

DECLARATION OF CONDOMINIUM
FOR
EMERALD POINT CONDOMINIUM
PHASE I

Prepared by

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PRESENTED
FOR
REGISTRATION
OCT 16 1:47PM '85
CHARLES E. CROWDER
REGISTER OF DEEDS
MECKLENBURG CO. N.C.

DECLARATION OF

EMERALD POINT CONDOMINIUM - PHASE I

This Declaration, made this 15 day of October 1985, by ENDERBY DEVELOPMENT ASSOCIATES, INC., a North Carolina corporation with its principal place of business in Charlotte, Mecklenburg County, North Carolina, hereinafter referred to as "Declarant" or "Developer" pursuant to the provisions of the North Carolina Unit ownership 41ct (the "Unit Ownership Act").

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property, more particularly described in Exhibit "A", attached hereto; and

WHEREAS, the Declarant has constructed a multi-unit residential building and other improvements on a portion of the said property, said portion of the real property improvements being hereinafter referred to as "Condominium Property"; and

WHEREAS; it is the desire and intention of the Declarant to divide the said property shown into "Condominium Units" or "Units", as those terms are defined by the provisions of the Unit Ownership Act, and to sell and convey the same to various purchasers subject to the covenants, conditions, easements, uses, limitations and restrictions contained herein; and reserving the right to add to such condominium the balance, or certain portions of the balance,, of the property described in Exhibit "B"; and

WHEREAS, the Declarant desires and intends, by the filing of this Declaration to submit the said condominium property, and the buildings and other improvements constructed thereon, together with all appurtenances thereto, to condominium ownership under the provisions of the North Carolina Unit Ownership Act (Chapter 47 of the North Carolina General Statutes);

NOW, THEREFORE,' the Declarant, on its behalf,, its successors and assigns and any and all persons or entities having or requiring any interest in the condominium property, does hereby *publish* and declare that the said condominium property and all property described in any supplemental declaration, recorded as herein provided and made subject to this Declaration, as held and shall be held, conveyed, hypothecated, encumbered, used, occupied and approved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said land and the division thereof into condominium units and shall be deemed to run with the land and shall be a burden and benefit to the Declarant, its successors and assigns, and persons acquiring or owning interest and interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns. Every grantee of any interest in such property by acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in writing, shall take subject to the provisions of the Unit Ownership Act, and this declaration and any supplemental declaration,, and shall be deemed to have consented to the same.

1. NAME OF CONDOMINIUM. The name of the condominium property is Emerald Point Condominium.

2. ESTABLISHMENT OF CONDOMINIUM; DESCRIPTION OF LAND AND BUILDINGS. Phase I is the first condominium phase of a series of twelve (12) condominium phases which the Declarant proposes to create. Each of these phases, if they are developed, will be located within (but not necessary encompassing all of) the real property described in Exhibit "A", attached hereto and incorporated by reference. These condominiums are being developed. under a common plan which includes this Declaration, and the features included herein, including common and recreational facilities and providing of maintenance and other services through a common administration. Each parcel or tract of land with the improvements thereon are to be placed thereon, which may be submitted to the condominium form of ownership pursuant to this common plan, shall constitute an addition to the original condominium. The first phase, which is encompassed by this Declaration, shall be designated "Emerald Point Condominiums, Phase I and any additional parcel or tract of land submitted to this condominium. form of ownership shall be designated consecutively as "Emerald Point Condominiums, Phase II" up through and including "Emerald Point Condominiums, Phase XII". There shall also be formed a non-profit corporation bearing the name The Emerald Point Condominium Homeowners Association, which shall have authority and responsibility for the operation and administration of condominium and all of its dedicated phases. This association is formed to operate and administer the various forms of the condominium under the common plan. The duties, responsibilities and the authority of the Emerald Point Homeowners Association, Inc., shall be as described in this declaration, and *ts Articles of Incorporation and Bylaws.

By this Declaration, Declarant hereby submits the real property, Which is more particularly described in Exhibit "B" (said property being a portion of the property described in Exhibit "A") , said Exhibit "B" is attached hereto and incorporated by this reference, and the improvements located thereon, to condominium ownership under the provisions of the Unit Ownership Act, and hereby declares the same to be a condominium to be known and identified as Emerald Point Condominium, Phase I, which shall contain and consist of one three story frame building, consisting of 12 living units, the supporting facilities and other appurtenant improvements, said units are constructed partially on a concrete slab and partially wood floor joist and gypsum concrete material. The buildings are constructed of wood frame and cedar shingle siding materials, and the ground floors and patios are poured concrete. The roof contains asphalt roofing shingles, and there are basements included in certain of the units, as shown by the attached plan. Each condominium unit shall have sufficient parking space to accommodate at least two automobiles, and the various unit owners shall have the right: to use, for at least two automobiles, such space. If additional phases are built, this Declaration shall be amended to submit any such phases to this Declaration and The Emerald Point Condominium Homeowners Association, Inc.

The building in Phase I, and its location, is more particularly described in the Plans and Specifications thereof, a copy of which is attached hereto and made a part hereof as Exhibit "C", showing all particulars of the building, including, but not limited to, the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, and bearing the seal of Harold Cooler, AIA, Registered Architect. Said plans are incorporated by reference and designated herein "Plans".

3. SURVEY AND DESCRIPTION OF IMPROVMENT; UNIT DESIGNATION AND PLANS. Filed simultaneously herewith and expressly made apart hereof as unit ownership file number _____ (hereinafter "Unit Ownership File"), consisting of ____ pages is a survey and graphic descriptions and plans of the improvements consisting of the condominium and identifying the condominium units, common areas and other facilities. These plans are as described above in Article 2.

