

3

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC ✓
2005 AUG 11 10:53 AM
BK: 19170 PG: 897-967 FEE: \$221.00

INSTRUMENT # 2005153880



2005153880

UNIT FILE NO. 753 PAGE 1-27

DECLARATION OF CONDOMINIUM
for
FIFTH AND POPLAR RESIDENTIAL CONDOMINIUM

Date: August 3, 2005

PREPARED BY AND RETURN TO:
Brent M. Milgrom, Jr.
Parker, Poe, Adams & Bernstein L.L.P.
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202

Table of Contents

	Page
ARTICLE I DEFINITIONS	1
Section 1.1 “Annual Meeting”	2
Section 1.2 “Assessments”	2
Section 1.3 “Association”	2
Section 1.4 “Base Assessment”	2
Section 1.5 “Building”	2
Section 1.6 “Bylaws”	2
Section 1.7 “Common Elements”	2
Section 1.8 “Common Elements Interest”	2
Section 1.9 “Common Expenses”	2
Section 1.10 “Condominium”	3
Section 1.11 “Condominium Documents”	3
Section 1.12 “Condominium Property”	3
Section 1.13 “Declarant”	3
Section 1.14 “Declarant Control Period”	3
Section 1.15 “Declaration”	3
Section 1.16 “Executive Board”	3
Section 1.17 “Limited Common Elements”	3
Section 1.18 “Master Association”	3
Section 1.19 “Master Condominium”	3
Section 1.20 “Master Declaration”	3
Section 1.21 “Member”	4
Section 1.22 “Mortgage”	4
Section 1.23 “Mortgagee”	4
Section 1.24 “North Carolina Condominium Act”	4
Section 1.25 “Office Unit”	4
Section 1.26 “Owner”	4
Section 1.27 “Plans”	4
Section 1.28 “Real Property”	4
Section 1.29 “Residential Units”	4
Section 1.30 “Rules and Regulations”	4
Section 1.31 “Special Declarant Rights”	4
Section 1.32 “Special Declarant Rights Period”	4
Section 1.33 “Units”	4
 ARTICLE II DESIGNATION OF CONDOMINIUM	 5
 ARTICLE III DESCRIPTION OF BUILDING	 5
 ARTICLE IV DESCRIPTION OF UNITS	 5
Section 4.1 Location of Building	5
Section 4.2 Units	5

Section 4.3	Unit Boundaries	5
ARTICLE V COMMON ELEMENTS		6
Section 5.1	Common Elements.....	6
Section 5.2	Limited Common Elements	6
Section 5.3	Undivided Interests of Owners in Common Elements	7
Section 5.4	Maintenance of Common Elements.....	8
Section 5.5	Maintenance Responsibilities of the Unit Owner	8
ARTICLE VI SPECIAL DECLARANT RIGHTS.....		8
Section 6.1	Special Declarant Rights.....	8
Section 6.2	Transfer of Special Declarant Rights	10
Section 6.3	Supplemental Declaration.....	10
ARTICLE VII RESTRICTIONS ON USE.....		10
Section 7.1	Use	10
Section 7.2	Nuisance.....	10
Section 7.3	Noise and Disorderly Conduct.....	11
Section 7.4	Prohibitions on Use of Common Elements and Limited Common Elements.....	11
Section 7.5	Garbage	11
Section 7.6	Parking	11
Section 7.7	Leases of Units.....	12
Section 7.8	No Timeshares	12
Section 7.9	Animals.....	12
Section 7.10	Utilities.....	12
Section 7.11	Floor Load.....	13
Section 7.12	Windows	13
Section 7.13	Architectural Control	13
Section 7.14	Signs and Flags	13
Section 7.15	Balconies and Terraces	13
Section 7.16	Nondiscrimination.....	14
Section 7.17	Sale of Units.....	14
Section 7.18	Handicap Accessibility	14
Section 7.19	Antennas	14
Section 7.20	Maintenance	15
Section 7.21	Fencing.....	15
Section 7.22	Insurance	15
Section 7.23	Landscaping	15
Section 7.24	Rules and Regulations.....	15
Section 7.25	Compliance with Covenants, Conditions and Restrictions.....	16
ARTICLE VIII THE ASSOCIATION		16
Section 8.1	Organization of Association	16
Section 8.2	Powers; Lien for Assessment.....	16
Section 8.3	Declarant Control Period	17
Section 8.4	Post-Development Period	18

