration).

B. **Regular Management Agent and Assessments.** Upon selection by the Association of a regular Management Agent and the holding of the first Association members' annual meeting, any excess of interim assessments over total, actual Association operating expenses shall be deposited by Declarant to the account of the Association. The interim Management Agent shall provide to the regular Management Agent an accounting of operating revenues and expenses. After adoption of the new annual Association budget, at the first Association members' meeting, the Declarant shall be subject to regular assessments for any units still owned by Declarant.

C. **Time of Payment.** Each unit's monthly assessment as set forth in Exhibit "D", 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 payment shall be due on the first day of each month. Payments not received when due shall bear interest at the maximum permissible legal rate until paid.

26. **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 element 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 elements furnishings and equipment, etc. At the time of selection of the regular Management Agent, the interim Management Agent 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 advance payment of regular assessments.

27. **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.

28. **AMENDMENT OF DECLARATION.** Except as provided elsewhere, this Declaration may be amended by the vote of not less than 67% 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.

29. **TERMINATION.** Except as provided in Paragraph 20 above, this Declaration may be terminated, and the condominium property removed from the provisions of the Act, only by a Termination Agreement executed by the unit owners as provided in the Act 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 elements.

30. **INCORPORATION OF ASSOCIATION.** The Declarant or the Homeowners of the Association shall have the right but not the obligation to incorporate the Homeowners Association by forming a non-profit corporation in which would be vested the rights of the Association that would be operated in accordance with this Declaration and the By-Laws thereof.

31. **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.

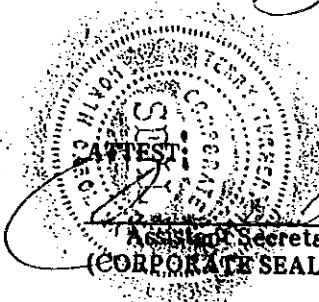
32. **WAIVER.** No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

33. **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.

34. **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 OR CONTAINED IN THE STANDARD BUILDERS WARRANTY DELIVERED TO THE UNIT OWNER AT CLOSING.**

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 1st day of July, 1987.

DECLARANT:  
TERRY TURNER, INC.  
By: TERRY F. TURNER  
President

  
[Signature]  
Assistant Secretary  
(CORPORATE SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, the undersigned Notary Public in and for the aforesaid County and State do hereby certify that CASSANDRA L. WILLIAMS personally appeared before me this day and acknowledged that he/she is the ASSISTANT Secretary 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 by her self as its Assistant Secretary.

WITNESS my hand and notarial seal, this the 1st day of July, 1987.

Carolyn M. Wells  
Notary Public



My Commission Expires:

My Commission Expires Sept. 7, 1991

(NOTARIAL SEAL)

STATE OF NORTH CAROLINA )  
COUNTY OF NEW HANOVER )

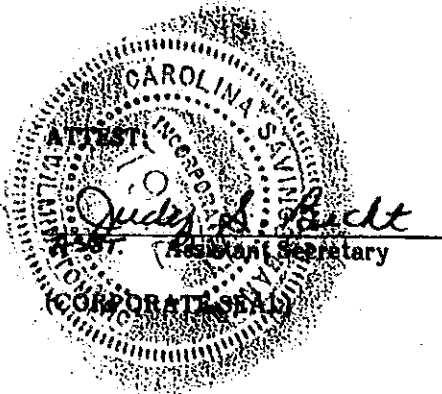
JOINER AND CONSENT

JAMES B. SWAILS, TRUSTEE, and CAROLINA SAVINGS BANK, a North Carolina Banking Corporation, join in this Declaration of Condominium for the sole purpose of subjecting and subordinating to said Declaration, the liens of those certain deeds of trust to JAMES B. SWAILS, TRUSTEE, recorded in Book 1342 at Pages 132 and 137 in the Office of the Register of Deeds of New Hanover County, North Carolina.

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

CAROLINA SAVINGS BANK

By: Patricia H. Barnes  
Asst. Vice President



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, 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.

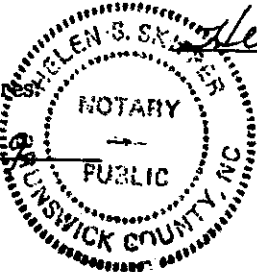
WITNESS my hand and official stamp or seal, this 1st day of July, 1987.

Helen S. Skinner  
Notary Public

My Commission Expires

Oct. 28, 1989

(NOTARIAL SEAL)



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Patricia H. Barnes, personally came before me this day and acknowledged that she is her Secretary of CAROLINA SAVINGS BANK, 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 her as its Secretary.

WITNESS my hand and official stamp or seal, this 23rd day of July, 1987.

My Commission Expires

September 9, 1991

(NOTARIAL SEAL)

James S. Anthony  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

The foregoing certificate(s) of Florence L. Anthony, Carolyn M. Wells,  
and Helen S. Skipper, Notary(ies) Public is/are certified to be  
correct. This the 27th day of July, 1987.

REBECCA C. TUCKER  
Register of Deeds - New Hanover County

By: *Walter C. Smith*  
Deputy/Assistant

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