

DECLARATION OF CONDOMINIUM
FOR
MILL CREEK, A CONDOMINIUM

Recorded on February 21, 1986
Recorded in Book 558, Page 482,
Orange County Registry, North Carolina

Parent Pin 9789-30-7375
7.82-B.7
New pins 9788-39-4984-001 thru 1010
7.82C-A.1 thru 10
Obs

Prepared by and return to:
William W. Bunch, III
FAISON, BROWN, FLETCHER, SHEARON & BROUGH
Suite 100, One West Franklin Building
105 North Columbia Street
P. O. Box 1210
Chapel Hill, North Carolina 27514

RECEIVED
1986 FEB 21 PM 12:34
ORANGE CTY. LAND RECORDS

DECLARATION

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>SECTION</u>
1.	DEFINITIONS
	1.1 Definitions
2.	CREATION OF THE CONDOMINIUM
	2.1 Submission to the Act
	2.2 Name and Location
	2.3 Governing Provisions
3.	DESCRIPTION OF THE CONDOMINIUM
	3.1 Submitted Property
	3.2 Additional Property
	3.3 Condominium Units
	3.4 Unit Boundaries
	3.5 Common Areas and Facilities
	3.6 Limited Common Areas and Facilities
	3.7 Expansion of the Condominium
4.	EASEMENTS
	4.1 Use and Enjoyment
	4.2 Structural Support
	4.3 Utilities
	4.4 Encroachments
	4.5 Maintenance and Repair
	4.6 Rights of Association
	4.7 Rights of Declarant
5.	MAINTENANCE AND REPAIR
	5.1 Association
	5.2 Unit Owner
6.	ASSESSMENTS
	6.1 Lien
	6.2 General Annual Assessments
	6.3 Special Allocation of Assessments
	6.4 Special Assessments for Capital improvements

- 6. ASSESSMENTS (CONT'D)
 - 6.5 Non-Payment of Assessments: Remedies of Association
 - 6.6 Priority of Lien
 - 6.7 Deed in Lieu of Foreclosure
- 7. ADMINISTRATION
 - 7.1 Administration by the Association
 - 7.2 Control by Declarant
 - 7.3 Duties and Powers
 - 7.4 Property
 - 7.5 Rules and Regulations
 - 7.6 Professional Management
 - 7.7 Enforcement of Directors' Duties
- 8. INSURANCE
 - 8.1 General Obligation and Authority
- 9. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE
 - 9.1 Damage and Destruction
 - 9.2 Manner of Repair and Reconstruction
 - 9.3 Costs of Repair and Reconstruction
- 10. ARCHITECTURAL CONTROL, USE RESTRICTIONS AND SALE OR LEASING OF UNITS
 - 10.1 Approval Required for Changes
 - 10.2 Lighting
 - 10.3 Residential Purposes
 - 10.4 Business Activities and Signs
 - 10.5 Pets
 - 10.6 Use of Common Areas and Facilities
 - 10.7 Antennas
 - 10.8 Motor Vehicles, Trailers, Boats, etc.
 - 10.9 Nuisances
 - 10.10 Prohibited Activities
 - 10.11 Governmental Regulations
 - 10.12 Exterior Appearance
 - 10.13 Sale Period
 - 10.14 Sale or Leasing
- 11. GENERAL PROVISIONS
 - 11.1 Amendment
 - 11.2 Eminent Domain
 - 11.3 Rights of Third Parties
 - 11.4 Termination
 - 11.5 Enforcement
 - 11.6 Exhibits

11.

GENERAL PROVISIONS (CONT'D)

- 11.7 Duration
- 11.8 Interpretation
- 11.9 Gender and Grammar
- 11.10 Rights of Mortgagees and Unit Owners
- 11.11 Severability
- 11.12 Captions
- 11.13 Restrictions on Other Actions
- 11.14 Person to Receive Service of Process

EXHIBITS

- A - Description of Submitted Property
- B - Description of Additional Property
- C - Schedule of Unit Information
- D - Articles of Incorporation
- E - Bylaws
- F - Plat
- G - Plans

DECLARATION OF CONDOMINIUM

FOR

MILL CREEK, A CONDOMINIUM

THIS DECLARATION is made as of February 21, 1986, by DGI Associates II, a North Carolina limited partnership whose sole general partners are John W. Morgan, a natural person, and The Development Group, Inc., a South Carolina corporation, 2008 Lincoln Street, Columbia, South Carolina 29202 (the "Declarant," as hereinafter defined).

Declarant is the owner of a tract of land and all improvements thereon in Orange County, North Carolina, and is creating an expandable condominium under the provisions of Chapter 47A of the North Carolina General Statutes, entitled the Unit Ownership Act. Ten (10) residential dwelling units have been built on a portion of the land called the Submitted Property, which is being submitted to the Unit Ownership Act at this time by this Declaration. The remainder of the land, called the Additional Property, is not being made a part of the Submitted Property at this time, but Declarant has the right to expand the Condominium by adding all or part of the Additional Property in the future.

NOW, THEREFORE, Declarant hereby makes this Declaration for the purposes and subject to all the terms and provisions hereinafter set forth.

ARTICLE 1DEFINITIONS

1.1 Definitions. The terms defined in Section 47A-3 of the Act shall be deemed to have the meanings therein specified whenever they appear in the Condominium Instruments unless the context otherwise requires and except to the extent, if any, that such definitions are changed below. In addition, the other terms defined below shall be deemed to have the meanings specified whenever they appear in the Condominium Instruments unless the context otherwise requires. These definitions shall apply whether or not the defined terms are capitalized.

"Act" means the Unit Ownership Act, which is Chapter 47A of the North Carolina General Statutes, as amended.

"Additional Property" means the property described in Exhibit B and shown on the Plat, together with all improvements thereon and all rights and easements appurtenant thereto, which may be added to the Condominium in accordance with the provisions of this Declaration and the Act. At such time as any part of the Additional Property is added to the Condominium, such part shall thereafter be included in the Submitted Property.

"Articles of Incorporation" means the articles of incorporation of the Association, as amended from time to time, a copy of the initial Articles of Incorporation being attached hereto as Exhibit D.

"Assessment" means the share of the Common Expenses from time to time assessed against a Condominium Unit and its Owner by the Association in the manner herein provided.

"Association" means Mill Creek Condominium Association, Inc., a North Carolina nonprofit corporation, formed for the purpose of exercising the powers of the Association under the Act and the Condominium Instruments.

"Board of Directors" or "Board" means the board of directors of the Association, which is the governing body of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time, a copy of the initial Bylaws being attached hereto as Exhibit E.

"Common Areas and Facilities" means all portions of the Condominium other than the Units.

"Common Expenses" means all sums lawfully assessed against the Unit Owners by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities (including Limited Common Areas and Facilities); expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of the Act, this Declaration or the Bylaws; and, insurance premiums.

"Condominium" means the Submitted Property, as it may exist from time to time, submitted to the provisions of the Act by the Condominium Instruments.

"Condominium Instruments" means this Declaration, the Articles of Incorporation, the Bylaws, the Plat and the Plans, including any and all exhibits, schedules, certifications and amendments thereof, as they may exist from time to time, made and recorded pursuant to the Act.

"Condominium Unit" means a Unit together with the undivided interest in the Common Areas and Facilities appertaining to that Unit.

"Declarant" means initially DGI Associates II, a North Carolina limited partnership whose sole general partners are John W. Morgan, a natural person, and The Development Group, Inc., a South Carolina corporation, which is the fee simple owner of the Submitted Property and has executed this Declaration.

"Declaration" means this Declaration as amended from time to time.

"Director" means a member of the Board of Directors.

"Expandable Condominium" means a condominium to which additional property may be added and made subject to the Act and this Declaration, and this Condominium is an Expandable Condominium.

"First Mortgagee" means the holder of a first-in-priority Mortgage.

"Foreclosure" includes, without limitation, the judicial foreclosure of a Mortgage or the exercise of a power of sale contained in any Mortgage.

"Unit Designation" means one or more numbers and/or letters that identify each Unit, as set forth in the Schedule of Unit Information, and as shown on the Plat and the Plans.

"Institutional Mortgagee" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Lease" means any lease, usufruct, tenancy, sublease, rental contract or other occupancy agreement whether oral or written.

"Limited Common Areas and Facilities" means a portion of the Common Areas and Facilities reserved for the exclusive use of one or more, but less than all, of the Units.

"Majority" means more than fifty (50%) percent in any context, unless a different percentage is expressly required.

"Mortgage" means a mortgage, deed to secure debt, deed of trust, security agreement or other instrument conveying a lien upon or security title to a Condominium Unit as security for a debt or for the performance of an obligation.

"Mortgagee" means the holder, guarantor, insurer of a Mortgage or a beneficiary under a Deed of Trust.

"Occupant" means any person, including, without limitation, any guest, invitee, tenant, lessee or family member of an Owner, occupying or otherwise using or visiting in a Unit.

"Officer" means an officer of the Association.

"Owner" has the same meaning as Unit Owner.

"Person" means a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plans" means the plans for the Condominium which are certified and filed for record as indicated on the cover page hereof, as amended and certified from time to time, with the initial Plans being attached hereto as Exhibit G.

"Plat" means the plat of survey for the Condominium which is certified and recorded as indicated on the cover page hereof, as amended and certified from time to time, with the initial Plat being attached hereto as Exhibit F.

"Record" or "file for record" means filing for record in the Office of the Register of Deeds, Orange County, North Carolina.

"Schedule of Unit Information" means the schedule attached hereto as Exhibit C, which schedule shows for each Condominium Unit its Identifying Number, Size and undivided interest in the Common Areas and Facilities, number of Votes in the Association, and share of liability for Common Expenses.

"Size" means the number of square feet of heated, enclosed floor space in a Unit as computed by reference to the Plat and Plans and rounded off to a whole number. Decks, patios and porches (except enclosed and heated sunporches) are not included. Lofts are included. Enclosed and heated stairways are counted, but only on one level.