Section 8.5	Books and Records	18
ARTICLE IX	EASEMENTS AND PROPERTY RIGHTS	18
Section 9.1	Access by the Association	18
Section 9.2	Encroachment Easements	18
Section 9.3	Easements Over Common Elements.....	18
Section 9.4	Emergency Access	19
Section 9.5	Relocation of Boundaries: Subdivision; Partitioning	19
Section 9.6	Conveyance or Encumbrance of Common Elements	20
Section 9.7	Nature of Interest in Unit	21
Section 9.8	St. Peters Homeowners Association, Inc	21
ARTICLE X	ASSESSMENTS	22
Section 10.1	Taxes	22
Section 10.2	Common Expenses.....	22
Section 10.3	Common Surplus	22
ARTICLE XI	INSURANCE.....	23
Section 11.1	Property Insurance	23
Section 11.2	Liability Insurance	23
Section 11.3	Fidelity Coverage.....	24
Section 11.4	Other Insurance Policies	24
Section 11.5	Premiums & Deductibles	24
Section 11.6	Distribution of Insurance Proceeds	24
Section 11.7	Insurance Obtained by Owners.....	26
ARTICLE XII	DUTY TO REPAIR OR RECONSTRUCT	26
Section 12.1	Reconstruction and Repair	26
Section 12.2	Obligations of Owners	26
ARTICLE XIII	UNITS SUBJECT TO CONDOMINIUM DOCUMENTS	27
ARTICLE XIV	AMENDMENT TO DECLARATION	27
ARTICLE XV	TERMINATION	27
ARTICLE XVI	RIGHTS RESERVED TO MORTGAGEES	28
Section 16.1	General Provisions	28
Section 16.2	Percentage of Mortgagees.....	28
Section 16.3	Rights of Mortgagees to Examine Books and Records	28
Section 16.4	Mortgagee's Rights to Notice	28
Section 16.5	Other Mortgagee Rights.....	29
Section 16.6	Consent and Notice Required	29
Section 16.7	Enforcement.....	30

ARTICLE XVII CONDEMNATION.....	30
ARTICLE XVIII MISCELLANEOUS PROVISIONS	31
Section 18.1 Invalidity	31
Section 18.2 Waiver.....	31
Section 18.3 Captions	31
Section 18.4 Law Controlling.....	31
Section 18.5 Liberal Construction	31
Section 18.6 Notice Address.....	31
ARTICLE XIX ENFORCEMENT	31
Section 19.1 Actions by the Association	31
Section 19.2 Actions by Owners.....	31
Section 19.3 Agreement to Encourage Resolution of Disputes Without Litigation.....	32
Section 19.4 Dispute Resolution Procedures	33

Exhibit A - Real Property Description

Exhibit B - Allocation of Common Element Interests

Exhibit C - Bylaws of the Association

Exhibit D – West End Easement Plat

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

DECLARATION OF CONDOMINIUM
FOR
FIFTH AND POPLAR RESIDENTIAL
CONDOMINIUM

This Declaration of Condominium for Fifth and Poplar Residential Condominium (this "**Declaration**") is made this 3rd day of August, 2005, by Fifth And Poplar Associates, LLC, a Delaware limited liability company ("**Declarant**"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

BACKGROUND STATEMENT

*[All capitalized terms in this Declaration of Condominium shall have the definitions set forth in **Article 1** below or as set forth elsewhere in this Declaration of Condominium.]*

Declarant is the owner of the Real Property and improvements more particularly described on **Exhibit "A"** attached hereto (collectively, the "**Condominium Property**") located in the City of Charlotte, Mecklenburg County, North Carolina.

Declarant desires to submit the Condominium Property to the terms and provisions of the North Carolina Condominium Act. In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' association that will be delegated and assigned powers of maintaining and administering the Common Elements located within the Condominium Property, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the Assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of Condominium Units within the Condominium Property and to promote the recreation, health, safety and welfare of the Unit Owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Condominium Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Condominium Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Condominium Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

Section 1.1 “Annual Meeting” shall mean the annual meeting of the Members of the Association held within the fourth quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Executive Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Executive Board shall determine.

Section 1.2 “Assessments” shall mean the Common Assessment, Special Assessment, Individual Unit Assessment and Initial Working Capital Assessment, all as more fully defined in **Article VIII** of the Bylaws.

Section 1.3 “Association” shall mean and refer to Fifth and Poplar Residential Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

Section 1.4 “Base Assessment” shall mean a portion of the monthly Common Assessment charged to each Unit Owner. The initial monthly Base Assessment applicable to each Unit is set forth on **Exhibit “B”**. Each calendar year, the Base Assessment shall increase or decrease in proportion to the overall increase or decrease in the Common Expenses Budget from the prior year. For example, if the Common Expense Budget increases by 10%, then the Base Assessment applicable to each Unit shall increase by 10%.

Section 1.5 “Building” shall mean and refer to the building within which the Condominium Property is located which contains the Units and the entrances and lobbies, stairways, hallways, mechanical rooms and utility systems and certain other Common Elements.

Section 1.6 “Bylaws” shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto as **Exhibit “C”**, and all amendments to such Bylaws which may from time to time be adopted.

