

BOOK 3619 PAGE 210

DECLARATION OF CONDOMINIUM

FOR

NEW BERN PLACE CONDOMINIUM

PRESENTED  
FOR  
REGISTRATION

DEC 16 2 37 PM '85

Filed for Record 16 Dec. 1985, 1985  
Recorded in Book 3619,  
Pages 210 Through 260,  
In The Office of The Register of Deeds  
For Wake County,  
North Carolina.

KENNETH F. LINDS  
REGISTER OF DEEDS  
WAKE COUNTY, NC

Consisting of 51 Pages,  
Numbered 1 Through 24,  
and  
Exhibits A Through E.

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## I N D E X

TO DECLARATION OF INTENTION TO SUBMIT PROPERTY  
TO THE PROVISIONS OF THE  
NORTH CAROLINA UNIT OWNERSHIP ACT

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DECLARATION OF INTENTION TO SUBMIT PROPERTY  
TO THE PROVISIONS OF THE  
NORTH CAROLINA UNIT OWNERSHIP ACT

NEW BERN PLACE CONDOMINIUM

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THIS DECLARATION, and the exhibits which are attached hereto and made a part hereof (hereinafter collectively called the "Declaration"), are made as of this 12<sup>th</sup> day of December, 1985 by MARTIN DEVELOPMENT GROUP, Inc., a North Carolina corporation, (the "Declarant") pursuant to the provisions of Article 1 of Chapter 47A of the North Carolina General Statutes, entitled the "Unit Ownership Act".

WITNESSETH:

WHEREAS, Declarant is the owner of a certain parcel of real estate in Raleigh, Wake County, State of North Carolina more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the Declarant is the owner of an eighteen (18) unit multi-family project and other improvements heretofore constructed upon the real estate described in Exhibit "A," and is the desire and intention of the Declarant to divide the aforesaid real estate and the buildings and other improvements thereon into eighteen (18) "Condominium Units" or "Units," as those terms are defined under the provisions of the North Carolina Unit Ownership Act, and to sell and convey the same to various purchasers subject to the covenants, conditions, easements, uses, limitations, obligations and restrictions herein reserved to be kept and reserved; and

WHEREAS, Declarant desires and intends, by the filing of this Declaration, to submit the real estate described on Exhibit "A" and the buildings and other improvements constructed thereon, together with all appurtenances thereto, to condominium ownership under the provisions of the North Carolina Unit Ownership Act (i.e., Article 1 of Chapter 47A of the North Carolina General Statutes); and

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described in Exhibit "A" and in Paragraph 3 below, identified as New Bern Place Condominium is submitted to the provisions of the North Carolina Unit Ownership Act and said property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, easements, uses, limitations, obligations and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of said property into condominium units and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person(s) or entity(ies) acquiring or owning an interest in the said real estate and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DEFINITIONS. Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a meaning different therefor:

- (a) "Association of Unit Owners" or "Association" is as defined in the North Carolina Unit Ownership Act and shall mean a non-profit corporation formed of all of the Unit Owners acting as a group in accordance with this Declaration and the Bylaws under the name of New Bern Place Condominium Association, Inc.
- (b) "Board of Directors" shall mean the governing body from time to time of New Bern Place Condominium Association, Inc., whose purpose is to manage, maintain, operate, care for and administer New Bern Place Condominium.
- (c) "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the Property.
- (d) "Bylaws" shall mean the bylaws of New Bern Place Condominium Association, Inc.
- (e) "Common areas and facilities" shall have the meaning as set forth in the North Carolina Unit Ownership Act and as more fully described in paragraph 5 hereof.
- (f) "Common Expenses" shall mean and include:
  - (i) all sums assessed against the Unit Owners by the Association;
  - (ii) expenses of administration, maintenance, repair or replacement of the Common areas and facilities;
  - (iii) expenses agreed upon as Common Expenses by the Association;
  - (iv) expenses declared Common Expenses by the provisions of the North Carolina Unit Ownership Act, or by this Declaration or the Bylaws; and
  - (v) insurance premiums; and
  - (vi) ad valorem taxes and public assessments and liens levied against the Common areas and facilities.
- (g) "Common Interest" shall mean the aggregate of the undivided interests of the Unit Owners in the Common areas and facilities.
- (h) "Condominium Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws and rules and regulations governing the use of the Property, as amended or supplemented from time to time and all attachments and exhibits thereto.
- (i) "Limited common areas and facilities" shall mean those parts of the Common areas and facilities reserved for the use of specific Units to the

exclusion of all other Units, as more specifically described in Paragraph 6 hereof.

(j) "Mortgage" shall mean a deed of trust as well as a mortgage constituting a first lien on a Unit.

(k) "Mortgagee" shall mean a beneficiary under a Mortgage.

(l) "Owner" or "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, having an ownership interest of record in a Unit within the Property, other than a Mortgagee or a trustee of a deed of trust.

(m) "Plans" shall mean and refer to the plans and specifications of the Condominium prepared by Reg Narmour, Registered Architect, recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Wake County and referred to in Exhibit "B" attached hereto and incorporated herein by reference.

(n) "Property" shall mean the real property referred to in this Declaration to be divided into condominiums including the parcel of real estate described in Exhibit "A," the Buildings, all easements, rights and appurtenances belonging thereto and all articles of personal property intended for common use in connection therewith.

(o) "Unit" shall mean those parts of the Property described in paragraph 4 hereof which are the subject of individual ownership.

The terms "Association", "Building", "Common areas and facilities", "Common Expenses", "Condominium", "Declaration", "Person", "Property", "Recordation", "Unit" or "Condominium Unit", "Unit Designation" and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meanings set forth in North Carolina General Statutes § 47A-3.