"Submitted Property" means the property lawfully submitted to the provisions of the Act and the Condominium Instruments from time to time by the recordation of Condominium Instruments in accordance with the Act. The original Submitted Property, before the addition of any part of the Additional Property, is the land described in Exhibit A and shown on the Plat, together with all improvements thereon and all rights and easements appurtenant thereto. This term shall include any portion of the Additional Property that has been lawfully added to the Condominium, from and after the date that such portion is added.

"Unit" means a portion of the Condominium intended for independent ownership and use, as more fully set forth and shown in the Condominium Instruments and the Act.

"Unit Owner" has the same meaning as Owner and means one or more persons, including the Declarant, who own a Condominium Unit. This term does not include a Mortgagee in his capacity as such.

"Vote" means the vote in the Association appertaining to each Condominium Unit.

ARTICLE 2

CREATION OF THE CONDOMINIUM

2.1 Submission to the Act. Declarant hereby submits the Submitted Property to the Act. The Submitted Property and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged and deeded in

trust subject to the Act and the Condominium Instruments. Every person acquiring or having any interest in the Submitted Property, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed to in writing, shall take such interest subject to the Act and to the Condominium Instruments and shall be deemed to have agreed to the same.

2.2 Name and Location. The name of the Condominium is "Mill Creek, A Condominium." The Condominium is located in Chapel Hill Township, Orange County, North Carolina.

2.3 Governing Provisions. The Condominium, the Association and each Unit Owner shall be governed by the Act, the Condominium Instruments and any rules and regulations adopted by the Association pursuant to the Condominium Instruments.

ARTICLE 3

DESCRIPTION OF THE CONDOMINIUM

3.1 Submitted Property. The Submitted Property is described on Exhibit A and shown on the Plat, and it includes all improvements thereon and all rights and easements appurtenant thereto. The improvements include one (1) four story building, containing a total of ten (10) Units, a portion of the road, parking areas, dumpster area, utilities and landscaping. The Condominium is an Expandable Condominium, with Declarant having reserved the right to expand the Condominium by adding all or part of the Additional Property. At such time as all or any part of the Additional Property is lawfully added to the Condominium, the portion so added shall be included in the Submitted Property.

3.2 Additional Property. The Additional Property is described on Exhibit B and shown on the Plat, and it includes all improvements now or hereafter located thereon and all rights and easements appurtenant thereto. It has no completed buildings at this time. The Additional Property is not a part of the Submitted Property as of the recording of this Declaration. However, from and after the date that all or any part of the Additional Property is lawfully added to the Condominium, the portion so added shall be included in the Submitted Property. Additional provisions governing expansion of the Condominium are set forth in Section 3.7 below.

3.3 Condominium Units. The Condominium contains initially ten (10) Condominium Units, the Identifying Numbers of which are set out on the Schedule of Unit Information and are shown in the Plat and Plans. Each Condominium Unit consists of the Unit together with its undivided interest in the Common Areas and Facilities. Each Condominium Unit includes a kitchen, living-dining room combination and utility room with additions thereto depending on the particular model type included, as follows: Type I model-a townhouse style Unit with two bedrooms located on the upper floor and two bathrooms; Type I model reversed-which means that such model is a

reversed mirror image of that shown on Exhibit G hereto for a Type I model; Type II model—a townhouse style Unit with two bedrooms located on the lower floor and two bathrooms; and, Type II model reversed—which means that such model is a reversed mirror image of that shown on Exhibit G hereto for a Type II model. Certain of such models have a bay window as set forth on Exhibit C hereto and shown on Exhibit G hereto. The Schedule of Unit Information sets forth for each Condominium Unit its Identifying Number, Size, model type, and undivided interest in the Common Areas and Facilities, Votes in the Association, and share of liability for Common Expenses. The building containing the Units will be situated upon concrete slab on grade with the first story containing steel studs, with brick exterior and the top three (3) stories containing wood studs with an exterior covering of cedar lap siding, while the roof finish will be asphalt shingles. Each Condominium Unit shall constitute for all purposes a separate parcel of real property which may be owned in fee simple and which, subject to the provisions of the Act and the Condominium Instruments, may be conveyed and encumbered like any other property. The undivided interest in the Common Areas and Facilities for each Condominium Unit shall not be altered except as expressly provided by the Act and this Declaration. Such undivided interest shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner shall automatically be a member of the Association, which membership shall continue during the period of ownership of the Condominium Unit by such Unit Owner.

3.4 Unit Boundaries. Each Unit shall include all the space within the boundaries thereof. The perimetrical or vertical boundaries of each Unit are the vertical planes of the interior surfaces of the wood framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the Common Areas and Facilities, and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors. The perimetrical Unit boundaries include the sheet rock on the Unit side of the walls, with the framing being a part of the Common Areas and Facilities, and they are extended to their intersections with each other and the upper and lower horizontal boundaries of the Unit. The lower horizontal boundary of each Unit is the plane of the upper surface of the concrete sub-floor of that Unit or the upper surface of the plywood sub-floor, as may be applicable, and the upper horizontal boundary of each Unit is the lower surface of the ceiling joists of the Unit, with such sub-floor and framing being a part of the Common Areas and Facilities. The upper and lower boundaries of each Unit include the wood, dry-wall, plaster or other material forming the ceiling or floor, as may be applicable, on the Unit side of such concrete sub-floor or framing, as the case may be, and extend to their intersections with the perimetrical boundaries of the Units. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit, including, without limitation, portions of the heating and air-conditioning system and the hot water heater are deemed to be a part of each Unit. The

balcony, porch, patio or deck and the roof thereof, if any, serving a Unit but located outside the boundaries thereof are Limited Common Areas and Facilities. If any chutes, flues, ducts, conduits, wires, pipes or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof which serve only that Unit shall be deemed a Limited Common Area and Facility of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Areas and Facilities shall be deemed a part of the Common Areas and Facilities. Further, any fan coil unit mounted above the ceiling of a Unit and the air-conditioning/heating unit located outside the Unit but serving that Unit only shall be deemed to be a part of that Unit. In interpreting the Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any Plat or Plans, regardless of settling or lateral movement of the building and regardless of minor variance between the boundaries shown on the Plans or in a deed and those of the Unit.

3.5 Common Areas and Facilities. The Common Areas and Facilities consist of all portions of the Condominium other than Units. Certain portions of the Common Areas and Facilities are Limited Common Areas and Facilities, as set out in Section 3.6.

3.6 Limited Common Areas and Facilities. The Limited Common Areas and Facilities are those portions of the Common Areas and Facilities which are reserved for the exclusive use of those persons who are entitled to the use of one or more (but less than all) of the Units. Limited Common Areas and Facilities are not separate and apart from the Common Areas and Facilities in general, but are limited only with respect to the exclusive use thereof by the Unit or Units to which they are assigned. Limited Common Areas and Facilities are assigned as follows and not otherwise:

3.6.1 The patio, terrace, balcony, deck, porch or steps, together with any enclosure therefor, which is appurtenant to each Unit having any of the foregoing, shall be a Limited Common Area and Facility assigned to the Unit having direct access thereto. Any part which separates one patio, terrace, balcony, deck, porch or steps from those of another Unit shall be a Limited Common Area and Facility assigned to both of the Units. If a walkway, steps or other means of access to the door of a Unit is designed to serve one or more (but less than all) of the Units, then it shall be a Limited Common Area and Facility appurtenant to the Unit or Units so served.

3.6.2 All portions of the Common Areas and Facilities on which there is located any portion of the heating and air-conditioning system exclusively serving a particular Unit or Units shall be a Limited Common Area and Facility assigned to that Unit or Units.

3.7 Expansion of the Condominium. Declarant reserves the option to expand the Condominium by adding to the Condominium all or any part of the

Additional Property on one or more occasions. There are no limitations on this option, and the consent of any Unit Owners or Mortgagees shall not be required. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time or in one or more portions at different times. The boundaries of the portions which may be added are not fixed hereby, and no limitations are imposed on how they shall be fixed. This option shall expire seven (7) years from the date of recording this Declaration. The maximum number of Units that may be created on the Additional Property and added to the Condominium is one hundred fifty (150). The maximum number of Units on the added portions of the Additional Property shall not exceed an average of sixteen (16) Units per acre (although the Condominium as a whole shall have a maximum number of Units of one hundred sixty (160)). The Additional Property (or any portion thereof) shall be subject to the use restrictions set forth herein when it is added to the Condominium. All Units shall be restricted to residential use, as set forth in Section 10.3. The structures created on any portion of the Additional Property added shall be compatible with the structures on the Submitted Property in terms of the general quality of construction, but no other assurances are made in this regard or with regard to size, principal materials or architectural style. The Declarant shall have the right to assign Limited Common Areas and Facilities on the Additional Property in accordance with the provisions of paragraph 3.6 hereof. The undivided interests in the Common Areas and Facilities, Votes in the Association and liability for Common Expenses are allocated among the Condominium Units on the Submitted Property in proportion to the approximate relation that the fair market value of the Unit at the time such Unit becomes subject to this Declaration bears to the then aggregate fair market value of all the Units having an interest in the Common Areas and Facilities, and, upon the expansion of the Condominium to include any portion of the Additional Property, shall be reallocated among the Units on the Submitted Property and such Additional Property on the same basis. The Common Areas and Facilities currently include a portion of the road, parking areas, utilities, landscaping and dumpster area. In the event Declarant exercises the option to expand reserved herein, Declarant intends to construct two (2) tennis courts, a pool and a summer house containing bathrooms as a portion of the Common Areas and Facilities, however, this shall not be construed as a requirement or representation that the Declarant construct such additional Common Areas and Facilities. By virtue of the aforementioned reallocation, the undivided interests in the Common Areas and Facilities will thereby be reduced as well as reducing the weight of Votes in the Association and percentage of liability for Common Expenses, however, such undivided interests in the Common Areas and Facilities shall include an undivided interest in all Common Areas and Facilities, whether now in existence or created in the future upon any portion of the Additional Property. All real estate taxes then due and payable on the portion of the Additional Property being added must be paid and prorated. Any expansion under this Section shall be effected by Declarant's executing and recording the amendments to this Declaration, the Plats and the Plans required by the Act, at Declarant's sole expense, which

can be done only when the improvements on the portion of the Additional Property being added are substantially complete. No amendment (or merger with any successor condominium regime) shall be effected without the prior written approval of the Veterans Administration, if the Condominium is subject to the requirements and approval of the Veterans Administration. Any such amendment shall be effective against all Owners and Mortgagees as of the time of its recording, notwithstanding when such Owners and Mortgagees acquired their interest in any Condominium Unit. The Condominium Units thereby created and added shall be owned by Declarant, but the Common Areas and Facilities shall be owned by all of the Unit Owners. Except as expressly set forth herein, the Declarant's option to expand the Condominium by including Additional Property shall not be limited in any other respect.