Each condominium unit is identified by specific numerical designation on the said Unit Ownership File, and no condominium unit bears the name designation as any other condominium unit. If the Declaration is amended to add additional phases, Declarant shall file additional surveys and plans as part of the amendment.

4. DEFINITIONS. The condominium consists of condominium units and common areas and facilities, as said terms are hereinafter defined.

A. Within the said building are 12 separate numerically identified dwelling units, as shown on the plans and in the Unit Ownership File (along with any subsequent additions). A unit is bounded horizontally by its perimeter walls as, measured from inside face of stud wall to inside face of stud wall, and vertically by its ceiling and floor as measured from top of floor joist to bottom of ceiling joist, including all windows and doors located in the walls of said unit. The immediate common area to which each unit has access is the front entrance stoop and stairway adjoining such unit as shown on the plans. Provided, however, the said condominium units do not include the space and improvements which lie beneath the sub-flooring material of all floors, beneath the exterior surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions, and above the interior surfacing materials of the ceilings. For purposes of maintenance, repair and replacement, all those portions of the heating and air conditioning systems which provide service solely to an individual Unit, as well as electrical, water and utility meters which, shall be appurtenant to an individual Unit, shall be considered a part of such Unit whether such systems or their components are located within or without the walls, floors and ceiling of such Unit. Furthermore, excluded are all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to condominium units and common areas and facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior surfacing materials for walls and ceilings and sub-flooring surfacing materials for floors. All pipes, ducts, wires, conduits and other facilities within the interior surfacing materials shall be a part of the respective condominium unit. The decoration and painting of the exterior surface of doors and window frames shall be the responsibility of the Association, as hereinafter defined; however, the maintenance and operation of such doors, windows and window frames shall be the responsibility of the individual condominium unit owner. The common area and facilities shall comprise all of the real property, improvements and facilities of the condominium other than the condominium units, the limited common areas, as described below, and all personal property held and maintained for the use and enjoyment of all the owners of condominium units. The common areas and facilities include, without limitation, the following:

1. The land, yards, gardens, landscaping, parking and driveway areas, swimming pool, tennis courts, club house, roofs, basements, crawl spaces, exterior walls, interior walls between units, and every other part of the buildings and land other than the units.

2. All foundations, columns, gutters, beams and supports and other structural members.

3. All central and appurtenant installations, equipment, motors, pumps, tanks, boilers and other apparatus on the property, excepting the systems, and any utility Meters, described hereinabove which provide service solely to an individual unit.

4. Easements for access, maintenance, repair, reconstruction or replacement of the foregoing structural members, equipment, installations and appurtenances and for all other services necessary or convenient to the existence, maintenance, safety and use of the property.

Provided however, that nothing in this section shall be construed to prohibit The Emerald Point Condominium Homeowners Association from assigning to each unit owner parking spaces in the parking area located on the property or for making any rules or regulations as may be designated and intended to serve the common good and convenience of the unit owners. The unit owners shall have an undivided interest in and to the common areas as described in Section 5 hereof.

B. With the common areas and facilities there are reserved for the use of a particular condominium unit to the exclusion of other units areas which are designated as "Limited Common Areas and Facilities". Limited Common Areas and Facilities and the condominium units to which they are reserved are as follows:

1. Patio or deck upstairs and storage sheds adjoining each unit as shown on the plans and surveys of dwelling units.
2. Courtyards, patios and other storage rooms and other facilities appurtenant to each of the units as shown on the plans.
3. Entrance hallways and stairways as shown on the plans.

The unit owners are hereby granted an exclusive and irrevocable license to use and occupy the limited common areas and facilities as defined above, and as are associated with such unit owner's, unit. Such unit shall maintain the cleanliness, orderliness, maintenance, repair and replacement of the said Limited Common Areas and Facilities and shall be their sole responsibility, but the responsibility for painting, together with control over the exterior decoration, shall remain with the Association.

C. Unless it is plainly evident from the context of this Declaration that a different meaning is intended, the terms defined in Section 3 of the Unit Ownership Act., being Section 47A-3 of the North Carolina General Statutes, shall have the meaning set forth therein. The terms "seventy-five percent of the members" or "seventy-five percent of the membership" (or 3/4 in lieu of seventy-five percent), when used in the context of membership voting rights, shall mean the owners of at least 75% of the aggregate interest in the common areas and facilities.

5. OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY. Each condominium unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each said condominium unit, an undivided interest in the common property. The undivided interest appurtenant to each condominium unit shall be as set out in Exhibit "D" attached hereto and made a part hereof. The proportional interest in the common property that is appurtenant to each condominium unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each unit at the date of the Declaration bears to the then aggregate fair market value of all of the Units having an interest in the Common Property. The fair market value of each Unit and the aggregate fair market value of all the Units have been determined by the Developer, and are binding upon all Unit Owners.

The Developer intends, but does not obligate itself, to add additional phases to the Condominium. If said phases are built, they will be built in substantially the same manner as Phase I. An Amendment to Declaration shall be made to bring Phase II and any other subsequent phases under this Declaration and the appurtenant undivided interest of each owner in the total common property shall decrease, upon the filing of the amendment for such phase and shall be in accord with the schedule contained therein. The percentage of each unit's undivided interest in the common property shall be determined in accord with the above formula and N.C.G.S. S 47A-6, it shall be the ratio formulated upon the approximate relation that the fair market value of each unit at the date of this Declaration (not the date of any subsequent or supplemental declaration, amendment or supplemental declaration) to the then aggregate fair market value of all of the Units having an interest in the common property. The Developer shall determine the fair market value of all units and the aggregate fair market value of all the units, and these determinations shall be binding upon all Unit Owners.