Section 1.7 “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in **Section 5.1** of this Declaration.

Section 1.8 “Common Elements Interest” shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on **Exhibit “B”** attached hereto. The Common Elements Interest shall be used to determine each Unit’s share of Common Expenses in the Association, and to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings. Common Elements Interests shall be recalculated in the manner described in **Section 5.3** or **Section 9.5** if Units are combined or subdivided in accordance with those provisions.

Section 1.9 “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47C-1-103(5).

Section 1.10 “Condominium” shall mean and refer to the Fifth and Poplar Residential Condominium, as established by the submission of the Condominium Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.11 “Condominium Documents” shall mean and refer to this Declaration, the Master Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations governing the use of the Condominium Property, as well as the articles of incorporation, bylaws and rules and regulations of the Master Association, all as amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.12 “Condominium Property” shall mean and refer to the “Residential Unit” as defined in the Master Declaration, which is hereby subjected to this Declaration.

Section 1.13 “Declarant” shall mean and refer to Fifth And Poplar Associates, LLC, a Delaware limited liability company, its successors, or any party to which it assigns its rights as Declarant under this Declaration.

Section 1.14 “Declarant Control Period” shall mean and refer to the period commencing on the date hereof and continuing until the earlier of: (i) one hundred twenty (120) days after the conveyance of seventy-five percent (75%) of the Units to an Owner other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; or (iii) the date upon which Declarant voluntarily surrenders control of the Condominium in writing.

Section 1.15 “Declaration” shall mean and refer to this Declaration of Condominium, as it may be amended in the future.

Section 1.16 “Executive Board” shall mean and refer to the governing body from time to time of the Association, as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

Section 1.17 “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or by the terms of N.C.G.S. §47C-2-102(2) or (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in **Section 5.2** of this Declaration, and as depicted on the Plans.

Section 1.18 “Master Association” shall mean and refer to Fifth and Poplar Master Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with the Master Declaration, and the North Carolina Condominium Act.

Section 1.19 “Master Condominium” shall mean and refer to the Fifth and Poplar Master Condominium, as established by this Master Declaration.

Section 1.20 “Master Declaration” shall mean the Declaration of Fifth and Poplar Master Condominium and any amendments thereto recorded in the Office of the Mecklenburg County Register of Deeds.

Section 1.21 “Member” shall mean any person or entity entitled to membership in the Association as provided herein.

Section 1.22 “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.23 “Mortgagee” shall mean and refer to the owner and holder of the indebtedness secured by a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in **Article XVI**.

Section 1.24 “North Carolina Condominium Act” shall mean and refer to Chapter 47C of the North Carolina General Statutes, as it may be amended from time to time.

Section 1.25 “Office Unit” shall mean unit number 144 as shown on the Plans, as are more particularly described in **Article IV** below.

Section 1.26 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit, but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.27 “Plans” shall mean and refer to the plat, plans and specifications for the Building and Condominium Property, including any amendments thereto, recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Mecklenburg County.

Section 1.28 “Real Property” shall mean the real property described on **Exhibit “A”**.

Section 1.29 “Residential Units” shall mean all of the units located within the Condominium other than the Office Unit, as more particularly described in **Article IV** below.

Section 1.30 “Rules and Regulations” shall mean all rules and regulations adopted by the Executive Board in accordance with the terms of this Declaration and the Bylaws.

Section 1.31 “Special Declarant Rights” shall have the meaning set forth in N.C.G.S. §47C-1-103 and as more particularly described in **Article VI** below.

Section 1.32 “Special Declarant Rights Period” shall commence as of the recordation of this Declaration and shall continue for fifteen (15) years thereafter unless Declarant records a statement of termination of such rights in the Mecklenburg Public Registry prior to such time.

Section 1.33 “Units” shall mean the three hundred four (304) Residential Units and the one (1) Office Unit as are more particularly described in **Article IV** below.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents; unless those terms are expressly

defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II
DESIGNATION OF CONDOMINIUM

The Condominium Property is located in Mecklenburg County, North Carolina. The Condominium Property is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is "Fifth and Poplar Residential Condominium."

ARTICLE III
DESCRIPTION OF BUILDING

The Building constructed on the Real Property is a post-tension concrete flat plate structure with exterior heavy gauge steel stud walls. The Building contains the residential Units, parking deck, residential amenities and common areas as well as certain commercial space and amenities (which are not included in the Condominium, but are part of the Master Condominium as described in the Master Declaration). The Building is more particularly described in the Plans. The Plans contain a certification by a North Carolina Registered Land Surveyor, and by a North Carolina Licensed Architect, that the Plans contain all the information required by N.C.G.S. §47C-2-109, and have been recorded under the name of the Condominium in the Unit Ownership File of the Mecklenburg County Public Registry.