2. NAME OF CONDOMINIUM. The name by which the Property shall be known is "New Bern Place Condominium" (the "Condominium").

3. DESCRIPTION OF BUILDINGS AND UNITS. The Condominium consists of two (2) three-story residential buildings principally constructed with brick and hardboard siding which contain eighteen (18) dwelling units. A plat of survey of the Property by Larry Chasak, North Carolina Registered Land Surveyor, showing the location of the Buildings is referred to in Exhibit "A" attached hereto. Said Buildings are more particularly described in the Plans, which show all particulars of the Buildings, including the layouts, locations, ceiling and floor elevations, Unit numbers and dimensions of the Units, and location of the Common areas and facilities affording access to each Unit. Such plans bear the verified statement of Reg Narmour, Registered Architect, certifying that the Plans fully and accurately describe the layout, location, ceiling and floor elevations, Unit numbers and dimensions of the Units, as built.

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 Unit conveyed, an undivided interest in the Common areas and facilities, an exclusive and irrevocable license to use the limited Common areas and facilities reserved for the use of such Unit and a perpetual and unrestricted right of ingress and egress to and from such Unit. The percentage of undivided interest in the Common areas and facilities appurtenant to each Unit shall be as set forth in Exhibit "C" attached hereto and made a part hereof. The percentage of undivided interest in the Common areas and facilities that is appurtenant to each Unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each Unit at the date of the Declaration bears to the then aggregate fair market value of all the Units having an interest in the Common areas and facilities. The fair market value of each Unit and the aggregate fair market value of all the Units has been determined by the Declarant, and this determination shall be binding upon all Units and Unit Owners. Except as provided in paragraph 30 below, the percentage of undivided interest in the Common areas and facilities assigned to each Unit shall not be changed except with the unanimous consent of all of the Unit Owners and with the consent of all the Mortgagees.

A more detailed description of the materials of which the Units and Buildings are constructed is contained in the Plans.

4. UNIT DESIGNATIONS. The designation of each Unit, a statement of its location, approximate area, number of rooms, and other data concerning its proper identification are shown on the Plans. Each Unit consists of all of the space bounded horizontally and vertically by the undecorated and/or unfinished interior surfaces of its perimeter walls, floors, ceilings, windows and window frames, doors and door frames. Each Unit includes both portions of each Building within such boundaries and the space so encompassed, including, without limitation, the interior surfaces of perimeter walls, windows, window frames, doors, door frames, floors and ceilings and all finishing materials applied to the interior surfaces of walls, doors, door frames, window frames, floors and ceilings, and all interior walls (i.e. a wall within a Unit that is not a perimeter wall) but excluding, however, any load-bearing columns or weight-supporting interior walls (but not the visible surfaces thereof) which shall be a part of the Common areas and facilities. All exterior doors, window frames, panes and screens shall be part of the Units to which they are attached, provided, however the decoration and painting of the surfaces (but not the components) of such doors, window frames, panes and screens which are visible from either the exterior of the Building or from the Common areas and facilities shall be the responsibility of the Association. For the purposes of maintenance, repair and replacement, all those portions of the heating and air-conditioning systems, which provide service solely to an individual Unit shall be considered a part of such Unit, whether such systems or their components are located within or without the perimeter walls, floors and ceilings of such Unit. Except as may be otherwise provided herein to the contrary, the responsibility for the maintenance, painting, repair and replacement of a Unit is the responsibility of each Unit Owner. Access to the Common areas and facilities is direct from each Unit.

5. COMMON AREAS AND FACILITIES. The Common areas and facilities consist of all of the Property other than the Units as described in paragraph 4 above, including without limitation, the following:

- (a) the real estate described in Exhibit "A" attached hereto;
- (b) all central and appurtenant installations for services such as power, light, water, gas, sewer, TV antennae and cables, elevators, if any, and all conduits, pipes, ducts, wires, and other facilities used in connection with any thereof, except such parts thereof as may be located within the space bounded by the perimeter walls, floors and ceilings of a Unit;
- (c) all foundations, columns, girders, beams, supports and other structural members;
- (d) all roofs and exterior walls; and all interior load bearing columns and weight-supporting walls;
- (e) steps and stairwells; parking garages, if any, and parking areas; sidewalks and walkways; and other exterior areas of the Property, all of which are shown by legend designation on the Plans;
- (f) all water and sewer lines lying outside of public rights-of-way which serve the Property; and
- (g) all other parts of the Property and all apparatus and installations, including all items of personal property, existing in the Buildings or upon the Property for common use or which are necessary or convenient to the existence, maintenance or safety of the Property.

The percentage of undivided interest in the Common areas and facilities appurtenant to each Unit and its Owner for all purposes is set forth in Exhibit "C" attached hereto and made a part hereof. The maintenance, painting, repair and replacement of Common areas and facilities is the responsibility of the Association.

6. LIMITED COMMON AREAS AND FACILITIES AND GARAGES. Limited common areas and facilities shall mean and include those Common areas and facilities reserved for use by a certain Unit or Units to the exclusion of other Units, including any deck, covered terrace, patio, courtyard, balcony, and/or exterior storage room (even if unattached to the Unit) appurtenant to such of the Units as are shown on the Plans. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy such Limited common areas and facilities as are associated with such Unit Owner's Unit. The cleanliness and orderliness of the Limited common areas and facilities shall be the responsibility of the individual Unit Owner, but the responsibility for maintenance, painting, repair and replacement thereof, together with control over the exterior decoration thereof, shall remain with the Association. References hereunder to Common areas and facilities shall include Limited common areas and facilities unless the context clearly indicates otherwise.