6. RESTRICTION AGAINST FURTHER SUBDIVISION OF CONDOMINIUM UNITS: SEPARATE CONVEYANCE OF APPURTENANT COMMON PROPERTY PROHIBITED. No Condominium Unit may be divided or subdivided into a smaller Unit or Units than as shown in the Unit Ownership File nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Property appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null and void insofar as it purports to affect any interest in a Condominium Unit and its appurtenant undivided interest in Common Property, unless it purports to convey, devise, or encumber the entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which describes each Condominium Unit by the numerical designation assigned thereto in the Unit Ownership File shall be construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. No limitation is placed on the ownership of any Condominium Unit by any person as tenants in common, joint tenants, or as tenants by the entirety.

7. THE CONDOMINIUM SUBJECT TO RESTRICTIONS. The Condominium Units, Common Property and Limited Common Areas are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Common Property and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Property, and said Condominium Units, Common Property and Limited Common Areas are further declared to be subject to the restrictions, easement, conditions, and limitations now of record affecting the land and improvements of the Condominium.

8. PERPETUAL NON-EXCLUSIVE EASIMENT IN COMMON PROPERTY. The Common Property is hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the Owners of Condominium Units for their use and the use of their immediate families, guests and invitees, for all property purposes, and for the furnishing of services and facilities for which they are intended, and for the enjoyment of the Owners. Notwithstanding the foregoing, the Association, hereinafter defined, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to assign parking spaces, and to establish regulations concerning their use and maintenance.

9. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the common Property or upon a Condominium Unit for as long as such encroachment shall naturally exist; and, in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium Unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if, upon reconstruction of such Unit and/or Common Property in accordance with

Paragraph 22 hereof, there exist encroachments of portions of the Common Property upon any Condominium unit, or of any Condominium upon any other Condominium Unit or upon any portion of the Common Property, then such encroachment shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

10. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON PROPERTY.

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the common Property in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division thereof.

11. ADMINISTRATION OF THE CONDOMINIUM BY EMERALD POINT HOMEOWNERS ASSOCIATION. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina corporation known and designated as THE EMERALD POINT HOMEOWNERS ASSOCIATION, INC. (herein "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of said Bylaws and Articles of incorporation are annexed hereto and expressly made a part hereof as Exhibits "E" and "F", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of how such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest.

12. RESIDENTIAL USE RESTRICTIONS-; APPLICABLE TO CONDOMINILM UNITS.

A. Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invitees and lessees. With the exception of a Lender in possession of a Condominium Unit. Following a default in a first deed of trust, a foreclosure proceeding or any deed in lieu of foreclosure, no Unit Owner shall lease his Unit for transient, hotel or commercial purposes. No Unit Owner may lease less than the entire Unit. Any lease agreement must provide that it shall be subject to the provisions of this Declaration, and that any failure by the lessee to comply with the terms hereof shall be a default under the lease, and shall be in writing. There is no other restriction on the right of any Unit Owner to lease his Unit.

B. Construction and Sale. Anything contained herein to the contrary notwithstanding, it shall be permissible for the Declarant to maintain during the period of construction and sale of units upon such portion of the property as Declarant may deem necessary, such facilities as in the sole discretion of the Declarant may be reasonably required, convenient, or incidental to the construction and sale of units, including, but without limitation, a business office, 'storage area, construction yard, signs, model units and sales offices.

C. Business Activities. No business activities shall be conducted on any portion of the property; provided, however, the foregoing restrictions shall not apply to the Declarant as provided above; provided, further, private offices may be maintained in a unit so long as such use is incidental to the primary residential use of the unit and is approved by the Board of Directors.

D. Motor Vehicles. No motor vehicle (other than private passenger vehicles) boat, trailer, mobile home, motor home, trailer or any similar items shall be stored in or upon the common Areas and Facilities, unless placed upon a portion of the Common Areas and Facilities which may be designated from time to time by the Board for the storage of such items.

E. Signs. No signs or other advertising devices shall be displayed which are visible from the exterior of any unit or on the Common Areas and Facilities other than a "For Sale" or "For Rent" sign no larger than 24 inches by 36 inches placed in a window, without written permission from the Board; except that the Declarant is exempt from this provision as provided above.

F. Prohibitions in Use of Common Areas and Facilities. Except on specific approval of the Board, the Common Areas and Facilities, including Limited Common Areas, shall not be used for temporary or permanent storage of supplies, personal property, trash or refuse of any kind, except in common trash receptacles placed at the discretion of the Board, nor shall they be used in anyway for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activities shall be carried on nor condition maintained by any unit owner either in his unit or upon the Common Areas and Facilities, if such activities should despoil, or tend to despoil, the appearance of the Condominium Property. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all owners on the condominium property and is necessary for the protection of the unit owners and is enforceable by the Board or any one or more unit owners.

G. Animals. No animal shall be kept on the Condominium Property, except for small household pets. Such pets may not be kept or bred for any commercial purpose and shall have such restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions or other nuisance. No savage or dangerous animal shall be kept or permitted on the condominium Property. No more than two household pets may be housed within a unit without written permission of the Board. No pets may be permitted to run loose upon the Common Areas and Facilities, and any unit owner who causes or permits any animal to be brought or kept upon the Condominium Property shall indemnify and hold the Association harmless for and from any loss, damage or liability which it sustains as a result of the presence of such animal on the Condominium Property, regardless of whether the Association or the Board has given its permission thereof.