ARTICLE IV
DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Building are shown on the Plans.

Section 4.2 Units. The location of Units within the Building, their dimensions, and their floor and ceiling elevations, are shown on the Plans. There are a total of three hundred five (305) Units within the Condominium. The identification number for each Unit is set forth on the Plans.

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The horizontal plane of the top surface of the wallboard in the ceilings within the Unit. In certain Units, as depicted on the Plans, the ceilings within different portions of the Unit may be at different elevations; in such cases, the upper boundary of the Unit shall not be a single plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the subflooring within the Unit. In certain Units, as depicted on the Plans, the floors within different portions of the Unit may be at different elevations; in such cases the lower boundary of a Unit shall not be a single plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Boundaries: The vertical planes which include the back surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries. Certain Units as shown on the Plans, may be initially combined by Declarant, or subsequently combined pursuant to the terms of this Declaration. Notwithstanding the fact that such Units may be physically combined, they shall still contemplate multiple Units for all purposes hereunder and the vertical boundaries of each such Unit shall be shown on the Plans (notwithstanding the fact that there may be no physical boundary).

As provided in N.C. Gen. Stat. §47C-2-102(1), all lath, flooring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. Furthermore, all interior walls (except load bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. As provided in N.C. Gen. Stat. §47C-2-102(2), if any chute, flue, duct, wire, pipe for water or sewer, conduit, load bearing wall, load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in **Section 5.2** below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

ARTICLE V COMMON ELEMENTS

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Real Property.
- (b) All improvements located within the Real Property outside of the Units, including without limitation the Limited Common Elements described in **Section 5.2** below and the elevators, elevator lobbies, interior stairwells and interior corridors within the Condominium Building.
- (c) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Condominium Building.
- (d) Any public connections and facilities for utility services serving the Condominium Building and located within the Real Property that are not owned by the public utility or municipal agency providing such services, until owned or maintained by the public utility or municipal agency providing such service.
- (e) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of the Units, but serving exclusively fewer than all of the Units, which shall be Limited Common Elements allocated exclusively to the Unit(s) served.

(b) Any shutters, awnings, window boxes, non-structural components of balconies and terraces, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, but serving less than all of the Units in the Building, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

(d) One (1) parking space shall be allocated to each Residential Unit as a Limited Common Element appurtenant to the Unit, all as identified on the Plans and as allocated in the initial deed from Declarant to each Unit Owner.

(e) One or more storage closets may be allocated to a Unit by deed from the Declarant, following which time such storage closet(s) shall constitute a Limited Common Element appurtenant to the Unit, all as identified on the Plans and as allocated in the initial deed from Declarant to each Unit Owner.

(f) Those areas indicated as Limited Common Elements on the Plans.

References in this Declaration to the "Common Elements" shall include the Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on **Exhibit "B"** attached hereto. Except as set forth in **Section 9.5** and **Section 6.3**, the Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized by the Condominium Act or elsewhere in this Declaration. In particular, if Declarant exercises its development right to subdivide, combine and/or create additional Units and Limited Common Elements, Declarant shall have the right to adjust the Common Elements Interest for each Unit in accordance with the following formula: the Common Elements Interest allocated to each Unit is based on the heated square footage of that Unit, as shown on the Plans, calculated by dividing the heated square footage of that Unit by the total heated square footage of all Units, and by multiplying the quotient so calculated by one hundred (100). The Supplemental Declarations required by **Section 6.3** of this Declaration shall contain a new allocation of Common Elements Interest calculated in

accordance with the foregoing formula which shall be substituted for **Exhibit "B"** attached to this Declaration in the event that Declarant exercises this development right.

Section 5.4 Maintenance of Common Elements.

(a) Except as specified herein, the Association shall be responsible for the maintenance and repair of all Common Elements, including all structural elements of balconies and terraces and other Limited Common Elements, but excluding non - structural elements of Limited Common Elements and maintenance or repairs caused by the negligence or intentional misconduct of any Unit Owner, his agents, invitees or family members, which shall be the responsibility of that Unit Owner.

(b) The cleanliness and orderliness of any Limited Common Elements that serve a single Unit, including terraces and balconies, but excluding the parking spaces, shall be the sole responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the North Carolina Condominium Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, air conditioning systems, or other non-structural improvements that are Limited Common Elements serving fewer than all of the Units shall be the sole responsibility of the Owner(s) of the Unit(s) to which such Limited Common Elements are allocated. Notwithstanding each Owner's obligation to maintain any Limited Common Elements which serve his or her Unit, each such Owner shall obtain the written consent of the Executive Board (or Independent Manager) in accordance with **Section 8.8** of the Bylaws, prior to performing any repairs or alterations.