7. CONDOMINIUM ASSOCIATION. (a) A non-profit North Carolina corporation known and designated as New Bern Place Condominium Association, Inc. (the "Association") has been or will be organized to provide for the administration of the Property and said corporation shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of the Articles of Incorporation and Bylaws are attached

hereto as Exhibits "D" and "E", respectively. Each Unit Owner shall automatically become a member of the corporation upon his acquisition of an ownership interest in any Unit and its appurtenant undivided interest in the Common areas and facilities and the membership of such Unit Owner shall terminate automatically upon such Unit Owner being divested of ownership interest in the title to such Unit. In the administration of the operation and management of the Property, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect general and special assessments in the manner herein provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common areas and facilities as the Board of Directors of the Association may deem to be in the best interests of the Association in accordance with the Bylaws.

(b) The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs: (i) the expiration of three (3) full years after the registration of this Declaration; (ii) 120 days after the date as of which Units to which seventy-five percent (75%) of the Common Interest appertain shall have been conveyed by the Declarant to Unit Owners other than a party constituting the Declarant; or (iii) the surrender by the Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant. Whenever Declarant shall be entitled to designate and select any person or persons to serve on the Board of Directors of the Association or as officers of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by them to act and serve on said Board of Directors or as officers and to replace such person or persons with another person or other persons to act and serve in the place of any Director or officer so removed for the remainder of the unexpired term of any Director or officer so removed. Any Director or officer designated and selected by Declarant need not be a resident of the Property or a Unit Owner; however, except as otherwise provided to the contrary below, Declarant shall be responsible for the payment of any assessments which may be levied by the Association against any Unit or Units owned by the said Declarant and for complying with the remaining terms and provisions hereof in the same manner as any other Unit Owner. During Declarant's period of control, Declarant may not bind the Association to any contract, lease or agreement which the Association cannot terminate, with or without cause, upon not more than 90 days written notice, and no such contract, agreement or lease shall be for a term of more than one (1) year.

(c) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all Common Areas and facilities which the Association is obligated to maintain. Such reserve fund shall be maintained out of the regular assessments for common expenses.

(d) The Association shall establish a working capital fund equal to at least the aggregate common expense assessments for all Units for a period of three months. Each Unit's share of said working capital fund shall be collected and transferred to the Association at the time of the closing of the initial sale of each Unit by Declarant. The working capital fund shall be maintained



in a separate account for the use and benefit of the Association and shall be used to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. All sums paid into the working capital fund are in addition to and not in lieu of regular assessments for common expenses.

(e) The Association shall make available for inspection upon request during normal business hours to any Unit Owners, Mortgagees and to insurers or guarantors of any Mortgage, current copies of this Declaration, the Bylaws, and other rules concerning the Condominium and the books, records and financial statements of the Association.

8. USE OF COMMON AREAS AND FACILITIES. 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 Unit, and such right shall be appurtenant to and run with his 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 impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the Bylaws, and such rules and regulations as may be established from time to time by the Board of Directors.

9. PERSON TO RECEIVE SERVICE OF PROCESS. A. Settle Dockery is hereby designated to receive service of process in any action which may be brought against or in relation to the Condominium. Said person's place of business is 801 Oberlin Road, Suite 335, Raleigh, North Carolina 27605, which is located within the county in which the Property is located.

10. EASEMENTS. (a) Each Unit Owner shall have an unrestricted and perpetual easement of ingress and egress to his Unit across that portion of the Common areas and facilities as are reasonable for ingress and egress to said Unit.

(b) Each Unit Owner shall have a perpetual, non-exclusive easement in common with all other Unit Owners to use all 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 a perpetual non-exclusive easement in favor of all other Unit Owners 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 Board of Directors shall have the right of access to each Unit to remove violations therefrom and to maintain, repair or replace the Common areas and facilities contained therein.

(c) If any portion of the Common areas and facilities now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common areas and facilities, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Buildings, there shall exist a valid easement for the encroachment and for the maintenance of same so long as the Buildings shall stand. In the event the Buildings, Units, or any portion of the Common areas and facilities shall be partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and shall thereafter be rebuilt, encroachment of parts of

the Common areas and facilities upon any Unit or of any Unit upon any other Unit or upon any portion of the Common areas and facilities due to such re-building shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Buildings shall stand.

(d) An easement is hereby established over all Common Areas for the benefit of applicable governmental agencies for the setting, removing and reading of water meters, maintaining and replacing water, drainage and drainage facilities, fire fighting, law enforcement, garbage collection and the delivering of mail. Subject to the provisions of Section 10-2075(e) of the Raleigh City Code, if applicable and in effect on the date of recording hereof, the Board of Directors may hereafter grant additional easements for utility purposes for the benefit of the Property including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone wires and electrical conduits, and wires over, under, along and on any portion of the Common Areas and facilities; and each Unit Owner hereby grants the Board of Directors an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing.