ARTICLE 4

EASEMENTS

In addition to the easements created by the Act, the easements described in this Article 4 from each Owner to each other Owner, to the Association and to the Declarant are hereby granted, reserved and established, subject to and in accordance with the following terms and conditions:

4.1 Use and Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Areas and Facilities (including the right to access, ingress and egress to and from his Unit over those portions of the Common Areas and Facilities designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every Condominium Unit, subject to the following provisions and limitations:

4.1.1 The right of the Association to control the use and enjoyment thereof as provided by the terms of this Declaration, which shall include, but not be limited to, the right of the Association to limit the use and enjoyment thereof to the Owners and their respective Occupants, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner and his Occupants.

4.1.2 The right of the Association to limit the number of guests of Owners.

4.1.3 The right of Owners to the exclusive use of the Limited Common Areas and Facilities appurtenant to their respective Units.

4.1.4 The right of the Association to suspend the Vote and rights to the use of the recreational facilities of the Condominium by an Owner and his Occupants for any period of time during which an Assessment against his Condominium Unit remains unpaid or for a reasonable time for infraction of any provision of the Condominium Instruments or rules and regulations.

4.2 Structural Support. Every portion of a Unit or the Common Areas and Facilities which contributes to the structural support of another Unit or the Common Areas and Facilities shall be burdened with an easement of structural support. No Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.

4.3 Utilities. To the extent that any utility line, pipe, wire or conduit serving any Unit, Units or the Common Areas and Facilities shall lie wholly or partially within the boundaries of another Unit or the Common Areas and Facilities, such other Unit, Units or the Common Areas and Facilities shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit, Units or Common Areas and Facilities served by the same and the Association.

4.4 Encroachments. If any portion of the Common Areas and Facilities encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Areas and Facilities, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, an easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event that any building, any Unit, any adjoining Unit, or any adjoining portion of the Common Areas and Facilities shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then be repaired or reconstructed, encroachments of portions 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 repair or reconstruction, shall be permitted, and easements for such encroachments and the maintenance, repair and replacement thereof shall exist. This easement is intended to apply to minor unintentional encroachments that are reasonable in extent and do not deprive another of a substantial property right or use.

4.5 Maintenance and Repair. There shall be an easement in favor of the Declarant, the Association and the Unit Owners through the Units and the Common Areas and Facilities as may be reasonably necessary for the installation, maintenance, repair and replacement of Units and the Common Areas and Facilities. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

4.6 Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agents and employees (including, but not limited to any manager employed by the Association) to enter upon the Submitted Property or any portion thereof and to enter or take access through the Units and the Common Areas and Facilities as may be

reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and operation of the Condominium and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representatives and employees, such access through such Owner's Unit as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon advance notice to and with the permission of the Owner or Occupant of a Unit directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Areas and Facilities for the installation, maintenance, repair and replacement of utilities, roads and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

4.7 Rights of Declarant. So long as Declarant owns any Condominium Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents, and employees shall have a transferable easement for the maintenance of signs, a sales office, a business office, promotional facilities and model Units on the Submitted Property, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development or sale of the Condominium Units on the Submitted Property or the Additional Property. The Declarant may use any two (2) Units for models and/or sales offices, which Units may be changed from time to time. The Size and location of the Units are shown on the Plat and Plans. During the period that Declarant owns any Condominium Unit, Declarant, its duly authorized contractors, representatives, agents and employees, shall have a transferable easement on, over, through, under and across the Common Areas and Facilities for the purpose of making improvements on the Submitted Property and the Additional Property, for expanding the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

ARTICLE 5

MAINTENANCE AND REPAIR

5.1 Association. The Association shall maintain, repair and replace all portions of the Common Areas and Facilities, except as may be herein otherwise specifically provided. This responsibility shall include all Limited Common Areas and Facilities appurtenant to Units (including, without limitation, fences, brick walls or railings enclosing any balcony, deck, terrace or patio area, porch or steps), except that the Association shall not be responsible for the cleaning of balconies, decks, terraces, patios, porches or steps. The Association shall also be responsible for the maintenance of the exterior finished surface of entry doors to Units, notwithstanding the fact that such doors are a part of the Units. Each

Unit Owner shall be responsible for all heating and air-conditioning equipment serving his Unit only as a Limited Common Area and Facility. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under the Act or this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

5.2 Unit Owner. Each Unit Owner shall maintain, repair and replace all portions of his Unit, except those portions, if any, which are to be maintained, repaired or replaced by the Association. The Unit Owner shall maintain, repair and replace the hot water heater and heating and air-conditioning system which is a part of or a Limited Common Area and Facility serving his Unit, together with all fixtures, equipment and appliances installed in his Unit or located within the boundaries thereof, and all chutes, flues, ducts, conduits, wires, pipes or other apparatus located within the boundaries of such Owner's Unit or deemed to be a part thereof as provided herein. The Unit Owner shall also maintain, repair and replace the windows, screens and doors (including the sliding glass doors, if any) which are a part of the Unit, except for the exterior finished surface of the entry doors of the Unit, which shall be maintained by the Association. Each Unit Owner shall perform his responsibilities in such a manner so as not to unreasonably disturb other persons in other Units and shall keep any balcony, deck, terrace, patio, porch or steps adjoining his Unit in a neat and clean condition and free of standing water. Each Unit Owner shall promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible. The Association shall have the right but not the obligation to make any repair or replacement or to do any cleaning or maintenance which is the responsibility of the Unit Owner if the Unit Owner fails or refuses to do so, and in such event the Unit Owner shall be obligated to pay for the cost incurred by the Association for such work. Each Unit Owner shall also be obligated to pay for the cost of repairing, replacing, or cleaning any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of such Unit Owner or any of his Occupants. The cost of any such repair, replacement, maintenance or cleaning shall be added to and become part of the Assessment or portion thereof next coming due to which the Unit Owner is subject.

ARTICLE 6

ASSESSMENTS

6.1 Lien. Each Unit Owner covenants and agrees to pay to the Association all Assessments (general and special) provided by the Act and by this Declaration which shall be fixed, established and collected from time to time as hereinafter provided. The liability of each Condominium

Unit and its Owner for Assessments shall be as set out in the Schedule of Unit Information. All Assessments and other charges provided by this Declaration, together with interest, thereon and costs of collection thereof as hereinafter provided, shall be a charge against and continuing lien upon the Condominium Unit against which each such Assessment or charge is made. Each Owner shall be personally liable for Assessments coming due on his Unit while he is the Owner. Any Unit shall be conveyed subject to a lien for any unpaid Assessments subject to the provisions of Section 47A-22(c) of the Act and Section 6.7 hereof. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Areas and Facilities or abandonment of his Unit.

6.2 General Annual Assessments. The amount of all Common Expenses not specially assessed against one or more but less than all of the Condominium Units pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved Common Profits, shall be assessed against the Condominium Units in accordance with the Schedule of Unit Information; provided, however, the general annual Assessment against Condominium Units owned by the Declarant and not occupied may be such lesser amount as may be fixed by the Board of Directors, but shall not be less than twenty-five percent (25%) of what the general annual Assessment would otherwise be. The general annual Assessment shall be established by the Board of Directors in the manner set forth in this Section. During that portion of the Association's fiscal year from the recording of this Declaration to the end of such fiscal year, the annual Assessment applicable to each Condominium Unit shall be as set forth in the estimated budget for the Condominium delivered to each purchaser of a Condominium Unit. At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and submit in writing to the Owners an estimated budget of the Common Expenses for the next succeeding fiscal year to be paid by Assessments collected from the Owners, together with the amount of the annual Assessment payable by each Owner during such fiscal year. If the estimated budget proves inadequate for any reason at any time during the year, then upon the affirmative Vote of Owners having at least two-thirds (2/3rds) of the total Vote of the Association, the Board of Directors may levy at any time a further Assessment against the Owners and notify the Owners accordingly. If for any reason an annual budget is not made by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new Assessment. Common Expenses of the Association to be paid through annual Assessments shall include, but shall not necessarily be limited to, the following:

6.2.1 Management fees and expenses of administration, including management, legal and accounting fees.

6.2.2 Utility charges for utilities serving the Common Areas and Facilities and charges for other common services.

6.2.3 The cost of any master or blanket policies of insurance purchased for the benefit of all Owners and the Association as required by this Declaration, including fire and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and the Owners.

6.2.4 The expense of maintenance, operation and repair of the Common Areas and Facilities as well as any maintenance upon the Units which is the responsibility of the Association under the provisions of Article 5, if such expense is not covered by a special Assessment.

6.2.5 Charges for any utilities provided to the Units and not separately metered, which shall be a Common Expense of the Association.

6.2.6 Such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against each Condominium Unit, other than ad valorem real property taxes.

6.2.7 The establishment and maintenance of an adequate reserve fund or funds for the periodic maintenance, repair and replacement of those Common Areas and Facilities (including Limited Common Areas and Facilities) which the Association may be obligated to maintain and of a reserve to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures and other matters, as may be authorized from time to time by the Board of Directors. A working capital fund shall be established for the initial months of the operation of the Condominium equal to at least two (2) months of the annual Assessment applicable to each Unit, which shall be collected with respect to each Unit at the time of conveyance of such Unit by Declarant to a purchaser and shall be deposited in and maintained in a separate account of the Association for the use and benefit of the Association. The purpose of such fund is to insure that funds will be available for the Association to meet unforeseen expenditures, to pay one-time expenses at the beginning of the Association such as legal, accounting and other services and advice, and to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. Amounts paid into such fund shall not be considered as advance payment of the annual Assessment.