H. Nuisances. No nuisances shall be allowed upon the Condominium Property and no person shall engage in any use, practice, or activity upon such property which is noxious, offensive or a source of annoyance to unit owners or which reasonably interferes with the peaceful possession and proper use of the property by any unit owner. All parts of the property shall be kept in a clean and sanitary condition; and no rubbish, refuse or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any unit owner (or his family, tenants, guest or agents) who shall dump or place any trash or debris upon any portion of the property shall be liable to the Association for the actual cost of removal or the sum of \$25.00, whichever is greater, and the same shall be added to and become a part of the assessment next coming due to which the unit owner is subject. No unit owner shall permit: any use of his unit or make any use of the Common Areas and Facilities which will increase the rate of insurance upon the Condominium Property.

I. Lawful Use. No unlawful use shall be made of the Condominium property nor any part thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof shall be observed

J. Rules and Regulations. The Board may from time to time promulgate reasonable rules and regulations respecting the restrictive covenants set out in this Section 12, but such rules and regulations shall be consistent with these restrictions and not in derogation or intended as an amendment thereof.

13. USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION. The use and maintenance of all Common Property by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established by the Association.

14. THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES: RESTRICTION AGAINST NUISANCES. No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interfere with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

15. RIGHT OF ENTRY INTO COMDOMINIUM UNITS IN EMERGENCIES AND FOR MAINTENANCE OF COMMON PROPERTY. In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by either, shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit other Owners or their representatives, or an agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

16. LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS: NO RIGHT TO ALTER COMMON PROPERTY. No Owner of a Condominium Unit shall permit any structural modification or alteration to be made to such Condominium Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association; shall determine that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects or machines which may protrude through the walls or roof of the Condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first obtained. No Unit Owner shall cause any object to be fixed to the Common Property or to any Limited Common Property (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the Common Property or Limited Common Property without the written

consent of the Association being first obtained. Each unit owner shall be responsible for keeping the Limited Common Areas and Facilities under his control and dominion in a neat, sightly and proper manner. This shall not impose upon the unit owner the obligation to maintain or repair any structural or other similar item on property located within the Limited Common Areas and Facilities assigned to his unit, unless the damage is caused intentionally or negligently by the unit owner or his family, guests, invitees or agents.

17. LIMITATION UPON RIGHT OF OWNERS TO ALTER OR MODIFY PLUMBING AND WATER FIXTURES. In accordance with this Section, each Owner shall use only the required water conservation plumbing fixtures as shown on Architect's and Engineer's plans for these units and no other plumbing fixtures shall be added. The Developer and/or The Emerald Point Homeowners Association, Inc. shall reserve the right to remove any water meter and shut off water service to any unit owner who does not use the plumbing fixtures specified in this Section.

18. RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON PROPERTY AND ASSESSMENT THEREFOR. The Association shall have the right to make such alterations or improvements to the Common Property which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association and their costs shall be common expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Condominium Unit or Units requesting them, then the cost of such alterations or improvements shall assessed against and collected solely from the Owner or Owner s of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association. The Association shall also have the right to grant permits, licenses, and easements over the common areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

19. MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS. Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit shall be liable and responsible for the maintenance, repair and replacement of all heating and air conditioning equipment, regardless of where located, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings- and floors within his Unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair and replacement of any item for which the Owner is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which maybe covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement:. The Owner of a Condominium Unit who has exclusive use of any Limited Common Area shall maintain such at his own expense. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective unit owners.

20. MAINTENANCE AND REPAIR OF COMMON PROPERTY BY THE ASSOCIATION. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property for the furnishing of utility, heating and other services to the Condominium Units and said Common Property, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests or licensees, or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

21. AUTHORITY TO PURCHASE INSURANCE. Insurance policies upon the Property (except title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association, as Trustees for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above if available.

22. INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE PROCEEDS.

A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property:

(1) Casualty insurance covering the buildings and all improvements upon the land and all personal property subject to this Declaration and any additions added by amendment, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage; and provided that such policies may be written on a co-insurance basis if not less than eighty (80%) percent. If co-insurance is purchased by the Association, an insurance policy with an agreed amount endorsement or its equivalent will be obtained. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

(2) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, including legal liability, hired automobile, non-owned automobile and off-premises employee coverages.

(3) All liability insurance shall contain cross liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.

(4) Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

B. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as Common Expense.

C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of the Association, the Condominium Unit Owners and their respective mortgagees in the following shares:

(1) Proceeds on account of damage to Common Property: in undivided shares for each Condominium Unit Owner and his mortgagee, if any, which is set forth as the Condominium Unit Owner's share as then exists under Paragraph 4 of this Declaration.

(2) Proceeds on account of damage to Condominium Units shall be held in the following undivided shares:

(a) Partial destruction when the Condominium is to be restored: for the Owners of damaged Condominium Units in proportion to the costs of repairing the damage by each damaged Condominium Unit;

(b) Total destruction of the Condominium or where the Condominium is not to be restored: for all Condominium Unit Owners and their mortgagees, the share of each being set forth in paragraph 4 of this Declaration.

D. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Condominium Unit Owners in the following manner:

(1) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

(2) If it is determined that the damage for which the proceeds are paid, shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Condominium Unit Owners, remittance to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

F. Each Unit Owner, at his or her expense, may, if he or she desires, keep in force comprehensive personal liability insurance covering liability for damages to person or property of others located within such Owner's Unit, or another Unit, or upon the Common Area and Facilities in such amounts as the Board of Directors shall from time to time, determine. This provisions is waivable by each individual Unit Owner, if he or she desires.