(e) Subject to the provisions of Section 10-2075(e) of the Raleigh City Code, if applicable and in effect on the date of recording hereof, the Board of Directors may hereafter grant and accept, and Declarant hereby reserves unto itself, its successors and assigns, easements and other rights for the benefit of the Property and also for the benefit of all of Declarant's adjacent or other land and any other property now, formerly or hereafter owned by Declarant, to be developed as apartments, condominiums, townhouses for sale, or planned unit developments (whether under separate declaration(s) of condominium or separate declaration(s) of covenants, conditions, restrictions and easements) or otherwise, for the purpose of providing such benefits as shared recreational facilities and amenities, reasonable access for pedestrian and vehicular traffic, open areas, green spaces, park lands and other suitable shared uses in, along and over any portion of the Common areas and facilities; provided, however, that the rights herein reserved by Declarant for itself, its successors and assigns in, along or over the Common areas and facilities of the Condominium, for the benefit of adjacent or other property now or hereafter owned or acquired by Declarant, shall not be available to Declarant or any successor or assign of Declarant unless Declarant and such successor or assign shall agree or be bound, as evidenced by an instrument in writing in recordable form, to share with the Unit Owners of the Condominium in the expenses of operation, maintenance, repair and replacement of the Common areas and facilities made available to Declarant and such successors and assigns of Declarant based upon the total number of dwelling units which are or will be entitled to the use and benefit of such Common areas and facilities; provided, further, that the obligations to be incurred in connection therewith shall not accrue or be incurred or due until the date such parties are entitled to actual usage of the portions of the Common areas and facilities of Condominium made available to such parties. Each Unit Owner hereby grants to the Board of Directors and Declarant an irrevocable "durable" power of attorney (which shall survive incompetency) pursuant to Chapter 32A of the North Carolina General Statutes to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing; provided, further, that the designation by Declarant on the Plans of an area dedicated for the use of any of the foregoing purposes in connection with any adjacent or other land

of Declarant, as hereinabove described, shall constitute the granting of such easement without the consent or joinder of any Unit Owner.

(f) In case of any emergency originating in or threatening any Unit or the Common areas and facilities, regardless of 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 cause of such emergency and making any other necessary repairs not performed by the Unit Owners, and such right of entry shall be immediate.

11. PARTITIONING. No Unit may be divided or subdivided into a smaller Unit or Units other than as shown on the Plans, nor shall any Unit or portion thereof be added to or incorporated into any other Unit. The undivided interest in the Common areas and facilities declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered, partitioned, subdivided or otherwise dealt with separately from said Unit, and the undivided interest in the Common areas and facilities appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, Mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its appurtenant undivided interest in Common areas and facilities unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the numerical designation assigned thereto on the Plans without limitation or exception shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the Common areas and facilities. Nothing herein contained shall be deemed and construed to affect ownership of any Unit and its appurtenant undivided interest in the Common areas and facilities by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or in any other form permitted by law.

12. LIENS. While the Property remains subject to this Declaration and the provisions of the North Carolina Unit Ownership Act, no liens of any nature shall arise or be created against the Common areas and facilities except with the unanimous written consent of all of the Unit Owners and their Mortgagees. Every agreement for the performance of labor, or the furnishing of materials to the Common areas and facilities, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanics' lien or other similar lien by reason of labor performed or material furnished is waived.

13. NATURE OF INTEREST IN UNITS. Every Unit, together with its undivided interest in the Common areas and facilities, shall for all purposes be, and it is hereby declared to be and to constitute, a separate parcel of real property and the Owner thereof shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be contained herein and

in the accompanying Bylaws and in the minutes of the Board of Directors of the Association.

#### 14. ASSESSMENTS.

(a) TAXES. Every Unit, together with its undivided interest in the Common areas and facilities, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit; provided, however, the Units will not be separately assessed until the calendar year following the year in which this Declaration is filed with respect to the Raleigh/Wake County ad valorem property taxes.

(b) COMMON EXPENSES. Each Unit Owner shall contribute, pro rata in proportion to his undivided interest as set forth in Exhibit "C" hereto, toward the expenses of administration, care of, maintenance and repair of the Common areas and facilities and any other expense lawfully agreed upon, (i.e. the "Common Expenses") all in accordance with the attached Bylaws and the provisions of the North Carolina Unit Ownership Act. Due dates for payment of such Common Expenses shall be established by the Board of Directors and such Common Expenses shall be collected at least monthly. In order to enforce the collection of the Common Expenses, the Association shall have the lien rights more fully described in the Bylaws; provided, however, that such lien for unpaid Common Expenses and other charges becoming payable on or after the date of recordation of any Mortgage with respect to any Unit and all fees, late charges, fines and interest levied by the Association in connection with any such unpaid assessment for Common Expenses shall be and is hereby subordinated to the lien of such Mortgage. Assessments for Common Expenses for Units shall commence upon Declarant's conveyance of the first Unit.

(c) SPECIAL ASSESSMENTS. Upon the affirmative vote of Unit Owners owning at least 51% of the Common Interest, the Association may make special assessments, from time to time, against the Units in order to meet unexpected, extraordinary or nonrecurring expenses. Each Unit Owner shall contribute, pro rata, in accordance with his undivided interest as set forth in Exhibit "C" hereto his share of such special assessments. Due dates and payment terms shall be established by the Board of Directors. The collection of such special assessments and their priority with respect to Mortgages are subject to the same terms and conditions as the assessments for Common Expenses.

(d) COMMON SURPLUS. "Common Surplus" means all funds and other assets of the Association (including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source over the amount of Common Expenses), shall be owned by the Unit Owners in the same proportion that the undivided interest in Common areas and facilities appurtenant to each Unit Owner's Unit bears to the Common Interest; provided, however, that said Common Surplus shall be held by the Association in the manner, and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Unit Owners of Units in accordance with their percentage interest in Common Surplus as declared herein.

15. PARKING. All parking spaces constituting a portion of the Property and as may be designated from time to time by the Board of Directors shall constitute part of the Common areas and facilities even though the Board of Directors may, in its discretion, elect to assign specific parking spaces to specific Units. If parking places are so assigned, each Unit Owner agrees to be bound by such decision and to abide by such rules and regulations as may be established in such regard; provided, however, that in no event shall there be less than the number of parking spaces available to each such Unit prescribed by Section 10-2061(a)(1) of the Raleigh City Code, if applicable and in effect on the date of recording hereof.