6.2.8 Expenses declared Common Expenses by the provisions of the Act.

The general annual Assessment for Common Expenses described above shall be paid by and collected from the Owners in accordance with their respective liabilities for Assessments. Each Owner shall be obligated to pay such Assessments to the Association in equal monthly installments on or before the first day of each calendar month. In any year in which there is an excess of Assessments and other income over expenditures, the Board of Directors, by resolution and without the necessity of a Vote of the Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments or to allocate the same to one or more reserve accounts of the Association described above. Any of the foregoing provisions of this paragraph which may be construed to the contrary notwithstanding, no Assessment shall be payable under this paragraph by any Owner until this Declaration is filed for record.

Therefore, the first annual Assessment payable under this paragraph shall be prorated according to the number of days remaining in the Association's fiscal year after the date on which this Declaration is filed for record.

6.3 Special Allocation of Assessments. Any Common Expenses occasioned by the conduct of less than all the Unit Owners or their Occupants may be specially assessed by the Board against the Condominium Unit or Units, the conduct of any Owner or Occupant of which occasioned any such Common Expenses. Any Common Expenses benefitting less than all of the Units may be assessed by the Board equitably among the Units so benefitted. Notwithstanding anything to the contrary set forth herein, except as provided in Section 5.2, there shall be no special Assessments against any particular Condominium Unit for any Common Expenses associated with the maintenance, repair, restoration, renovation or replacement of any Limited Common Areas and Facilities; rather, such expenses shall be Common Expenses. The special allocation of assessments provided for in this paragraph shall be levied by the Board of Directors in its reasonable judgment, and the amount and due date(s) of such Assessments so specially allocated by the Board shall be as specified by the Board. In no event shall the Association or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph.

6.4 Special Assessments for Capital Improvements. In addition to the special and general Assessments authorized above, and in addition to the special Assessments for reconstruction or repair of casualty damage, the Board of Directors may levy special Assessments for the purpose of defraying, in whole or in part, the cost of any capital addition to or capital improvement of the Common Areas and Facilities (including the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the Common Areas and Facilities (including the necessary fixtures and personal property related thereto), which is for the benefit of all Owners; provided, however, any special Assessment levied by the Board of Directors under and pursuant to the provisions of this Section must first have the affirmative Vote of Owners having at least two-thirds (2/3rds) of the total Vote of the Association at a meeting duly called and held for such purpose. Owners shall be assessed for special Assessments under this Section in accordance with the liability for Assessments of their respective Condominium Units, and the due date(s) of any such special Assessments shall be specified by the Board of Directors.

6.5 Non-Payment of Assessments: Remedies of Association. Any Assessment, or portion thereof, not paid when due shall be delinquent, and the Board of Directors shall have the duty to enforce the collection of all delinquent Assessments. Any Assessment, or portion thereof, not paid within thirty (30) days after the due date shall constitute a lien on such Owner's Condominium Unit when filed of record in the Office of the Clerk of Superior Court, Orange County, in the manner provided for filing statutory liens against real property. If the same is not paid within thirty (30)

days after the due date, then a late charge, not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each Assessment or installment thereof not paid when due, shall also be due and payable to the Association. If any Assessment or portion thereof is delinquent for a period of more than thirty (30) days, and then is not paid within ten (10) days after written notice is given to the Owner to make such payment, the entire unpaid balance of the Assessment for the year in question may be accelerated at the option of the Board of Directors and be declared due and payable in full, and proceedings may be instituted to enforce such obligation and/or lien. Such notice shall be sent by certified mail, return receipt requested, to the Owner both at the address of the Unit and at any other address or addresses the Owner may have designated to the Association in writing, specifying the amount of the Assessments then due and payable, together with authorized late charges and interest accrued thereon. Any Assessment or portion thereof, together with authorized late charges, not paid within thirty (30) days after its due date shall bear interest from its due date at the rate of six percent (6.0%) per annum. The Board of Directors may suspend the Vote of the Owner or the rights of the Owner and his Occupants to use the recreational facilities of the Condominium during the period in which any Assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Owner as aforesaid, and the Association may bring an action at law against the Owner obligated to pay the same or foreclose its lien against such Owner's Condominium Unit, in which event late charges, interest and costs of collection shall be added to and included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Condominium Unit, and reasonable attorneys' fees. For the purposes of this Article, the amount of delinquent Assessments, late charges, accrued interest and the amount of accelerated Assessments, if any, shall be considered an indebtedness and shall be evidenced by this Section 6.5 and therefore evidence of indebtedness shall exist hereby. All payments on account shall be applied first to the aforesaid costs of collection, then to late charges, then to interest, and then to the Assessment lien first due. All late charges and interest collected shall be part of the Common Profits. Each Owner vests in the Board of Directors the right and power to bring all actions against him personally for the collection of such Assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting through the Board, shall have the power to bid in the Condominium Unit at any Foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas and Facilities or abandonment of his Condominium Unit. The rights and remedies conferred herein shall be in addition to, and not in lieu of, those set forth in Section 47A-22 of the Act.

6.6 Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except only (a) the lien for

real estate taxes on that a Condominium Unit, and (b) the lien of a Mortgage securing sums unpaid to Mortgagee or other lien or encumbrance recorded prior to the perfection of said lien for Assessments. Except as provided in Section 6.7 hereof and Section 47A-22(c) of the Act, the sale or transfer of any Condominium Unit shall not affect the Assessment lien.

6.7 Deed in Lieu of Foreclosure. Notwithstanding anything contained in this Declaration or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Condominium Unit by virtue of any deed in lieu of Foreclosure of a First Mortgage, such a First Mortgagee shall not be liable for, nor shall such Condominium Unit be subject to a lien for, any Assessment chargeable to such Condominium Unit on account of any period prior to the time such First Mortgagee shall so acquire title to such Condominium Unit; provided, however, that Common Expenses collectible thereafter from all Owners, including such First Mortgagee shall be paid as set forth in this Declaration. The provisions of this Section 6.7 are in addition to, and not in lieu of, the provisions of Section 47A-22(c) of the Act.

ARTICLE 7

ADMINISTRATION

7.1 Administration by the Association. The Association shall administer the Condominium, and have the rights and duties with respect thereto, as set out in and subject to the Act and the Condominium Instruments.

7.2 Control by Declarant. The Declarant shall have the right to appoint or remove all Directors and Officers or to exercise powers and responsibilities otherwise assigned to the Association, Board or Officers by the Act or the Condominium Instruments until the first to occur of: (i) the expiration of five (5) years after the date of the recording of this Declaration, (ii) the date as of which Units to which three-fourths (3/4) of the undivided interests in the Common Areas and Facilities appertain shall have been conveyed by Declarant to Unit Owners or (iii) the surrender by Declarant of such rights by an express amendment to this Declaration executed and recorded by Declarant, without the need for consent or joinder by any person. Upon the expiration of the period of Declarant's rights, such rights shall automatically pass to the Owners (including Declarant if Declarant then owns one or more Condominium Units) and a special meeting of the Association shall be called as set forth in the Bylaws. At such special meeting the Owners shall elect a Board of Directors. Further, any management or other agreement or any lease entered into during the period of Declarant control shall be subject to cancellation without cause and without penalty or termination fee upon not more than ninety (90) days prior written notice.

7.3 Duties and Powers. The duties and powers of the Association shall be those set forth in the Act, the North Carolina Nonprofit Corporation

Act, this Declaration and the other Condominium Instruments, together with those reasonably implied to effect the purposes of the Association. Except to the extent otherwise required by the Act, the North Carolina Nonprofit Corporation Act, this Declaration or the other Condominium Instruments, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the Officers, without any further consent or action on the part of the Owners. Subject to and in accordance with the provisions or limitations set forth in the Bylaws, each Director and each Officer shall be entitled to be indemnified by the Association in connection with any threatened, pending or completed action, suit or proceeding with respect to which such person was or is a party by reason of the fact that such person is or was a Director or Officer.

7.4 Property. All funds received and title of all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Owners as herein provided and for the purposes herein stated. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Condominium Unit. In any year in which there is an excess of Assessments over expenditures, such surplus shall be applied in accordance with the provisions of Article 6.

7.5 Rules and Regulations. Without limiting the generality of this Article, the Board of Directors shall have the power and authority to make, amend and revoke reasonable rules and regulations concerning the use of the Units and the Common Areas and Facilities as set forth in the Bylaws.

7.6 Professional Management. The Board of Directors may employ a professional management firm to manage the operation and affairs of the Condominium and the Association. Any management firm employed shall be employed pursuant to a written agreement executed on behalf of the Association by a Majority of the Board of Directors. All such management agreements shall be terminable by the Association for cause upon thirty (30) days' written notice and without termination fee and upon ninety (90) days prior written notice and without termination fee without cause, and the term thereof may not exceed one year. The management firm shall be the agent of the Board of Directors and the Association. To the extent permitted by law, the Board of Directors shall be authorized to delegate to such management firm such of the duties and powers of the Association and of its Board of Directors and Officers as the Board of Directors shall determine. The Declarant or any person affiliated with Declarant may be employed as the professional management firm pursuant to this Section; provided, however, that notwithstanding the foregoing, any contract or agreement of any kind with the Declarant or any person affiliated with the Declarant whether for professional management or for another purpose shall be terminable by either party thereto without cause and without payment of a termination fee upon no more than ninety (90) days' prior written notice.

7.7 Enforcement of Directors' Duties. In the event that the Board of Directors shall fail to perform any duty or duties which; under the terms and provisions of the Act, this Declaration, or the other Condominium Instruments, are to be performed by it, any Owner or First Mortgagee who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, shall any Director have any liability to any Owner or First Mortgagee for any failure by the Board of Directors to perform any such duty or duties, except to the extent specifically provided in the North Carolina Nonprofit Corporation Act.