23. RECONSTRUCTED OR REPAIR OF CASUALTY DAMAGE; DAMAGE TO COMMON PROPERTY; DAMAGE TO CONDOMINIUM UNITS.

A. If any part of the Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:

(1) Partial destruction shall be destruction of two-thirds (2/3) or less of the building. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all of the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair.

(2) Total destruction shall be destruction of more than two-thirds (2/3) of the building. In the event of total destruction, the Common Property shall not be reconstructed or repaired if Condominium Unit Owners who own three-fourths (3/4) or more of the building vote against reconstruction or repair at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or, if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such insurance loss has been adjusted.

(3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

B. If the damage is only to those parts of one or more Condominium, Units for which the responsibility for maintenance and repair is that of the Unit Owner, then the Condominium Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association as follows:

(1) Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems appropriate. '

(2) When the damage is to both Common Property and Condominium Units, the insurance proceeds shall be applied first to the costs of repairing the Common Property and the balance to the Condominium Units.

C. Each Condominium Unit Owner delegates to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one Condominium Unit.

24. CONDEMNATION.

A. General. Whenever all or any part of the property shall be taken by any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore shall be disbursed by the Association as hereinafter provided in this Section.

B. Common Areas. If the taking is confined to the Common Areas and Facilities on which improvements shall have been constructed and if at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after such taking to replace such improvements, or any part thereof, on the remaining land included in the Common Areas and Facilities and according to plans therefor to be approved by the Association, then the Board shall arrange for such replacement and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed as provided for in Paragraph 22 hereof. The disbursement is subject, however, to the right hereby reserved to the Association which may be exercised by a majority of the total vote thereof to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the owners or any one or more of them in amounts disproportionate to the Percentage Interests appurtenant to their units established herein, which disproportionate amounts shall correspond with any disproportionate damages sustained by the owners of anyone or more of them as the Association may determine. If at least seventy-five (75%) percent of the total vote of the Association shall not decide within sixty (60) days after such taking to replace such improvements or if the taking is confined to the Common Areas and Facilities on which no improvements shall have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvement taken, including the right reserved to the Association to provide for the disbursement of the remaining proceeds held by it to the owners in disproportionate amounts.

C. Units. If the taking includes one or more units, any part or parts thereof, or the Limited Common Areas and Facilities or parts thereof, to which a unit has exclusive use, then the award shall be disbursed and all related matters, including, without limitation, alteration of the Percentage Interest appurtenant to each unit, shall be handled pursuant to and in accordance with the consent of all owners expressed in a duly recorded amendment to this DECLARATION. Such amendments,, if any, shall realign the Percentage Interests, establish the method of distributing the condemnation award, and include such other provisions as all of the unit owners deem reasonable and appropriate. Further provided, such amendment shall be executed by the respective mortgagees of such units and shall not prejudice the creditors or their third parties who have an interest in the condemnation award with respect to their rights, if any, in such award. In the event that such an amendment shall not be recorded within ninety (90) days after such taking, then such taking shall be deemed to be and shall be treated or damage or destruction which shall not be repaired or reconstructed as provided for in Paragraph 22 herein, whereupon the development will be terminated in the manner therein prescribed.

25. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEE. The Association shall maintain a Register setting forth the names of the Owners of all of the Condominium Units. In the event of the transfer of any Condominium Unit to a third party, the transferee shall notify the Association in writing of his interest in such Condominium Unit, together with the recording information necessary to identify the instrument by which the transferee has acquired his interest. The Owner of each Condominium Unit shall also notify the Association of the parties holding any mortgage on any Condominium Unit, the amount of such mortgage and the recording information necessary to identify the

mortgage. The holder of any mortgage upon any Condominium Unit may notify the Association of the existence of any mortgage and the Association shall register in its records all pertinent information relating thereto.

26. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT. The Association is given the authority to administer the operation and management of the Condominium as being in the best interest of the Owners of all Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the owners of Condominium Units, costs and expenses (herein "common expense"). To provide the funds necessary for such proper operation, management and capital improvement, the Association has been granted the right to make, levy and collect assessments against the Unit Owners and their Condominium Units. In furtherance thereof, the following provisions shall be operative and be binding upon the Owners of all Condominium Units:

A. All assessments levied against the Unit Owners and their Condominium units shall be uniform, and unless specifically otherwise provided for herein, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium shall bear the same ratio to the total assessment made against all Unit Owners and their Condominium Units as the undivided interest in Common Property appurtenant to each Condominium units bears to the total undivided interest in Common Property appurtenant to all Condominium Units. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefore levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests in Common Property exclusive of the interest therein appurtenant to any Unit or Units owned by the Association.

B. Assessments provided for herein shall be payable in monthly installments, or in such other manner as the Board of Directors of the Association shall determine. Such assessments shall commence for each Unit when selected by the Board of Directors of the Association.

C. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that the initial year of operation of the condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the condominium, including a reasonable allowance for contingencies and reserves for, among others, periodic maintenance of the common areas and those limited common areas which the Association may be obligated to maintain, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. In accordance with subparagraph "D" hereof, the Board of Directors shall keep items relating to operation and maintenance separate from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies shall be delivered to each Owner of a Condominium Unit and the assessment for said year shall be established based upon such budget, although the non-delivery of a copy of it to each Owner shall not affect the liability of any Owner for such assessment.

C. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property (herein "Capital Improvement Fund"), which shall be for the purpose of

enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property, and the replacement of personal property constituting a portion of the Common Property held for the joint use and benefit of the owners of Condominium Units; provided, however, the sum contributed by each Unit Owner must be an amount at least equal to the first two months assessments, as defined hereinabove. The payment into the capital account shall not be considered to be an advance payment of regular assessments. Said sum shall be collected by the Association at closing of all units. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and shall be used only to make capital improvements to Common Property. Any interest earned on the Capital Improvement fund may be expended for current operation and maintenance.

E. If for any reason the annual assessments are inadequate to pay the Common Expenses, the Board may levy special assessments at any time. The special assessment shall be fixed against the Units according to the Percentage Interests and the period of the assessment and the manner of payment shall be determined by the Board.

F. All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating and managing the Condominium, or the proper undertaking of all acts and duties imposed upon it by this Declaration, the Articles of Incorporation and the Bylaws of the Association. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived there from or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the Condominiums.

G. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of its due date. When in default, the delinquent assessment or delinquent installment thereof due to Association shall bear interest at the highest rate allowed by law until paid in full to the Association.

H. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special., which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including reasonable attorney's fees, whether suit be brought or not.

I. No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the sue of enjoyment of any of the Common Property, or by abandonment of the Condominium Unit or in any other way.

J. Recognizing that proper operation and management of the condominium requires the continuing payment of costs and expenses therefore, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such common expenses represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of each unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure the funds due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure all costs, interest at the highest rate allowed by law and expenses, including reasonable attorney fees, which may be incurred by the Association in enforcing this lien upon said Condominium Unit. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to reasonable rental from the Owner of any Condominium Unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium unit. The lien granted to the Association shall further secure such advances for taxes, payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at the highest rate allowed by law on any such advances so made. All persons who shall acquire any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

K. The lien herein granted to the Association shall be enforceable from the time of recording a claim of lien in the Public Records of Mecklenburg County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien shall have been fully paid. Such claims of lien shall include only assessment which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorney's fees, advances to pay taxes and prior encumbrances and interest thereon. It shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, it shall be satisfied of record.

The lien provided for herein shall be subordinated to the lien of any first mortgage or deed of trust. Any person, firm or corporation acquiring title to any Condominium Unit and its appurtenant undivided interest in Common Property by any foreclosure, deed in lieu of foreclosure or judicial sale shall be liable and obligated only for assessments as shall accrue and become due and payable for said Condominium unit and its appurtenant undivided' interest in Common Property subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure or judicial sale any assessment which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Condominium Units as a part of the common expense, , although nothing herein contained shall release the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

L. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owners, shall furnish to the proposed lessee, purchaser or mortgagee a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the

Association and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement.

In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Condominium Unit to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds shall be applied by the lessee, purchaser or mortgagee first to the payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the Owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Condominium Unit, the purchaser thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefore.

Institution of a lawsuit to attempt to collect the payment of any delinquent assessment shall not be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

27. COMMON SURPLUS. "Common Surplus," meaning all funds and other assets of the Association (including excess of receipts of the Association, including but not limited to assessments, rents, profits and revenues from whatever source over amount of the common expense), shall be owned by the Owners of all Condominium units in the same proportion that the undivided interest in Common Property appurtenant to each Owner's Condominium Unit bears to the total of all undivided interest in Common Property appurtenant to all Condominium units; provided, however, that said common surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the condominium, any attribution or distribution of common surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in common surplus as declared herein.

28. TERMINATION. The Condominium shall be terminated, if at all, in the following manner:

A. The termination of the Condominium may be affected only by the unanimous agreement of all Condominium Unit Owners expressed in an instrument duly recorded; and provided that the holders of all liens affecting any of the Condominium Units consent thereto, or agree, by instrument duly recorded, that their liens be transferred to the percentage of the undivided, interest of the Condominium Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such agreement has been recorded in the public records of Mecklenburg County, North Carolina.

B. If it is determined in the manner elsewhere provided that the Condominium shall not be reconstructed after casualty, the Condominium plan of ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts effecting the termination, which Certificate shall become effective upon being recorded in the public records of Mecklenburg County, North Carolina.

C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided shares of the Condominium Unit Owners. The undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the Common Area and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be held for the Unit Owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.

D. Following termination, the property may be partitioned and sold upon the application of any Condominium Unit Owner.

E. The members of the Board of Directors acting collectively as agent for all Condominium Unit Owners, shall continue to have such powers as granted herein, even though the Association may be dissolved upon a termination.

29. AMENDMENT OF DECLARATION OF CONDOMINIUM: This Declaration of Condominium may be amended in the following manner:

A. Developer shall have the right to amend this Declaration at any time prior to September 15, 1990, without the further consent of the Unit Owners and Institutional Lenders, to incorporate into the Property (i) all the land described in Exhibit "A" attached hereto and incorporated herein by reference and (ii) up to 129 additional dwelling units if constructed upon such additional land by Developer in subsequent phases. In the event that this Declaration is so amended, the term "Property" as used herein shall be deemed to include part or all of the additional property described in Exhibit "A" and all improvements and structures now or hereafter placed by Developer thereon, all easements* rights and appurtenances thereto, and all articles of personal property provided by Developer and intended for use in connection therewith. Upon such Amendment, the undivided interest appurtenant to each Condominium Unit shall be decreased as set out in Section 5 of this Declaration. The materials used in the construction of the additional units shall be of comparable quality as those used in the original 12 units, and the architectural style of the additional units shall be substantially the same as, or compatible with, the original units. No amendment made by Developer in accordance with this paragraph shall divest any Owner of any portion of his Dwelling Unit without the consent of such Owner and no such amendment shall materially alter the plan of development set forth herein without the consent of all Owners affected thereby. Each Unit Owner and each Institutional Lender shall further be deemed by the Owner's acceptance of a deed to a Condominium Unit to have appointed Developer their attorney-in-fact to give, execute and record the consent of said owner and said Institutional Lender to any and all amendments to this Declaration which Developer may wish to execute pursuant to the powers herein reserved.