Section 5.5 Maintenance Responsibilities of the Unit Owner. Each Unit Owner shall be responsible for the maintenance and repair of all portions of his or her Unit and (except as specified herein) their Limited Common Elements appurtenant thereto, excluding all structural elements (for example, structural elements of balconies and terraces).

ARTICLE VI
SPECIAL DECLARANT RIGHTS

Section 6.1 Special Declarant Rights. Until the expiration of the Special Declarant Rights Period, Declarant will have the following Special Declarant Rights with respect to all of the Property, in addition to any other such rights reserved in this Declaration:

(a) Development Rights. The right to exercise all "development rights" (hereinafter, "**Development Rights**") as defined from time to time in the North Carolina Condominium Act with respect to all of the Property, including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (1) The right to complete any improvements shown on the Plans.
- (2) The right to subdivide Units, combine Units and alter Unit boundaries, so long as the maximum number of Units does not exceed three hundred fifty (350) Units. If Declarant chooses to physically combine two (2) or more Units, the combined Units

shall still contemplate multiple Units for all other purposes hereunder (i.e. voting, assessment, parking space assignment, etc.).

(3) The right to maintain within the Condominium, one sales office, one management office, up to five model Units, and signs advertising the Condominium. The offices, model Units and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Units and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time during or promptly after the expiration of the Special Declarant Rights Period.

(4) The right to appoint any officer or director of the Association, as provided in this Declaration or the Bylaws, but subject to the limitations of the Act.

(5) The right to allocate parking spaces and storage closets located on the Condominium Property to specific Units as Limited Common Elements in the initial deed of conveyance of a Unit by Declarant or in a subsequent deed from Declarant to an Owner.

(b) Easements to Facilitate the Exercise of Special Declarant Rights. Declarant hereby reserves for itself and its successors and assigns a non-exclusive easement upon, across, over, in, and under the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the North Carolina Condominium Act or this Declaration, including, without limitation: (i) easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems; (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction and renovation of the Building and other improvements on the Property; and (iii) the location of these easements and rights-of-way may be made certain by Declarant and the Association by instruments recorded in the Mecklenburg County Public Registry. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not unreasonably hamper the enjoyment of the Project by the Owners.

(c) Order of Exercise of Declarant's Rights. The fact that Declarant may exercise one or more of Declarant's Development Rights of other Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property.

(d) Supplemental Provisions Regarding Declarant's Rights. Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Section below. Declarant reserves the right to amend this Declaration and any Plans in connection with the exercise of any Development Rights or any other Special Declarant Rights to the extent permitted by the Act, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 6.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Mecklenburg County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C. Gen. Stat. §47C-3-104.

Section 6.3 Supplemental Declaration. In order to exercise the development right to combine and subdivide Units, Declarant shall execute and record an amendment to this Declaration in accordance with N.C. Gen. Stat. §47C-2-110 (a “**Supplemental Declaration**”). Any Supplemental Declaration executed and recorded by Declarant to exercise the development right of subdividing or combining Units and creating new Units and Limited Common Elements shall contain an amendment or supplement to the Plans identifying the new Units and Limited Common Elements so created, as well as in an amendment to **Exhibit “B”** attached to this Declaration, assigning and identifying numbers to each new Unit and reallocating the Common Elements Interest among all Units in accordance with the formula set forth in **Section 5.3** of this Declaration. Declarant may exercise the development right to subdivide, combine, or create new Units without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in accordance with this **Section 6.3**.

ARTICLE VII
RESTRICTIONS ON USE

The following covenants, restrictions, conditions and limitations as to use and occupancy which shall run with the land shall be binding upon each Unit Owner, his or her family members residing in or occupying his or her Unit, guests, invitees, tenants, licensees, heirs, executors, administrators, successors and assigns.

Section 7.1 Use.

(a) Residential Units. Except as specifically set forth herein, all Residential Units shall be used only for single-family residential purposes. Except for the construction, sales and management activities of the Declarant, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained or permitted on any part of the Condominium Property (except within the Office Unit) unless permitted by the Executive Board.

(b) Office Unit. The Office Unit shall be used for either general office purposes or for single-family residential purposes. The Office Unit may also be used by Declarant as a sales office or model units.

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Condominium.

Section 7.3 Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Condominium Property, or cause or allow any disturbance, including, but not limited to, shouting, singing or playing any musical instruments or electronic equipment (including radios, stereos, televisions, and computer equipment) in a manner that unreasonably disturbs other Owners. The Owner of a Unit shall be responsible for the conduct of such Unit Owner's family members, guests and tenants. It shall be the responsibility of an individual Owner causing unreasonable sound transmissions to remedy the disturbance. For example, the installation of floor covering may minimize sound transmissions to adjacent Units. In cases where a justifiable complaint exists and is confirmed by the Association, the Association is authorized to engage the services of a qualified engineer to recommend a solution, and the Owner causing the unreasonable sound transmission shall be responsible for the reasonable expenses of the engineer, as well as for the expense of implementing the solution recommended by the engineer.