16. INSURANCE. (a) The Board of Directors shall obtain and maintain at all times insurance on the Property of the type and kind and in no less than the amounts set forth below:

(1) Fire. The Building and all other improvements upon the land and all fixtures and personal property included in the Common areas and facilities and all personal property and supplies belonging to the Association shall be insured in an amount equal to 100% of the then current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. In addition, if any fixtures, property or equipment used or kept in a Unit are financed by the proceeds of any Mortgage on such Unit, then such personal property shall be covered in such insurance with any additional premium arising out of such coverage to be the sole responsibility of the Unit Owner. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the then current replacement cost of the Building and all other improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, explosion and boiler damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. All such policies shall provide that adjustment of loss shall be made by the Board of Directors or an "Insurance Trustee" (as defined below). In addition to the provisions and endorsements set forth in (c) of this Paragraph, the fire and casualty insurance described herein shall contain the following provisions:

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

(B) a provision that any "no other insurance" clause in the policy excludes individual Unit Owners' policies from consideration and that the master policy shall be primary in the event a Unit Owner has insurance covering the same loss;

(C) a New York standard mortgagee endorsement (without contribution) or a substantially similar endorsement;

(D) standard "Agreed Amount" and "Inflation Guard" endorsements;

(E) construction code endorsements if the Condominium becomes subject to a construction code provision which would require changes to undamaged portions of the Building thereby imposing significant

costs in the event of partial destruction of such Building by an insured peril;

(F) 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;

(G) a provision that the coverage will not be prejudiced by act or neglect of one or more 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; and

(H) steam boiler coverage, if applicable.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Unit Owners or the Mortgagees; (2) loss payments are contingent upon action by the carrier's, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Unit Owners or Mortgagees from collecting the proceeds.

(2) Public Liability. The Board of Directors shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use as the Property, covering each member of the Board of Directors, the managing agent, if any, and each Unit Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common areas and facilities and public ways and commercial spaces, if any, adjacent to, located in or running through the Property; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall also protect against legal liability arising out of law suits related to employment contracts of the Association. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Unit Owners as a group to a single Unit Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Unit Owners, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.

(3) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and

one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(4) Flood Insurance. In the event it is determined, by survey or otherwise, that the Condominium is located within an area having special flood hazards and if flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association shall obtain and pay, as a common expense, the premiums upon a policy of flood insurance on the Property in such amount as may from time to time be deemed appropriate by the Board of Directors; provided, however, that such coverage shall not be less than the lesser of: (1) the maximum coverage available under the NFIP for that portion of the Property within a designated flood hazard area or (2) 100% of the then current "replacement cost" of such portion of the Property.

(5) Other. Such other insurance coverages including workmen's compensation as the Board of Directors shall determine from time to time desirable.

(b) Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a Common Expense.

(c) The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

(1) recognition of any insurance trust agreement entered into by the Association;

(2) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured, any Insurance Trustee and all Mortgagees; and

(3) coverage that 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;

(d) 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 "A:XV" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and the Unit Owners and their Mortgagees as their respective interests may appear, and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association as Insurance Trustee for the use and benefit of the Unit Owners. The sole duty of the Board of Directors shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees 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, an undivided share for each Unit Owner, such share being the same as such Unit Owner's percentage of undivided interest in the Common areas and facilities.

(3) In the event a mortgage 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; provided, however, no Mortgagee shall have the right to participate in the determination as to whether any damaged Property shall be reconstructed or repaired.

(e) 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 (10) 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.

(f) Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

(g) Each Unit Owner hereby grants an irrevocable power of attorney to the Association or its authorized representative for the purpose of purchasing and maintaining all forms of insurance as described above, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

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

(a) All expenses of the Insurance Trustee shall be first paid or provisions made therefor.

(b) If it is determined, as provided in paragraph 18 hereof, that the damaged Property, with respect to which the proceeds are paid shall not be



reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners and their Mortgagees, if any, jointly.

(c) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial owners and their Mortgagees, if any, jointly.

#### 18. DUTY TO REPAIR.

(a) In the event of damage to or destruction of the Building as a result of fire or other casualty to the extent of less than 2/3rds in value of the Building, or if the Property is not partitioned as provided in N.C. Gen. Stat. §47A-25, the Board of Directors shall arrange for the prompt repair and restoration of the Building (including any damage to any Unit therein, but not including any decoration or coverings for walls, ceilings, or floors, or other furniture, furnishings, fixtures or equipment in such Unit, unless the subject insurance policy covers a portion or all of such loss to the Unit, in which event the Board shall repair or replace such damage to property), and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the plans or as the Board of Directors shall otherwise approve. The determination of whether the damage or destruction "exceeds two-thirds (2/3)" the value of the Building for the purposes herein stated shall be determined by an appraisal of the value of such Building (excluding the land) as of the day immediately preceding the damage obtained by the Board of Directors from a licensed appraiser (who is a member of the American Institute of Real Estate Appraisers, the American Society of Appraisers, the Society of Real Estate Appraisers, or a comparable professional association of appraisers), when compared to the cost of repairs and restoration as determined by the Board of Directors.

(b) Each Unit Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the plans or as the Board of Directors shall otherwise approve, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Board of Directors. Upon the failure of a Unit Owner to so maintain his Unit, the Board of Directors shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Unit Owner and constitute a lien on the Unit until paid.

#### 19. UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS.

All present and future Unit Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and any rules and regulations as may be adopted in accordance with the Bylaws, as said Declaration, Bylaws, rules and regulations may be amended or supplemented from time to time. The acceptance of a deed of conveyance or of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Unit Owner, tenant or occupant and all such other 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 Units as though such provisions were made a part of each and every deed of conveyance, lease or agreement.