B. Except for amendment pursuant to subparagraph A, an amendment to this Declaration of condominium may be proposed by the Board of Directors of the Association action upon a vote of majority of the Directors, or by the members of the Association owning a majority of the Condominium units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment to this Declaration being proposed by the Board of Directors or members, such proposed Amendment shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment. It shall be the duty of the Secretary to give to each member written notice of such Special Meeting, stating the time and place, and reciting the proposed Amendment in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of

the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment proposed must be approved by an affirmative vote of seventy-five (75%) percent of the members owning Units in the Condominium in order for such Amendment to become effective. Thereupon such Amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment so certified and executed with the same formalities as a deed, shall be recorded in the Mecklenburg Public Registry within twenty (20) days from the date on which the same became effective. At any meeting held to consider such Amendment, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

C. Except as provided in subparagraph (A) hereof, the approval of 51% of the Institutional Lenders holding first mortgages on the unit estates of the Condominium, based upon one vote for each first mortgage owned, shall be required to add or amend any material provision of the Condominium Documents, which establish, provide for, govern or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Areas (or Units, if applicable);
- (iv) Insurance or Fidelity Bonds;
- (v) Rights to use of the Common Areas;
- (vi) Responsibility for maintenance and repair of the several portions of the Condominium;
- (vii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of: property to or from the Condominium;
- (viii). Boundaries of any Unit;
- (ix) The interests in the General or Limited Common Areas;
- (x) Convertibility of Units into Common Areas or Common Areas into Units;
- (xi) Leasing of Units;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a unit estate owner to sell, transfer, or otherwise convey his or her unit estate;
- (xiii) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on Units.

D. No alteration in the percentage of ownership in Common Property appurtenant to each Condominium Unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, or alteration of voting rights in the Association, shall be made without the prior written consent of all of the Owners of all Condominium Units and all of the Lenders holding first mortgages or first deeds of trust on the Condominium Units, subject to the provisions for adding additional phases pursuant to subparagraph A above.

E. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Lender shall be made without prior written consent of all Lenders holding mortgages on Condominium Units in the Condominium being first had and obtained.

F. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Developer shall be made without the written consent of said party being first had and obtained.

30. REMEDIES IN EVENT OF DEFAULT. The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provision of this Declaration and the Articles of Incorporation and Bylaws of the Association, as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owner of other Condominium Units to the following relief:

A. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles of Incorporation or Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of an alleged default by a Unit Owner, the Association shall be entitled to recover the costs of the proceeding and reasonable attorney's fees.

D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit pursuant to any terms, provisions, covenants or conditions of this Declaration or other abovementioned documents, shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

F. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned documents shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.

G. The failure of a Lender to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by this Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

31. RIGHTS RESERVED UNTO LENDERS. As long as any Lender shall hold any mortgage upon any Condominium Unit or Units, or shall be the Owner of any Condominium Unit or Units, such Lender shall have the following rights:

A. To approve the company or companies with whom casualty insurance is placed, and to notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

B. To examine, upon request and at reasonable times and upon reasonable notice, the books and records of the Association; and to be furnished at least one copy of the annual Audited Financial Statement and Report of the Association prepared by a Certified Public Accountant designated by the Association, such Financial Statement and Report to be furnished by April 1 of each calendar year.

C. To be given written notice by the Association of the call of any meeting of the membership, which notice shall state the purpose of such meeting; and to designate a representative to attend.

D. To be given written notice of default on any assessment or charge by any owner owning a Condominium Unit encumbered by a mortgage held by the Lender, such notice to be sent to the place which it may designate in writing.

E. To be given written notice of any material loss to or taking of, including any condemnation or casualty loss, the common elements of the Condominium.

F. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.

Whenever any Lender desires the provisions of this Article to be applicable to it, it shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail, addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Lender holds any mortgage, or identifying any Condominium Units owned by it, together with sufficient facts to identify such mortgage and which notice shall designate a place to which notices are to be given by the Association to such Lender.

32. RIGHT OF DEVELOPER TO REPRESENTATION ON BOARD OF DIRECTORS OF THE ASSOCIATION. Until 105 condominium units in Emerald Point Condominium have been sold or conveyed, or until September 15, 1990, whichever first shall occur, Developer shall have the right to designate and select a majority of the persons who shall serve as members of the Board of Directors of the Association.

Subject to Section 32 below, in the event of dissolution of Developer at the time when it is the Owner of a Condominium Unit, then the rights of the Developer shall pass to Condominium Unit in dissolution.

Whenever Developer shall be entitled to designate and select any person to serve on the Board of Directors of the Association, the manner in which such person shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Developer shall have the right to remove any person selected by it to act and serve on said Board of Directors and to replace such person with another person to act and serve in the place of any Director so removed for the remainder of the unexpired term of any Directors so removed. Any Director designated and selected by Developer need not be a resident in the Condominium. However, Developer shall be responsible for the payment of any assessments which may be levied by the Association against any Condominium Unit or Units owned by the said Developer and for complying with the remaining terms and provisions hereof in the same manner as any other Owner of a Condominium Unit or Units.

33. RIGHTS OF DECLARANT.

A. All special Declarant rights provided in the Condominium Documents are transferable upon the terms and conditions set forth herein.