Section 7.4 Prohibitions on Use of Common Elements and Limited Common Elements. The Common Elements (other than the Limited Common Elements and storage areas, if any, designated by the Executive Board) shall not be used for storage of personal property of any kind, including, without limitation, baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs. Entrances, lobbies, stairwells, corridors, hallways, sidewalks, driveways, and parking areas shall not be obstructed in any way, or used for other than their intended purposes. Terraces and balconies may be used only for their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in such Unit Owner's Unit or upon the Common Elements which despoils the appearance of the Condominium Property or which interferes with the quiet enjoyment of other Owners with respect to their Units.

Section 7.5 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, or deposited in the appropriate trash chute located on each story of the Building. No trash or garbage shall be kept or stored on terraces or balconies.

Section 7.6 Parking. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Condominium Property except wholly within designated parking areas, and in particular shall not block any entrances, drive aisles, or fire lanes. Except for vehicles being used by persons providing services to the Declarant, the Association, the Unit Owners, or otherwise used or authorized to be used at the Condominium Property by the Declarant, no part of the Condominium Property may be used for the parking of any trailer coaches, house trailers, mobile homes, automobile trailers, camp cars, recreational vehicles, campers, commercial trucks, ¾ ton or larger pick-up trucks, boats, jet skis, boat trailers or any other similar vehicles (collectively the "**Special Vehicles**"). Operative vehicles other than Special Vehicles used by a resident of a Unit as a primary source of transportation may be parked only in the assigned parking spaces for such Unit Owner. Inoperative vehicles may not be parked on the Condominium Property. No auto maintenance and/or repairs may be performed on the Condominium Property. The Association shall have the right to tow any vehicle in violation of this **Section 7.6** at its owner's expense. Likewise, the Executive Board shall have the right to establish Rules and Regulations pertaining to the use of any parking spaces which are not assigned to Unit Owners as Limited Common Elements. Without limiting the foregoing, the Executive Board may elect to rent spaces (which are not assigned as Limited Common Elements)

to Unit Owners or the public upon such terms and conditions that the Executive Board deems appropriate.

Section 7.7 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. No Unit may be leased for a period shorter than thirty (30) days without the express written consent of the Executive Board, which may be withheld for any reason. Additionally, no Unit shall be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days; or (ii) any rental if the occupants of the Unit rented are provided any customary hotel services, such as room service, food and beverage service, maid service, or furnishing of laundry and linen. This restriction shall not prevent a person or entity from allowing a guest or employee to occupy the Unit as a temporary residence for less than thirty (30) days provided that such guest or employee does not pay rent and further provided that such occupant complies with all of the terms of the Condominium Documents.

Section 7.8 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10).

Section 7.9 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained in the Condominium or in any Unit except that common household pets may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes and provided that no Owner may have more than two (2) such pets at any one time (excluding fish). No pet shall be permitted upon the Common Elements (including balconies or terraces) unless carried or leashed and accompanied by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) in the Condominium. Pets shall not be permitted to defecate in the Common Elements or to urinate in any portion of the Common Elements except for any grassed areas, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Elements caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Condominium upon not less than ten (10) days' written notice.

Section 7.10 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Executive Board. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located. The Master Condominium will have a single meter for water and sanitary sewer service provided to the Condominium and a portion of such costs for water and sewer service shall be allocated to the Association in accordance with the Master Declaration and shall constitute a Common Expense. The Association shall have the right to separately meter or submeter water and sanitary sewer service

to any or all Units and costs of such utility service shall be allocated to the Unit for which such meter applies.

Section 7.11 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square foot live load (excluding partitions), unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Executive Board.

Section 7.12 Windows. No curtains or draperies shall be installed or hung in any window of any Unit unless they have a white lining or backing on the side exposed to the window. No storm windows shall be installed in any Unit.

Section 7.13 Architectural Control. No building, landscaping, fence, wall or other structure (other than a satellite dish or antenna, to the extent permitted by **Section 7.19**) shall be commenced, erected or maintained upon the Condominium Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to surrounding structures and topography by the Executive Board.