20. AMENDMENT TO DECLARATION. This Declaration may be amended by the vote of Unit Owners owning at least 75% of the Common Interest, together with the prior written consent of their respective Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws; provided, however, that such amendment shall have been approved in writing by the Declarant in the event Declarant owns one or more Units at the time of the proposed amendment; and provided, further, that Declarant hereby reserves the right to amend this Declaration without the consent of any Unit Owner or Mortgagee for the limited purpose of correcting typographical or other minor errors herein, if any, or to comply with a requirement of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or of any other agency of the federal government, and Declarant's statement in any amendment hereto of the existence of any such error or requirement shall be conclusive evidence of the existence thereof and of the necessity for Declarant to correct or comply with same. No such amendment shall be effective until recorded in the Office of the Register of Deeds, Wake County, North Carolina and until approved by the Raleigh City Attorney, if such approval is required under applicable ordinances on the date of recording of such amendment; provided, however, any amendment which amends or alters the percentage of undivided interest of any Unit(s) in the Common areas and facilities, alters or amends any voting rights, or limits, alters or amends the right of a Unit Owner to lease his Unit (subject to the Condominium Documents) shall require the written approval of all Unit Owners, together with the prior written consent of all their respective Mortgagees.

21. TERMINATION. This Declaration may be terminated and the Condominium Property removed from the provisions of the Unit Ownership Act by an instrument to that effect executed by all of the Unit Owners and duly recorded, provided that all the Mortgagees of the Units have consented thereto or agreed, in either case by instruments duly recorded, 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 of such termination any funds held by the Association, after payment of all expenses, shall be distributed to the Unit Owners, pro rata, in accordance with their share of the Common Interest.

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, and provided all Mortgagees consent in writing, 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 Units are transferred to the percentage of undivided interest 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 Wake County Public Registry.

22. STATEMENT OF PURPOSES, USE AND RESTRICTIONS. The Units and Common areas and facilities shall be occupied and used as follows:

- (a) Each Unit shall be used for a single family residence and for no other purposes. A Unit Owner or occupant may use a portion of his Unit for his office provided that the activities therein are in compliance with all local rules, regulations and ordinances, do not interfere with the quiet enjoyment or comfort of any other Unit Owner or occupant and further provided that such activities shall not involve the provision of "on premises" personal services of any Unit Owner or occupant to a customer, client or other person. No Unit Owner may lease his Unit for less than a 30 day term or for purposes of occupancy by persons other than the lessee and his or her immediate family. No room may be rented and no transient tenants may be accommodated. Each lease shall be in writing, on forms approved from time to time by the Association, and shall provide that the terms contained therein shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all the terms of such instruments shall constitute a default under the lease. Provided, however, there shall be no restriction in the leasing of Unit or Units owned by the Declarant so long as Declarant owns any Units for sale in the ordinary course of business, and no leasing restriction on Units owned or possessed by Mortgagees as a result of foreclosure proceedings (or proceedings in lieu of foreclosure).
- (b) There shall be no obstruction of the Common areas and facilities. Nothing may be stored in the Common areas and facilities without the prior written consent of the Board of Directors.
- (c) Nothing shall be done or kept in any Unit or in the Common areas and facilities which will increase the rate of insurance on the Common areas and facilities or any other Unit without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common areas and facilities which would result in the cancellation of insurance on any Unit or any part of the Common areas and facilities, or which would be in violation of any law. No waste of the Common areas and facilities shall be permitted or committed.
- (d) No sign of any kind shall be displayed to the public view from any Unit or from the Common areas and facilities without the prior written consent of the Board of Directors.
- (e) No animals (including household pets), livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common areas and facilities except in accordance with the promulgated rules of the Board of Directors.
- (f) No noxious, offensive, unlawful, or improper activity shall be carried on in any Unit, or in the Common areas and facilities, nor shall anything be done therein which will be an annoyance or nuisance to other Owners.
- (g) Nothing shall be altered or constructed in or removed from the Common areas and facilities except with the prior written consent of the Board of Directors.
- (h) The Board of Directors of the Association is authorized to adopt rules for the use of the Common areas and facilities, said rules to be furnished in writing to the Unit Owners.

(i) Notwithstanding anything to the contrary, Declarant, and such persons as it may select, shall have the right of ingress and egress over, upon and across the Common areas and facilities, the right to utilize one or more Units as a model, the right to erect signs upon the Property for the purpose of advertising availability of Units for sale and/or lease and similar uses, and the right to store materials in or on the Common areas and facilities and make such other use thereof as may be reasonably necessary incident to construction, development, lease and/or sale of the Units and the repair, maintenance and operation of the Units and Common areas and facilities.

(j) Except with the written consent of the Board of Directors, no natural barriers in the form of trees, bushes or shrubs, and no man-made structures in the form of fences, shall be permitted on or about the Common areas and facilities, except such natural barriers and man-made structures as exist on the date of this Declaration.

23. RIGHTS RESERVED UNTO MORTGAGEES. Any Mortgagee shall have the following rights, to-wit:

(a) to be furnished one (1) copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;

(b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;

(c) to be given prompt written notice of default under any of the Condominium Documents by any Unit Owner owning a Unit encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

(d) to be given prompt written notice of any casualty loss or loss by eminent domain or other taking of the Common areas and facilities or any applicable Unit;

(e) to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(f) to be given prompt written notice of any action which requires the consent of all or any portion of the Mortgagees as specified herein;

(g) to have any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, performed substantially in accordance with this Declaration and the original plans and specifications unless other action is approved by Mortgagees holding Mortgages on Units which have at least 51% of the Common Interest; and

(h) in the event that professional management has been previously required by any Mortgagee or other entity, to have any decision to establish self-management by the Association approved in advance by Unit Owners having at least 67% of the Common Interest and by Mortgagees holding Mortgages on Units which have at least 51% of the Common Interest.