ARTICLE 8

INSURANCE

8.1 General Obligation and Authority. The Association shall obtain and maintain at all times (a) insurance for all of the insurable improvements on the Submitted Property (with the exception of improvements and betterments made by the respective Owners or Occupants) against loss or damage by fire or other hazards, including extended coverage, vandalism, malicious mischief, debris removal, cost of demolition, windstorm and water damage, in an amount consonant with full replacement value of such insurable improvements, (b) if there is a boiler on the Submitted Property, boiler explosion insurance evidenced by the broad form of boiler and machinery insurance policy and providing as a minimum, \$50,000.00 per accident per location, (c) fidelity coverage against dishonest acts on the part of its Directors, Officers, employees, agents and volunteers responsible for handling funds belonging to or administered by the Association in an amount at least equal to the sum of three (3) months Assessments plus reserves or in such greater amount as the Board may determine, (d) comprehensive public liability insurance, in amounts established by the Board of Directors from time to time, but in no event shall such amounts be less than \$1,000,000.00 for single limit coverage, and (e) such other types of insurance either required by the Federal National Mortgage Association, Federal Home Loan Mortgage Association, Veterans Administration, Federal Housing Administration or any other applicable governmental authority or law or authorized by the Board of Directors from time to time. Such casualty, liability and fidelity coverage shall be maintained in accordance with and satisfy all of the applicable provisions of the Federal National Mortgage Association Conventional Home Mortgage Selling Supplement or in accordance with any other requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal Housing Administration or any other applicable governmental authority. When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Unit Owner by the Officer required to send notices of meetings of the Association.

ARTICLE 9RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

In the event of damage by fire or other casualty to the Submitted Property or any part thereof, the provisions of this Article and Section 47A-25 of the Act shall govern the repair and reconstruction. The terms "repair" or "reconstruction" as used herein shall mean repairing or restoring the Submitted Property to substantially the same condition in which it existed prior to the fire or other casualty (excluding improvements and betterments made by an Owner or Occupant) with each Unit and the Common Areas and Facilities having the same boundaries as before. Any repair or reconstruction may reasonably take into account changes in construction and design techniques and materials and the cost or availability thereof. The term "substantial loss" relative to Units and/or Common Areas and Facilities serving exclusively a Unit shall mean a loss involving damage or destruction which renders more than two-thirds (2/3rds) of the Units and/or Common Areas and Facilities serving exclusively a Unit in any one (1) building or which serves exclusively any one (1) building untenable. The term "substantial loss" relative to the Common Areas and Facilities not serving exclusively a Unit shall mean a loss involving damage or destruction having a cost of restoration or repair of more than two-thirds (2/3rds) of the replacement cost of the improvements which are damaged or destroyed by casualty.

9.1 Damage and Destruction.

9.1.1 Claims, Adjustments and Repair Estimates. Immediately after any damage or destruction to all or any part of the Submitted Property covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Owners and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damaged or destroyed property.

9.1.2 Common Areas and Facilities. In the case of damage or destruction to Common Areas and Facilities not serving exclusively a Unit, such damage or destruction shall be repaired or reconstructed unless both (i) there is a substantial loss of the Common Areas and Facilities not serving exclusively a Unit resulting from such damage or destruction and (ii) within sixty (60) days of the date of such casualty, Owners having three-fourths (3/4ths) of the Votes in the Association Vote not to repair or reconstruct.

9.1.3 Units. In the case of a casualty causing damage or destruction to a Unit and/or Common Areas and Facilities serving exclusively a Unit, such damage or destruction (including any damage or destruction to any Common Areas and Facilities serving exclusively such Unit) shall be repaired or reconstructed unless each of the following occur: (i) there is a substantial loss of all the Units (including any damage or

destruction to any Common Areas and Facilities serving exclusively such Unit) contained in any one (1) building in the Condominium; and (ii) within sixty (60) days of such casualty, the Owner of each damaged or destroyed Unit, together with the Owners of all of the other Units contained within the building in which such Units are located, and together with the remaining Owners comprising at least three-fourths (3/4ths) of the total remaining Vote of the Association agree in writing not to repair or reconstruct. Should the Owners so decide not to repair or reconstruct damaged or destroyed Units, then such damaged or destroyed Units shall not be repaired or reconstructed and the provisions of Section 47A-25 of the Act shall govern and control the ownership of such damaged or destroyed Units. The undivided interest in the Common Areas and Facilities, Votes in the Association and share of liability for Common Expenses appertaining to such Condominium Units shall thenceforth appertain to the remaining Condominium Units on the basis of an equal share per Unit.

9.1.4 Extension of Time. If for any reason the amount of insurance proceeds to be paid as a result of a casualty, or reliable and detailed estimates of the cost of repair or reconstruction of such casualty, are not made available within sixty (60) days after such casualty, then the sixty (60) day period specified above, shall be extended until such information is made available; provided, however, that such period of time shall in no event exceed One Hundred Twenty (120) days after such casualty.

9.1.5 Application of Proceeds: Common Areas and Facilities and Units Not Repaired. If it is determined in accordance with the provisions hereof that any damaged Common Areas and Facilities not serving exclusively a Unit shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be divided among the Owners in accordance with their percentage or fractional interests in the Common Areas and Facilities. If it is determined in accordance with the provisions hereof that any damaged Unit shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be paid to the Owner of such damaged Unit in proportion to the total damage for which proceeds are received, and thereupon such Owner shall have no further right, title or interest in the Condominium. In all cases where there is a Mortgagee endorsement with respect to a Unit, any insurance proceeds shall be disbursed to the Owner and such Mortgagee jointly, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. The Association shall cause the debris to be removed from any area on which was located a damaged Unit or damaged Common Areas and Facilities which are not to be repaired or restored and shall landscape and restore such area to a clean, safe and attractive condition, and the Board of Directors shall have the right to levy a special Assessment against all of the Owners of the Condominium Units to raise the funds necessary to defray the costs of such work in excess of any amounts which may be available from any reserve funds of the Association maintained for such purpose.

9.2 Manner of Repair and Reconstruction. All repairs, reconstruction or rebuilding to be made as a consequence of a fire or other casualty shall be made in accordance with the following provisions:

9.2.1 Common Areas and Facilities. If the damage to be repaired or reconstructed is to the Common Areas and Facilities, and if the insurance proceeds payable as a result of such damage or destruction is less than (10%) of the total annual revenues anticipated to be received by the Association under the then current budget of the Association, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors. If the damage to be repaired or reconstructed is to the Common Areas and Facilities, and if the insurance proceeds available as a result of such damage or destruction is greater than ten percent (10%) of the total annual revenues anticipated to be received by the Association under the then current budget of the Association, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors; provided, however, that in the event the Board of Directors shall approve plans and specifications for the repair or reconstruction of such damaged property which differ materially from those of the damaged property prior to the occurrence of such damage, such plans and specifications shall be submitted for the approval of a Majority of the Association, if a request to such effect is submitted in writing signed by Owners together possessing at least fifteen percent (15%) of the total Vote of the Association no later than 14 days after the meeting at which the Board of Directors approve such differing plans and specifications.

9.2.2 Units. If the damage to be repaired or reconstructed is to any Unit, such repair, reconstruction or rebuilding shall be substantially in accordance with the plans and specifications for such damaged Unit prior to the occurrence of such damage.

9.2.3 Responsibility for Repair or Reconstruction. All of the work of repairing or reconstructing any portion of the Submitted Property, the damage to or destruction of which resulted in the payment of any insurance proceeds under any insurance policy maintained by the Association, shall be the responsibility of the Association and shall be performed under the supervision of the Board of Directors. In discharging such supervisory responsibility, the Board of Directors shall be authorized, but shall not be obligated, to employ as its agent or consultant such building supervisors or architects as the Board of Directors shall determine. Any fees which shall be payable to any such building supervisor or architect as shall be employed by the Board of Directors shall be a Common Expense of the Association.

9.3 Costs of Repair and Reconstruction.

9.3.1 Common Areas and Facilities. The costs of repairing or reconstructing any portion of the Common Areas and Facilities not exclusively serving any Unit which shall be damaged or destroyed shall be paid with any insurance proceeds which shall be paid to the Association on account of such damage or destruction. If such insurance proceeds, together with any amounts as may be available from any reserve funds maintained by the Association for such purposes, are not sufficient to defray such costs of repair or reconstruction, then upon the affirmative Vote of Owners having at least two-thirds (2/3rds) of the total Vote of the Association, the Board of Directors shall levy a special Assessment against all of the Owners and the Condominium Units to raise the excess funds necessary to defray such costs.

9.3.2 Units and Common Areas and Facilities Exclusively Serving Units. The costs of repairing or reconstructing each Unit which shall be damaged or destroyed, together with any portion of the Common Areas and Facilities exclusively serving such Unit which shall be damaged or destroyed, shall be paid with the insurance proceeds which shall be paid to the Association on account of such damage or destruction for such Unit. If any amounts shall remain after all of the costs and expenses of repairing and reconstructing the Unit are paid, such amounts shall be paid jointly to the Owner and his Mortgagee. If the amount held by the Association for such Unit is not sufficient to defray such cost of repair and reconstruction, then upon the affirmative Vote of Owners having at least two-thirds (2/3rds) of the total Vote of the Association, the Board of Directors shall levy a special Assessment against the Owners and the Condominium Units so involved to raise the excess funds necessary to defray such costs.

9.3.3 Common Areas and Facilities Exclusively Serving a Unit. For purposes of this Article, Common Areas and Facilities shall be deemed to serve exclusively a particular Unit only if they constitute all or a portion of the building in which such Unit is contained or a Limited Common Area and Facility assigned to such Unit. This concept is necessary because almost all structural parts of a building technically constitute Common Areas and Facilities under the Unit boundaries established in Section 3.4 of this Declaration.

ARTICLE 10

ARCHITECTURAL CONTROL, USE RESTRICTIONS AND SALE OR LEASING OF UNITS

To assure a community of congenial Owners and thus protect the value of the Condominium Units, the Submitted Property shall be subject to the restrictions set forth in this Article and in the rules and regulations of the Association.