Section 7.14 Signs and Flags. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except for: (a) one name plate or sign not exceeding twenty-four (24) square inches in area on the main door to each Residential Unit; (b) a temporary professionally printed "For Sale" sign not to exceed three (3) square feet in one (1) window of a Unit; and (c) one or more signs for the Office Unit, erected in conformance with applicable sign ordinances and plans approved by the Association as provided in **Section 7.13**. The Office Unit shall submit the plans for such signage to the Executive Board; provided, however, the Executive Board must approve or disapprove such signage within fifteen (15) business days and, if the Executive Board disapproves such signage, it must include with such disapproval specific reasons for disapproval and suggestions of alterations to the signage that will be approved by the Executive Board.. Any signs permitted by the Executive Board for the Office Unit shall be maintained solely by the Owner of such Unit and shall be maintained in a neat and clean condition and shall not be permitted to become worn, tattered, faded or otherwise in disrepair. Notwithstanding the foregoing, Declarant shall have the right to maintain within the Condominium advertising signs during the Declarant Control Period, provided those signs comply with applicable governmental regulations. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Unit, or in the Common Elements unless approved in advance by the Executive Board. In the event that the Executive Board approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material.

Section 7.15 Balconies and Terraces. The balconies and terraces shall be kept in a clean, neat and orderly condition at all times, and shall not be used for the overnight storage of garbage, or the drying of laundry. No floor covering of any sort (including but not limited to indoor/outdoor carpeting) may be installed on any balcony or terrace, without the prior written consent of the Executive Board. No hot tub or above-ground pool may be installed on any balcony or terrace. Towels or banners shall not be hung on the balcony or terrace railings, and

any dead plants shall be removed promptly. The balconies shall not be used for the storage of bicycles or exercise equipment. No open fires shall be permitted on any part of the Condominium Property, including balconies or terraces, other than fires in charcoal grills or other similar cooking devices located within the Limited Common Elements provided that the use of such devices does not violate any applicable laws or the Rules and Regulations (as defined in **Section 7.24** below).

Section 7.16 Nondiscrimination. No Owner (including the Declarant), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale, lease or rental of any Unit nor in the use of the Common Elements.

Section 7.17 Sale of Units. Except as hereafter set forth, the right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that Owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of the Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five (5) days after interest in that Unit Owner's Unit has been transferred to another person. In addition, each Unit Owner agrees to provide to a purchaser of that Owner's Unit a copy of the Condominium Documents and all effective Rules and Regulations.

Section 7.18 Handicap Accessibility. Notwithstanding the other provisions herein, a Unit Owner may, at such Unit Owner's expense, have such reasonable modifications made to the interior and exterior of such Unit Owner's Unit and the Common Elements or Limited Common Elements as may be necessary to afford physically handicapped persons full enjoyment of such Unit Owner's premises. Any modifications to be undertaken to the exterior of a Unit or the Common Elements or Limited Common Elements shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract and such plans and specifications as are approved by the Executive Board. The Unit Owner and the approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members of the Association, the Executive Board is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy such Unit Owner's Unit, including the Common Elements and Limited Common Elements.

Section 7.19 Antennas. Unless required by law, no exterior satellite dish or antenna may be placed on the exterior of any Unit or in the Common Elements (including balconies) without the prior written approval of the Executive Board, which may be withheld in its sole discretion and which, in any event, shall be no larger than eighteen inches (18") in diameter. The location of any exterior antenna, or satellite dish, which is permitted pursuant to the previous sentence shall be subject to the reasonable prior approval of the Executive Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Executive Board may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite

dish, the Owner shall furnish to the Executive Board a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Executive Board. In no event shall such antenna or satellite dish be installed on the roof unless required by law or otherwise approved by the Executive Board in its sole discretion, and then, any roof penetration that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Executive Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. Any Owner installing an antenna or satellite dish under this **Section 7.19** shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the Building or other property damage caused by roof leaks.

Section 7.20 Maintenance. Each Owner shall keep such Unit Owner's respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and (excluding its parking space and the structural elements of the balcony, terrace or other Limited Common Elements appurtenant to such Unit) in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 7.21 Fencing. No fencing (including invisible dog-type fencing) or walls shall be permitted on the Common Elements or Limited Common Elements with the exception of those installed by Declarant without the prior written consent of the Executive Board.

Section 7.22 Insurance. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Building or contents thereof, applicable for residential use, without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Elements.

Section 7.23 Landscaping. No Unit Owner shall install any landscaping and/or plant any vegetable or herb garden in the Common Elements or the Limited Common Elements unless the prior written consent of the Executive Board is obtained.

Section 7.24 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Condominium Property may be established and amended from time to time by the Executive Board ("**Rules and Regulations**"); provided, however, that, notwithstanding any other provision herein to the contrary, any Rules and Regulations (or amendment thereto) that materially restrict a use then being conducted in an Office Unit or which is not otherwise prohibited by the terms of this Declaration, shall not be enforceable against the Owner or tenant of the Office Unit in a manner which materially restricts such use unless the Owner of such Unit consents to the Rules and Regulations in writing. Copies of such regulations and amendments thereto shall be posted

prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

Section 7.25 Compliance with Covenants, Conditions and Restrictions. Every Unit Owner and other party described in the first paragraph of this **Article VII** shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the Bylaws and with the Rules and Regulations in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Unit Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Unit Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof.