Whenever any Mortgagee desires the provisions of this paragraph to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Certified Mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Unit or Units upon which any such Mortgagee holds any Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee. Provided, however, no provision of this Declaration or the other Condominium Documents shall be construed to grant to any Unit Owner, or to any other party, any priority over any rights of the Mortgagees pursuant to their first mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or the Common areas and facilities or to any portions thereof.

24. INVALIDITY. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

25. WAIVER. No provisions contained in the 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.

26. CAPTIONS. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

27. LAW CONTROLLING. This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

28. LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Unit Ownership Act. Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

29. RIGHTS AND REMEDIES. The Association and any aggrieved Unit Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration, the Bylaws and any duly authorized rules and regulations governing the Condominium against any non-complying Unit Owner. Each Unit Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Condominium against the Association. Notwithstanding the foregoing, this Declaration is subject to Raleigh City Code provision 10-3074 paragraphs b and c, if applicable and in effect on the date of recording hereof, which provide as follows:

"(b) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to

the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowners' association or occupants.

"(c) In no case shall any approval, or certificate granted for the use of such development be valid unless the homeowners' association documents clearly indicate the above limitations on the City's responsibility and unless all conveyances made with respect to such developments clearly indicate the limitations on the City's responsibility."

### 30. CONDEMNATION.

(a) In the event all or any part of the Condominium Property shall be taken in condemnation or by eminent domain, each Unit Owner hereby grants an irrevocable power of attorney to the Association to represent such Unit Owner in any and all condemnation proceedings, negotiations, settlements and agreements with the condemning authority. The award for such taking shall be payable to the Association for the use and benefit of the Unit Owners and their respective Mortgagees as their interests may appear and shall be disbursed by the Board as hereinafter provided.

(b) If the taking is confined to the Common areas and facilities, the Board of Directors shall arrange for restoration of the remaining Common areas, and the Board of Directors shall disburse the proceeds of the condemnation award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Common areas is to be repaired or reconstructed, as provided for in paragraphs 17 and 18 hereof.

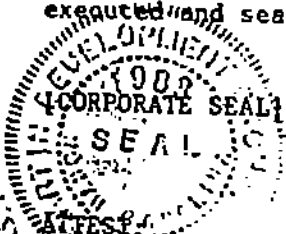
(c) If the taking includes any part of a Unit, whether or not there is included in the taking any part of the Common areas and facilities, such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided for in paragraphs 17 and 18 hereof, whereupon:

(1) The Board of Directors, using the proceeds of such condemnation award, shall acquire, on behalf of the remaining Unit Owners, the Unit(s) and the appertaining interest in the Common areas and facilities of the Unit Owner(s) whose Unit(s) have been taken in whole or in part, at a price equal to the fair market value of said Unit(s) and said appertaining interest in the Common areas and facilities as of the date immediately preceding the condemnation thereof. Such price shall be determined by majority vote of three appraisers, one of whom shall be selected by the Unit Owner(s) affected, one of whom shall be selected by the Board of Directors and the third of whom shall be selected by the two appraisers so selected. All appraisers so selected shall be members of the American Institute of Real Estate Appraisers, the American Society of Appraisers, the Society of Real Estate Appraisers, or a comparable professional association of appraisers.

(2) After acquisition of the Unit(s) as aforesaid, the remaining Unit Owners may terminate the Condominium pursuant to N.C. Gen. Stat. §47A-16 or may amend this Declaration and the Bylaws to the end that the Condominium Property will continue to be subject to the Unit Ownership Act. Such amendments, if any, shall realign the percentage interests of each

remaining Unit Owner in the Common areas and facilities, establish the method of distributing the remainder of the condemnation award, if any, and include such other provisions as all of said remaining Unit Owners shall deem reasonable and appropriate. Any termination of the Condominium or any such amendments shall have been consented to in writing by all Mortgagees and shall not prejudice creditors or other third parties who have an interest in any condemnation award with respect to their rights, if any, in such award.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed this 12 day of December, 1985.



MARTIN DEVELOPMENT GROUP, INC.

By: [Signature]  
D.S. President

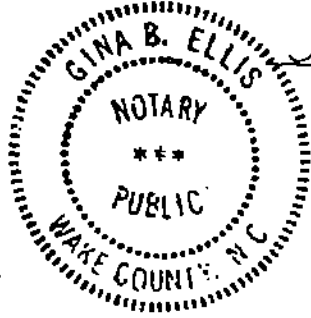
[Signature]  
Asst Secretary

STATE OF NORTH CAROLINA

BOOK 3619 PAGE 233

COUNTY OF WAKE

This 12 day of December, 1985, personally came before me A. GREGG DICKERSON, who, being by me duly sworn, says that he is DICKERSON President of MARTIN DEVELOPMENT GROUP, INC., that the seal affixed to the foregoing instrument in writing is the corporate seal of the Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said A. GREGG DICKERSON acknowledged the said writing to be the act and deed of said Corporation.



Gina B. Ellis  
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission expires:  
4-4-90



NEW BERN PLACE CONDOMINIUM  
CONSENT OF MORTGAGEE

First Federal Savings and Loan Association of Raleigh being the Beneficiary under that certain Deed of Trust dated as of November 16, 1984 from Martin Development Group, Inc. to First Financial Service Corporation of Raleigh, Trustee, conveying the property described in Exhibit "A" attached hereto and made a part hereof, and recorded on December 18, 1984, in Book 3403 at Page 274 in the Wake County Public Registry does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof and the provisions of the North Carolina Unit Ownership Act to said real property described in Exhibit "A," and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits and amendments hereto, shall be superior to the lien of said Deeds of Trust on said Property described in Exhibit "A." The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Declarant, the relationship of partnership or of joint venture, nor shall said Beneficiary be deemed to have accepted in any way, nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the Declarant under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deeds of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 12<sup>th</sup> day of December, 1985.