B. No special Declarant rights created or reserved under the Unit Ownership Act or as provided for in the Condominium Documents may be transferred except by an instrument evidencing the transfer recorded in the Mecklenburg County Public Registry. The instrument is not effective unless executed by the transferor and transferee.

C. Upon transfer of any special Declarant right, the liability of a transferor Declarant is as follows:

(i) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by law. Lack of privity does not deprive any Unit Owner of standing to bring an action to enforce any obligation of the transferor.

(ii) If a transferor retains any special Declarant rights, or if a successor to any special Declarant right is an affiliate of a Declarant, the transferor is subject to liability for all obligations and liabilities imposed on a Declarant by law or by the Condominium Documents arising after the transfer and is jointly liable with the successor for the liabilities and obligations of the successor which relate to the Condominium.

(iii) A transferor who retains no special Declarant right has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a special Declarant right by a successor Declarant who is not an affiliate of the transferor.

D. Unless otherwise provided in the Mortgage, in case of foreclosure of the Mortgage, sale by a trustee; under a deed of trust, or sale under Bankruptcy Act or receivership proceedings, of any Units owned by a Declarant in the Condominium, a person acquiring all the Units being foreclosed or sold, but only upon his request, succeeds to all special Declarant rights, or only to any rights reserved in the Condominium Documents to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special Declarant rights requested.

E. Upon foreclosure, sale by a trustee under a deed of trust, or sale under Bankruptcy Act or receivership proceedings, of all Units in a condominium owned by a Declarant: (1) the Declarant ceases to have any special Declarant rights, and (2) the period of Declarant control as provided in the Condominium Documents terminates unless the judgment or instrument conveying title provides for transfer of all special Declarant rights to a successor Declarant.

F. The liabilities and obligations of persons who succeed to special Declarant rights are as follows:

(i) A successor to any special Declarant right who is an affiliate of a Declarant is subject to all obligations and liabilities imposed on any Declarant by the Unit Ownership Act or by the Condominium Documents.

(ii) A successor to any special Declarant right, other than a successor described, in subparagraphs (f) (iii) or (f) (iv) , who is not an affiliate of the Declarant, is subject to all obligations and liabilities imposed upon a Declarant by law or the Condominium Documents, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous Declarant or made before the Condominium was created, or for a breach of fiduciary obligation by any previous Declarant.

(iii) A successor to only a right reserved in the Condominium Documents to maintain models, sales offices, and signs, if he is not an affiliate of a Declarant, may not exercise any other special Declarant right, and is not subject to any liability or obligation as a Declarant.

(iv) A successor to all special Declarant rights who is not an affiliate of a Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under subparagraph (D) , may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right to control the Board of Directors in accordance with the provisions of the Unit Ownership Act and the Condominium Documents for the duration of any Declarant control period and any attempted exercise of those rights is void. So long as a successor Declarant may not exercise special Declarant rights under this subparagraph, he is not subject to any liability or obligation as a Declarant other than liability for the successor's acts and omissions.

G. Nothing in this Article subjects any successor to a special Declarant right to any claims against or other obligors of a transferor Declarant, other than claims and obligations arising under the Condominium Documents.

H. Nothing contained in the Condominium Documents shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct or provide any buildings except to the extent required by law.

34. The Owner's Association is not bound and shall not be bound, prior to the expiration of Developer's rights in paragraph 31, to any contract or lease unless there is a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time without penalty after the expiration of Developer's rights in paragraph 31 hereof, upon notice not to exceed 90 days.

35. MISCELLANEOUS.

A. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable, such holding shall not affect, alter modify or impair in any manner any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

B. The provisions of this Declarant shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender the feminine or neuter. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

C. The restrictions and burdens imposed by the covenants of this Declaration shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Condominium Unit and its' appurtenant undivided interest in Common Property. This Declaration shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become Owners of Condominium Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

D. The Association shall make available for inspection to all unit owners, lenders, and holders, insurers or guarantors of any first mortgage current copies of the Declaration, Bylaws and any other rules concerning the project along with the books, records and financial statements of the Association, upon request, during normal business hours.

E. The following named individual is designated as the person to receive service of process for the Association:

Mr. Richard D. Enderby
9800 Emerald Point Drive
Charlotte, North Carolina 28210

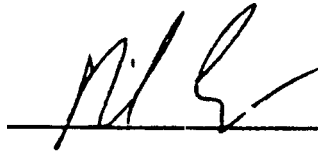
IN WITNESS WHEREOF, ENDERBY DEVELOPMENT ASSOCIATES, INC. has caused these presents to be executed in its name by its President and its Corporate Seal to be hereunto affixed, attested by its Secretary by authority duly given, this 15 day of October 1985, at Charlotte, North Carolina.

ATTEST:
(Corporate Seal)

ENDERBY DEVELOPMENT ASSOCIATES, INC.


Secretary

By:


President

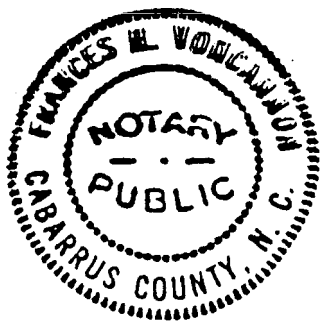
Note: Faint outline of
Corporate Seal
On Official Copy

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, a Notary Public of the County and State aforesaid, certify that Gloria J. Parrish, personally came before me this day and acknowledged that, she is Secretary of ENDERSY DEVELOPMENT ASSOCIATES, INC., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

1985.

WITNESS my hand and notarial seal, this 15 day of October.





Notary Public

My Comm. Exp.: 5-1-90