10.1 Approval Required for Changes. To preserve the architectural appearance of the Condominium, no construction, painting or other changes

of any nature whatsoever shall be commenced or maintained by any Unit Owner other than Declarant with respect to the exterior of any Unit or any other portion of the Condominium, including any Limited Common Areas and Facilities appurtenant thereto, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or by an architectural committee appointed by the Board of Directors. An Owner may make improvements and alterations within his Unit; provided however, that no Owner shall make any structural alterations in a Unit or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of that Unit or any other Unit or otherwise materially lessen the support of any portion of the Condominium. No Owner shall impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

10.2 Lighting. The design, type, location, size, intensity and color of all exterior lights (including both those mounted as part of the original design of the Submitted Property or otherwise in place at the time of the conveyance of a Unit to an Owner and those mounted with the consent of the Board of Directors) shall be subject to the prior written approval of the Board of Directors.

10.3 Residential Purposes. Except for Declarant's rights as set forth herein, all Units shall be, and the same hereby are, restricted exclusively to residential use, and the occupancy thereof shall be subject to such restrictions as the Board of Directors may establish pursuant to the rules and regulations of the Association.

10.4 Business Activities and Signs. No business activities, other than the development and sales activities of Declarant as permitted hereunder, shall be conducted on any portion of the Submitted Property. Except as may be required by legal proceedings and except as permitted in accordance with Section 4.8 hereof, no "For Sale" or "For Rent" signs or other signs or advertising posters of any kind shall be maintained or permitted on any portion of the Submitted Property without the express prior written permission of the Board of Directors, and the approval of signs and posters shall be upon such conditions as may from time to time be determined by the Board of Directors. Notwithstanding the foregoing, the provisions of this Section shall not apply to any signs maintained on the Submitted Property by Declarant, its agents, representatives or assigns, during the period that Declarant has any Condominium Unit for sale, or to any notice or other advertisement posted on any community bulletin board by an Owner or his licensed real estate broker or agent or to a "For Sale" sign posted by a Mortgagee who becomes the Owner as purchaser at a Foreclosure sale conducted with respect to a Mortgage or as transferee pursuant to any proceeding in lieu thereof, subject to reasonable rules and

regulations established by the Board of Directors with respect to such "For Sale" sign.

10.5 Pets. No animals or birds, other than a reasonable number of generally recognized house pets, shall be kept or maintained on any portion of the Submitted Property and then only if they are kept or maintained solely as domestic pets and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas and Facilities, except that such a structure may be constructed or maintained within any balcony, deck, patio, terrace area or other Limited Common Areas and Facilities if the same shall be approved in advance in writing by the Board of Directors. Pets shall be under leash when walked or exercised in any portion of the Common Areas and Facilities. No pets shall be permitted to leave its droppings on any portion of the Common Areas and Facilities, and the Owner of such pet shall immediately remove the droppings. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular pet is permitted or such pet is a nuisance and shall have the right to require the Owner of a particular pet to remove such pet from the Condominium if such pet is found to be a nuisance or to be in violation of these restrictions.

10.6 Use of Common Areas and Facilities. The use and enjoyment of the Common Areas and Facilities by the Owners and their Occupants shall be subject to such reasonable rules and regulations as may be made and amended from time to time in accordance with Section 7.5 of this Declaration. This Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

10.7 Antennas. No antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Submitted Property, whether attached to a building or structure or otherwise; provided, however, that Declarant and the Association shall have the right to erect, construct and maintain such devices.

10.8 Motor Vehicles, Trailers, Boats, etc. Automobiles shall be operated and parked only upon those portions of the Common Areas and Facilities designated for such purpose on the Plat or by the Board of Directors. Other motor vehicles, including, without limitation, mobile homes, motor homes, truck campers, trailers of any kind and boats, shall be kept, placed, stored, parked, maintained or operated only upon those portions of the Submitted Property, if any, designated specifically for such purpose by the Board of Directors. Further, although not expressly prohibited hereby, the Board of Directors may prohibit mobile homes, motor homes, truck campers, trailers of any kind, motorcycles, motor scooters, motorized bicycles, mo-peds, motorized go-carts and other such contrivances, or any of them, from being kept, placed, stored, maintained or

operated upon any portion of the Submitted Property if in the opinion of the Board of Directors such prohibition shall be in the best interests of the Condominium.

10.9 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Submitted Property, except in containers specially designated for such purpose, nor shall any odors, be permitted, so as to render any portion of the Submitted Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Submitted Property. No nuisance shall be permitted to exist or operate upon any portion of the Submitted Property so as to be offensive or detrimental to persons using or occupying other portions of the Submitted Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Submitted Property.

10.10 Prohibited Activities. Noxious or offensive activities shall not be carried on in any Unit or in any part of the Common Areas and Facilities. Each Owner and Occupant shall refrain from any act or use of his Unit or the Common Areas and Facilities which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants, or which could result in the cancellation of insurance on any Unit or any portion of the Common Areas and Facilities, or which would be in violation of any law or governmental code or regulation. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Submitted Property.

10.11 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Submitted Property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provisions shall apply.

10.12 Exterior Appearance. To provide a neat, attractive and harmonious appearance throughout the Condominium, no awnings, shades, screens or other item shall be attached to, hung or used on the exterior of any window or door of a Unit or on the exterior of any building without the prior written consent of the Board of Directors or an architectural committee appointed by the Board of Directors. Further, no foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose. Unless otherwise approved by the Board of Directors, all shades, drapery linings and other window treatments visible from the exterior of a Unit on any window or door shall be white or off-white. Outside clotheslines or other outside facilities for drying or airing

clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Submitted Property, nor shall any clothing, rugs or any other item be hung on any railing or fence enclosing any balcony, deck, terrace or patio.

10.13 Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Condominium Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Submitted Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Condominium Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Submitted Property for such purposes and to use any Units owned by Declarant as model Units and as offices for the sale of the Condominium Units and related activities, such Units being located and described as provided herein and in the other Condominium Instruments.

10.14 Sale or Leasing. The following provisions shall apply to sales or leases of Condominium Units.

10.14.1 The right of any Owner, including Declarant, to sell, transfer, convey, mortgage, encumber or pledge the Condominium Unit owned by such Owner shall not be subject to any right of first refusal or any similar restriction in favor of the Association or any other Owner.

10.14.2 No Owner may Lease his Condominium Unit for transient or hotel purposes. All Leases shall be in writing on a standard lease form prescribed by the Board with a minimum term of at least three months. Any Lease shall be subject in all respects to the provisions of the Condominium Instruments and the rules and regulations of the Association; any failure by the lessee to comply with the terms of such Condominium Instruments shall be a default under the Lease, and any Lease shall so provide. In the event of non-compliance by any tenant of a Condominium Unit with the terms of the Condominium Instruments, the Board of Directors shall have the right to require the Owner or lessee of such Condominium Unit to terminate such Lease because of such default and to levy a charge or fine against the Owner of such Condominium Unit for such non-compliance.

10.14.3 Any of the foregoing provisions of this Section which may be construed to the contrary notwithstanding, the Lease by Declarant of any Condominium Unit owned by Declarant or the Lease by a Mortgagee who becomes the Owner of a Condominium Unit at a Foreclosure sale conducted with respect to the Mortgage on such Condominium Unit or as transferee pursuant to any proceeding in lieu thereof, so long as such Condominium Unit is owned by such person, shall not be subject to the provisions of this Section except that the occupancy of any Condominium Unit by any lessee of

such person shall be otherwise subject to the provisions of the Condominium Instruments and the rules and regulations of the Association.

ARTICLE 11

GENERAL PROVISIONS

11.1 Amendment. This Declaration may be amended during the initial twenty (20) year period hereof commencing on the date of recordation by the affirmative Vote of Owners having at least ninety percent (90%) of the total Vote of the Association, and thereafter, by the affirmative Vote of Owners having at least seventy-five percent (75%) of the total Vote of the Association. So long as the same shall not (a) adversely affect the title to any Condominium Unit, (b) change the percentage of undivided ownership interest in and to the Common Areas and Facilities appurtenant to any Condominium Unit, (c) materially alter or change any Owner's right to the use and enjoyment of his Unit or the Common Areas and Facilities as set forth in this Declaration, or (d) otherwise make any material change in this Declaration, each Owner agrees that, if requested to do so, such Owner will consent to the amendment of the Condominium Instruments, (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation the provisions of the Act, or judicial determination which shall be in conflict therewith, (ii) if such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration or Federal Housing Administration, to enable such lender or purchaser to make or purchase mortgage loans on any Condominium Unit, or (iii) if any such amendment is necessary to enable any governmental agency to insure mortgage loans on the Condominium Units based on the statutes, laws, rules or regulations applicable to or promulgated by such agency. Except as expressly permitted or required by the Act and this Declaration, any amendment to this Declaration which would change the boundaries of any Unit, the undivided interest in the Common Areas and Facilities, the number of Votes in the Association or the liability for Common Expenses appertaining to any Condominium Unit shall be approved in writing by all Owners and all holders of all Mortgages encumbering the Condominium Units. Any provision in this Declaration which may be construed to the contrary notwithstanding, any amendment to this Declaration, which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to any Mortgagee shall require the prior written approval of such Mortgagee. Amendments to this Declaration or the other Condominium Instruments may be proposed by Declarant, by the Board of Directors, or by petition signed by Owners having at least thirty percent (30%) of the total Votes of the Association. Agreement of the required majority of Owners to any amendment of the Condominium Instruments shall be evidenced by their execution of the amendment. Any such amendment of the Condominium Instruments, including

this Declaration, shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any Mortgagee required with respect to such amendment shall also be recorded with such amendment.

11.2 Eminent Domain. In the event that all or part of the Submitted Property shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation and all related matters, such as the reallocation of undivided interests in the Common Areas and Facilities, liabilities for Assessments and Votes, shall be handled as follows:

11.2.1 If any Unit or portion thereof or the Common Areas and Facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Condominium Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other Condominium Instrument establishing the Condominium will entitle the Owner or other person to priority over any Mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Condominium Unit.

11.2.2 In the event all or any part of the Submitted Property shall be taken in condemnation or by eminent domain, each Owner hereby grants an irrevocable power of attorney to the Association to represent such 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 Owners and their respective Mortgagees as their interest may appear and shall be disbursed by the Board as hereinafter provided.