[CORPORATE SEAL]  
Attest:  
Joyce B. Buller  
Secretary  
[Signature]  
Vice President

FIRST FINANCIAL SERVICE CORPORATION OF  
RALEIGH  
By [Signature]  
Vice President

TRUSTEE

[CORPORATE SEAL]  
Attest:  
[Signature]  
Secretary

FIRST FEDERAL SAVINGS AND LOAN  
ASSOCIATION OF RALEIGH  
By [Signature]  
President

BENEFICIARY

COUNTY OF WAKE

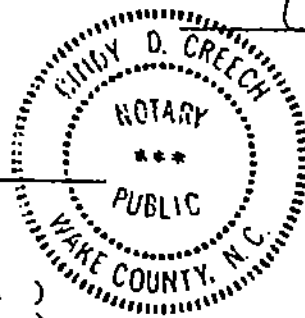
This 13 day of December, 1985, personally came before me Rick Merrill, who, being by me duly sworn, says that he is Vice President of First Financial Service Corp., as Trustee, that the seal affixed to the foregoing instrument in writing is the corporate seal of the Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said Rick Merrill acknowledged the said writing to be the act and deed of said Corporation.

Cindy D. Creech  
Notary Public

[NOTARIAL SEAL]

My Commission expires:

May 9, 1989



STATE OF NORTH CAROLINA )

COUNTY OF WAKE )

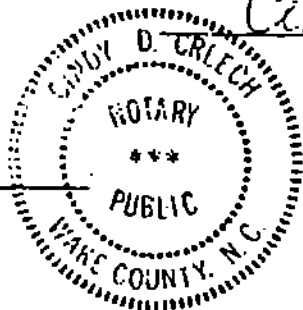
This 15<sup>th</sup> day of December, 1985 personally came before me J. Douglas Wheeler, who being by me duly sworn, says that he is a Vice President of First Federal Savings & Loan Assoc. of Raleigh, that the seal affixed to the foregoing instrument in writing is the corporate seal of the Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said Corporation.

Cindy D. Creech  
Notary Public

[NOTARIAL SEAL]

My Commission expires:

May 9, 1989



Drawn by and mail to:

E. Allen Prichard  
Kennedy Covington Lobdell & Hickman  
3300 NCNB Plaza  
Charlotte, North Carolina 28260

EXHIBIT "A" TO  
DECLARATION OF CONDOMINIUM  
FOR  
NEW BERN PLACE CONDOMINIUM

Legal Description of Real Estate Comprising  
New Bern Place Condominium

\*\*\*\*\*

LYING AND BEING in the City of Raleigh, Wake County, North Carolina and more particularly described as follows:

BEGINNING at the point of intersection of the Western right of way line of N. Person Street and the Southern right of way line of E. Edenton Street, runs thence along the Western right of way line of N. Person Street S 13-10-36 W 210.07 feet to a point; runs thence along an arc to the southwest, said arc having radius of 62.70 feet, a distance of 57.04 feet to a point, the center line of a 20 ft. sanitary sewer easement; runs thence along the center line of said sanitary sewer easement N 76-45 W 75.35 feet to a point; runs thence N 13-06-39 E 259.27 feet to a point in the Southern right of way line of E. Edenton Street; runs thence along said right of way line S 76-55-21 E 99.84 feet to the point and place of BEGINNING containing all of Tax Parcels \*A-77-06, A-77-07 and a portion of the former New Bern Avenue right of way, according to a map entitled "Recombination of Property, City of Raleigh, N. Person Street, Raleigh, NC" by L.I. Chasak, Registered Land Surveyor, dated 11/1/84 and recorded in Book of Maps 1984, page 1619, Wake County Registry.

Together with all right, title and interest now or hereafter acquired with regard to any easements for ingress, egress or access related to the above described property.

\*(Erroneously shown upon the aforesaid map as Tax Parcels B-77-06 and B-77-07.)

EXHIBIT "B" TO  
DECLARATION OF CONDOMINIUM  
FOR  
NEW BERN PLACE CONDOMINIUM  
Plans of New Bern Place Condominium

\*\*\*\*\*

[See the Plans of New Bern Place Condominium dated September 20, 1985, prepared by Reg Narmour, Registered Architect, and filed for registration simultaneously with the filing of the Declaration in the Unit Ownership File located in the Office of the Register of Deeds for Wake County, North Carolina, under the name of the Condominium.]

EXHIBIT "C" TO

DECLARATION OF CONDOMINIUM

FOR

NEW BERN PLACE CONDOMINIUM

Percentage of Undivided Interest  
in the Common Areas and Facilities  
Appurtenant to Each Unit

\*\*\*\*\*

UNIT DESIGNATION

APPLICABLE PERCENTAGE INTEREST

1	5.64%	86.29
2	5.70%	87.21
3	6.01%	91.95
4	5.52%	82.2
5	5.58%	85.97
6	5.89%	90.17
7	5.52%	84.44
8	5.56%	85.55
9	5.69%	90.12
10	5.16%	78.51
11	5.16%	78.91
12	5.52%	84.46
13	5.16%	78.95
14	5.16%	78.85
15	5.52%	82.51
16	5.52%	85.92
17	5.58%	86.27
18	5.89%	90.12

*Annual Meeting  
adopt flat rate -  
adopted at  
11/88 Annual meeting*