11.2.3 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 Facilities and the Board of Directors shall disburse the proceeds of the condemnation award in the same manner as required for the disbursement of insurance proceeds where damage or destruction to the Common Areas and Facilities is to be repaired or reconstructed, as provided in Article 9 hereof.

11.2.4 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 in Article 9 hereof, whereupon:

(i) The Board of Directors, using the proceeds of such condemnation award, shall acquire, on behalf of the remaining Owners, the Condominium Unit or Units of the Owner or Owners whose Condominium Unit or Units have been taken in whole or in part, at a price equal to the fair

market value of such Condominium Unit or Units as of the date immediately preceding the condemnation thereof. Such price shall be determined by Majority vote of three (3) appraisers, one of whom shall be selected by the Owner or Owners affected, one of whom shall be selected by the Board of Directors and the third of whom shall be selected by the two (2) appraisers so selected. All appraisers so selected shall be members of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such institute is not then in existence), disinterested, have at least ten (10) years experience in the appraisal of real estate, be familiar with property values in the metropolitan Raleigh, North Carolina area, and have reasonable experience in the appraisal of Condominium Units.

(ii) After acquisition of the Condominium Unit or Units as aforesaid, the undivided interest in the Common Areas and Facilities, Votes in the Association and share of liability for Common Expenses appertaining to such Condominium Units shall thenceforth appertain to the remaining Condominium Units on the basis of an equal share per Unit. The method of distributing the remainder of the condemnation award, if any, shall be determined by the Board of Directors.

11.3 Rights of Third Parties. This Declaration shall be recorded pursuant to the provisions of the Act for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or other person shall have any right, title or interest whatsoever in the Condominium or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and such Mortgagees as herein provided, the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provision of this Declaration without the consent, permission or approval of any adjoining owner or third person.

11.4 Termination. The Common Areas and Facilities shall remain undivided, and unless the Condominium form of ownership hereby established is terminated in accordance with Section 47A-16 of the Act, no Owner nor any other person shall bring any action for partition or division of the whole or any part of any Condominium Unit or of the whole or any part of the Common Areas and Facilities. This provision is in addition to, and not in lieu of, Section 47A-7 of the Act. The Condominium may be terminated or abandoned only by the agreement of all Owners, provided that all holders of Mortgages encumbering the Condominium Units consent thereto and agree in accordance with Section 47A-16 of the Act.

11.5 Enforcement. Each Owner shall comply strictly with the provisions of the Condominium Instruments and rules and regulations of the Association. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or, in a proper case, any aggrieved Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other reme-

dies, the Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Common Areas and Facilities, including any Limited Common Areas and Facilities, where a violation exists and, at the expense of the violating Owner, abate or remove any erection, thing or condition that may be or exist contrary to the intent and meaning of the Condominium Instruments or rules and regulations, if after notice and hearing as set forth in the Bylaws, it shall not have been corrected by such Owner. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of the Association, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Condominium Instruments and rules and regulations is essential for the protection of present and future Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association or, in any proper case, any aggrieved Owner or Owners, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure or omission on the part of the Association or any aggrieved Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association or its Officers or Directors for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulations, however long continued, or for the imposing of provisions which may be unenforceable.

11.6 Exhibits. All exhibits referred to in and attached to this Declaration or any other Condominium Instrument are hereby incorporated in this Declaration or such other Condominium Instrument in full by this reference.

11.7 Duration. Unless the Condominium is terminated as herein otherwise provided, the provisions of this Declaration shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and Mortgagees, their heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of twenty (20) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended perpetually for successive periods of ten (10) years, to the extent permitted by North Carolina law.

11.8 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of the

Condominium. The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date it is filed for record. In the event of any conflicts or inconsistencies between the Act, this Declaration or the Bylaws, the terms and provisions of the Act and this Declaration, in that order, shall prevail.

11.9 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 Rights of Mortgagees and Unit Owners. In addition to the rights of Mortgagees elsewhere provided, each Mortgagee and each Unit Owner shall: (a) be entitled to written notice from the Association of any default by an Owner in the performance of his obligations under the Condominium Instruments which is not cured within sixty (60) days specifically including any delinquency in payment of an Assessment; (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of Owners, but not meetings of the Board of Directors; (c) be entitled to receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which a Mortgagee holds a Mortgage; (d) be entitled to receive thirty (30) days prior written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (e) be entitled to receive written notice of any proposed action which would require the consent of a specified percentage of the Mortgagees; and (f) be furnished copies of annual financial reports within 120 days after the end of the Association's fiscal year; provided, however, that such Owner or Mortgagee shall first file with the Association a written request (setting forth the name of such Owner or Mortgagee and the Unit Designation of the Unit with respect to which such request is made) that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of the Mortgagee or Owner at an address stated in such notice. Further, each Mortgagee and Unit Owner shall, upon request, be entitled to inspect the books, records and financial statements of the Association (including the Condominium Instruments and other documents) during normal business hours. Any First Mortgagee shall, upon written request, be entitled to an audited financial statement of the Association for the immediately preceding fiscal year, free of charge to the First Mortgagee so requesting it.

11.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

11.12 Captions. The captions of each Article and Section hereof as to its contents are inserted only for convenience and are in no way to be construed as defining, extending or otherwise modifying or adding to the particular Article or Section.

11.13 Restrictions on Other Actions. Notwithstanding anything to the contrary contained in the Condominium Instruments, except as provided by the Act in case of substantial loss to the Units or termination and as provided herein in the case of condemnation, termination, partition or in the case of substantial loss to the Common Areas and Facilities, unless at least two-thirds (2/3's) of the First Mortgagees (based upon one vote for each First Mortgage owned) and Owners (other than the Declarant) of the Condominium Units have given their prior written approval, neither the Association nor the Owners shall be entitled to:

11.13.1 By act or omission, seek to abandon or terminate the Condominium.

11.13.2 Except for special assessments levied pursuant to Section 6.3 hereof, and except for the distribution of hazard insurance proceeds pursuant to paragraph 9.3.2 hereof, change the prorata interest or obligations of any Condominium Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the prorata share of ownership of each Condominium Unit in the Common Areas and Facilities.

11.13.3 By act or omission, seek to encumber, sell or transfer the Common Areas and Facilities, except in the case of reassignment of Limited Common Areas and Facilities pursuant to Section 3.6 hereof (neither the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities by the Condominium nor the transfer, sale or encumbrance of an undivided interest in the Common Areas and Facilities, as an appurtenance to a Unit, shall be deemed a transfer within the meaning of this subparagraph).

11.13.4 Use hazard insurance proceeds for losses to any part of the Submitted Property (whether to Units or to Common Areas and Facilities) for other than the repair, replacement or reconstruction of such Submitted Property.

Notwithstanding anything to the contrary contained in the Condominium Instruments, during the initial twenty (20) year period hereof commencing on the date of recordation the provisions of this Section may be amended only by the affirmative Vote of Owners having at least ninety percent (90%) of the total Vote of the Association and thereafter, by the affirmative Vote of Owners having at least seventy-five (75%) of the total Vote of the Association and at all times also by at least two-thirds (2/3rds) of the First Mortgagees (based on one vote for each First Mortgage).

11.14 Person to Receive Service of Process. Charles Gordon Brown is designated as the registered agent of the Association in the Articles of Incorporation and therefore shall receive service of process in any action which may be brought against or in relation to the Condominium as agent therefor. His address for such purpose is Suite 100, One West Franklin Building, 105 North Columbia Street, Chapel Hill, North Carolina 27514.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal as of the day and year first above written.

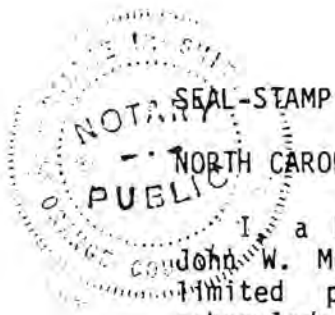
DGI ASSOCIATES II, a North Carolina limited partnership

By: [Signature] (SEAL)
John W. Morgan, general partner

By: THE DEVELOPMENT GROUP, INC., a South Carolina corporation, general partner

By: [Signature]
John W. Morgan, President

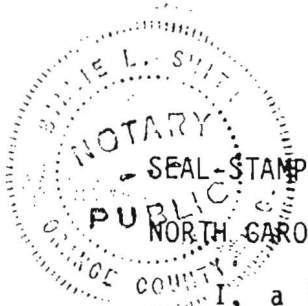
Attest: William W. Bunch III
William W. Bunch, III, Assistant Secretary



I, a Notary Public of the County and State aforesaid, certify that John W. Morgan, general partner of DGI Associates II, a North Carolina limited partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of FEBRUARY, 1986.

Belle J. Smith
NOTARY PUBLIC

My commission expires: 11-13-90



NORTH CAROLINA, ORANGE County.

I, a Notary Public of the County and State aforesaid, certify that William W. Bunch, III, personally came before me this day and acknowledged that he is Assistant Secretary of The Development Group, Inc., a South Carolina corporation, which executed the foregoing instrument as general partner of DGI Associates II, a North Carolina limited partnership, and that by authority duly given and as the act of the corporation as general partner, the foregoing instrument was signed in its name by its President sealed with its corporate seal and attested by him as its Assistant Secretary. Witness my hand and official stamp or seal, this 21 day of FEBRUARY, 1986.

Billie L. Smith
NOTARY PUBLIC

My commission expires: 11-13-90

NORTH CAROLINA - ORANGE COUNTY

The foregoing certificate(s) of _____
Billie L. Smith,

A Notary ~~(or Notaries)~~ Public of the designated Governmental units ~~is~~(are) certified to be correct. Filed for registration this the 21st day of February 19 86, at 1:45 o'clock, PM
in Record Book 558 Page 482.

Return: _____

Betty June Hayes, Register of Deeds
By: Deborah B. Broad
Assistant/Deputy
Register of Deeds

EXHIBIT A
TO DECLARATION OF CONDOMINIUM
SUBMITTED PROPERTY

All that certain tract or parcel of land located in Chapel Hill Township, Orange County, North Carolina, more particularly described as follows:

BEGINNING at an existing iron pipe located in the eastern margin of the 100 foot wide right-of-way of Airport Road, which point is the same as the southwestern corner (control corner) of the property shown on plat recorded in Plat Book 39, Page 184, Orange County Registry, running thence from such point of BEGINNING, South $86^{\circ} 09' 58''$ East 195.80 feet to a point; running thence North $04^{\circ} 20' 05''$ West 136.41 feet to a point; running thence South $88^{\circ} 48' 44''$ West 46.00 feet to a point; running thence North $73^{\circ} 11' 17''$ West 24.50 feet to a point; running thence North $16^{\circ} 48' 44''$ East 4.00 feet to a point; running thence North $72^{\circ} 49' 46''$ West 31.36 feet to a point; running thence South $22^{\circ} 23' 09''$ West 4.00 feet to a point; running thence North $67^{\circ} 36' 11''$ West 38.85 feet to a point in the eastern margin of the right-of-way of Airport Road; running thence with and along such right-of-way along the arc of a curve to the left (counterclockwise direction) with a radius of 2792.72 feet, an arc distance of 161.03 feet to an existing iron pipe, the point and place of BEGINNING, and being all of Phase 1, Mill Creek, containing 0.545 acres, all as shown in Plat Book 43, Page 170, Orange County Registry.

EXHIBIT B
TO DECLARATION OF CONDOMINIUM
ADDITIONAL PROPERTY

All that certain tract or parcel of land located in Chapel Hill Township, Orange County, North Carolina, more particularly described as follows:

BEGINNING at a point located South 86° 09' 58" East 195.80 feet from the southwestern corner (control corner) of the property shown on plat recorded in Plat Book 39, Page 184, Orange County Registry, running thence from such point of BEGINNING, South 86° 09' 58" East 189.69 feet to a point; running thence North 12° 00' 00" East 41.11 feet to a point; running thence South 89° 31' 02" East 319.23 feet to a point; running thence North 28° 51' 24" East 339.73 feet to a point; running thence North 12° 54' 36" West 281.70 feet to a point; running thence North 10° 14' 39" East 75.60 feet to a point; running thence North 55° 51' 50" West 10.75 feet to a point; running thence South 42° 51' 34" West 164.00 feet to a point; running thence North 88° 39' 58" West 199.72 feet to a point; running thence North 67° 59' 17" West 251.77 feet to a point in the eastern margin of the 100 foot wide right-of-way of Airport Road; running thence with and along such right-of-way, South 27° 21' 24" West 156.41 feet to a point; running thence along the arc of a curve to the left (counterclockwise direction) with a radius of 2792.72 feet, an arc distance of 382.78 feet to a point; running thence South 67° 36' 11" East 38.85 feet to a point; running thence North 22° 23' 09" East 4.00 feet to a point; running thence South 72° 49' 46" East 31.36 feet to a point; running thence South 16° 48' 44" West 4.00 feet to a point; running thence South 73° 11' 17" East 24.50 feet to a point; running thence North 88° 48' 44" East 46.00 feet to a point; running thence South 04° 20' 05" East 136.41 feet to a point, the point and place of BEGINNING.

EASEMENT

All that certain "Private 50 foot Easement" as shown in Plat Book 39, Page 184, Orange County Registry, and being the same Easement set forth in Book 483, Page 32, Orange County Registry.

EXHIBIT C
TO
DECLARATION OF CONDOMINIUM
SCHEDULE OF UNIT INFORMATION

This exhibit sets forth for each Condominium Unit its Identifying Number, Size, and undivided interest in the Common Areas and Facilities, weight of the Vote in the Association, and share of liability for Common Expenses.

<u>Unit Identifying Number</u>	<u>Size</u>	<u>Unit Type</u>	<u>Percentage of Common Areas and Facilities, Vote and Common Expenses</u>
A-1	1071 sq. ft.	II reversed with bay window	9.965
A-2	1055	II reversed	9.759
A-3	1055	II	9.700
A-4	1055	II reversed	9.759
A-5	1071	II with bay window	9.935
A-6	1071	I reversed with bay window	10.317
A-7	1055	I reversed	10.112
A-8	1055	I	10.053
A-9	1055	I reversed	10.112
A-10	1071	I with bay window	<u>10.288</u>
			100.00%

For information, Units A-1 through A-10 are located in Building A.

This instrument prepared by and return
to: William W. Bunch, III, Faison,
Brown, Fletcher, Shearon & Brough,
P.O. Box 1210,
Chapel Hill, North Carolina 27514

ARTICLES OF INCORPORATION

OF

MILL CREEK CONDOMINIUM ASSOCIATION, INC.

The undersigned, being of the age of eighteen years or more, does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the laws of the State of North Carolina.

ARTICLE I

NAME

The name of the corporation is MILL CREEK CONDOMINIUM ASSOCIATION, INC., hereafter called the "Association".

ARTICLE II

DURATION

The Association's period of duration shall be concurrent with the period during which that certain Declaration of Condominium for Mill Creek, A Condominium, which shall be recorded in the Orange County Registry, (hereinafter referred to as the "Declaration") shall affect or restrict the use of the Submitted Property described therein or until the Association shall be sooner terminated pursuant to these Articles. The Submitted Property is described in Exhibit A attached hereto and incorporated herein by this reference. All definitions set forth in Article 1 of the Declaration shall have the same meanings as set forth therein in these Articles of Incorporation.

ARTICLE IIIREGISTERED OFFICE AND AGENT

The address of the initial registered office of the Association is Suite 100, One West Franklin Building, 105 North Columbia Street, Chapel Hill, Orange County, North Carolina 27514. The name of the initial registered agent at that address is Charles Gordon Brown.

ARTICLE IVPURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, management, preservation and architectural control of the Submitted Property, as it may exist from time to time, which is subject to the Declaration and to promote the health, safety and welfare of the Owners within the Submitted Property, as it may exist from time to time, and to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration and as the same may be amended from time to time as therein provided:

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) borrow money, and, with the assent of two-thirds (2/3rds) of the Owners and Mortgagees, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) dedicate, sell or transfer all or any part of the Common Areas and Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners, but no such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3rds) of the Owners and First Mortgagees, agreeing to such dedication, sale or transfer (neither the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities by the Condominium nor the transfer, sale or encumbrance of an undivided interest in the Common Areas and Facilities, as an appurtenance to a Unit, shall be deemed a dedication, sale or transfer within the meaning of this subparagraph);

(f) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall be effected as provided in the Declaration;

(g) have and to exercise any and all powers, rights and privileges which a corporation organized under the North Carolina Nonprofit Corporation Act N.C.G.S. §55A-1, et. seq., by law may now or hereafter have

or exercise.

The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

ARTICLE V

NONPROFIT ASSOCIATION

No part of the net earnings of the Association shall inure to the benefit of any Officer, Director or member of the Association. All funds and property acquired by the Association and the proceeds therefrom shall be held only for the benefit of the members of the Association in accordance with the provisions of the Declaration.

ARTICLE VI

MEMBERSHIP

Every person or entity who is a record Owner of a fee or undivided fee interest in any Condominium Unit shall be a member of the Association and no other persons shall be entitled to membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in any Condominium Unit merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Condominium Unit which is subject to Assessment by the Association.

ARTICLE VII

BOARD OF DIRECTORS

During the Declarant Control Period the affairs of this Association shall be managed by a Board of three (3) Directors, who need not be Unit Owners. After the expiration of the Declarant Control Period, the Board

shall consist of five (5) Directors who must each be a Unit Owner. The number of directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of the initial directors until the selection of their successors at the first meeting of the Association are:

<u>DIRECTOR</u>	<u>ADDRESS</u>
A. Stevenson Mitchener	C-2, 211 Church Street Chapel Hill, North Carolina 27514
William W. Bunch, III	Suite 100, One West Franklin Building 105 North Columbia Street Chapel Hill, North Carolina 27514
John W. Morgan	2008 Lincoln Street Columbia, South Carolina 29202

ARTICLE VIII

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3rds) of the Owners and First Mortgagees. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE IX

AMENDMENTS

Amendment of these Articles of Incorporation shall require the affirmative Vote of the Owners having at least seventy-five percent (75%) of the total Vote of the Association.

ARTICLE X

INCORPORATOR

The name and address of the incorporator of the Association is: William W. Bunch, III, Suite 100, One West Franklin Building, 105 North Columbia Street, Chapel Hill, Orange County, North Carolina 27514.

IN WITNESS WHEREOF, I have set my hand and seal this the _____ day of _____, 1985.

William W. Bunch, III (SEAL)

STATE OF NORTH CAROLINA
COUNTY OF _____

THIS IS TO CERTIFY that on the _____ day of _____, 1985, before me, a Notary Public, personally appeared William W. Bunch, III, who I know to be the person named in and who executed the foregoing Articles of Incorporation of Mill Creek Condominium Association, Inc., a corporation not for profit, and I have first made known to him the contents thereof, he did acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this the _____ day of _____, 1985.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A

All that certain tract or parcel of land located in Chapel Hill Township, Orange County, North Carolina, more particularly described as follows:

BEGINNING at an existing iron pipe located in the eastern margin of the 100 foot wide right-of-way of Airport Road, which point is the same as the southwestern corner (control corner) of the property shown on plat recorded in Plat Book 39, Page 184, Orange County Registry, running thence from such point of BEGINNING, South 86° 09' 58" East 195.80 feet to a point; running thence North 04° 20' 05" West 136.41 feet to a point; running thence South 88° 48' 44" West 46.00 feet to a point; running thence North 73° 11' 17" West 24.50 feet to a point; running thence North 16° 48' 44" East 4.00 feet to a point; running thence North 72° 49' 46" West 31.36 feet to a point; running thence South 22° 23' 09" West 4.00 feet to a point; running thence North 67° 36' 11" West 38.85 feet to a point in the eastern margin of the right-of-way of Airport Road; running thence with and along such right-of-way along the arc of a curve to the left (counterclockwise direction) with a radius of 2792.72 feet, an arc distance of 161.03 feet to an existing iron pipe, the point and place of BEGINNING, and being all of Phase 1, Mill Creek, containing 0.545 acres, all as shown in Plat Book _____, Page _____, Orange County Registry.