In addition to the above rights, the Executive Board may also enter upon a Unit or any portion of the Condominium Property perform maintenance or make repairs thereon which is the responsibility of a Unit Owner who has failed to perform such maintenance or make such repairs (i) after having given such Owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any fines imposed by the Executive Board, which is hereby empowered to levy reasonable fines against any Unit Owner for the failure of such Unit Owner to comply with any such covenants, conditions and/or restrictions, and any and all expenses incurred by the Association in enforcing any of the terms and provisions of the Condominium Documents, including reasonable attorneys' fees to the extent permitted by North Carolina law, may be levied as an Individual Unit Assessment against the Unit Owner in question and his or her Unit.

Any action brought by the Association hereunder may be brought in its own name, in the name of its Executive Board or in the name of its managing agent. In any case, of flagrant or repeated violation by a Unit Owner, he or she may be required by the Executive Board to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration and with the Bylaws and Rules and Regulations.

ARTICLE VIII THE ASSOCIATION

Section 8.1 Organization of Association. A nonprofit North Carolina corporation known and designated as Fifth and Poplar Residential Condominium Owners Association, Inc. (the "**Association**") has been organized to provide for the administration of the Condominium Property, and the Association shall administer the operation and maintenance of the Condominium Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as **Exhibit "C"**. Every Owner shall be required to be and shall automatically be a Member of the Association by virtue of his/her ownership interest in a Unit.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Condominium Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect

Assessments in the manner provided in **Article X** below and in **Article VIII** of the Bylaws, and adopt, promulgate and enforce such Rules and Regulations governing the use of the Units, Common Elements as the Executive Board may deem to be in the best interest of the Association in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47C-3-116 and **Article VIII** of the Bylaws. Any lien established pursuant to this **Section 8.2** shall be subordinate to the lien of any bona fide mortgage recorded prior to the docketing of the lien and shall not be affected by the transfer of the Unit other than a transfer as a result of the foreclosure of a first lien deed of trust pursuant to N.C.G.S. § 47C-3-116 (f) which shall extinguish the lien for any Assessments that were payable prior to the foreclosure sale, but will not relieve any subsequent Owner from paying future Assessments.

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Director; provided, however, (i) that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, the President of the Association shall call a special membership meeting, at which meeting the Unit Owners other than the Declarant shall elect at least one Director (and not less than twenty-five percent 25% of the Directors) to the Executive Board who shall be a Unit Owner or who shall otherwise meet the qualifications as provided in the Bylaws; and (ii) that not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent 33% of the Directors of the Executive Board must be elected by the Owners other than Declarant, and if this is not the case, the President of the Association shall call a special membership meeting, at which meeting the Unit Owners other than the Declarant shall elect at least less than thirty-three percent 33% of the Directors, each of whom shall be a Unit Owner or whom shall otherwise meet the qualifications as provided in the Bylaws.

Not more than sixty (60) days after the earlier of the following events occurs, the President of the Association shall call a special membership meeting ("**Declarant Control Period Special Meeting**"):

- (a) the expiration of the Declarant Control Period; or
- (b) Declarant gives up, in writing, the right to appoint the Executive Board.

Notwithstanding anything above to the contrary, the Declarant may, by written notice to the Executive Board, at or before any Annual Meeting, relinquish to the Owners, the Declarant's right to elect one or more Directors at such annual meeting pursuant to this Section.

At the Declarant Control Period Special Meeting, the Unit Owners (including the Declarant) shall elect a new Executive Board consisting of three (3) Directors who all shall be Unit Owners or who shall otherwise be qualified pursuant to the Bylaws. The persons so elected shall take office immediately upon election and the three (3) Directors of the Executive Board previously appointed or elected shall step down from their positions.

Section 8.4 Post-Development Period. After the Declarant Control Period Special Meeting, the Unit Owners shall elect the Directors of the Executive Board at the Annual Meeting of Unit Owners.

Section 8.5 Books and Records. The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any Rules and Regulations adopted by the Executive Board from time to time; and (c) all financial records of the Association, as required by N.C.G.S. §47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, any Unit prospective purchaser and any insurer or guarantor of a loan secured by a Mortgage. The Association shall cause audited financial statements to be prepared for the preceding fiscal year within 120 days following the end of the Association's fiscal year (beginning with the first complete fiscal year following the recordation of this Declaration).

ARTICLE IX EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by the Executive Board, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Common Elements.

Section 9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of the Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as the Building shall stand. If the Building or any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty, or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, encroachments of parts of the Common Elements upon any Unit, or of any Unit upon any other Unit or parts of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3 Easements Over Common Elements. Declarant, during the Declarant Control Period, and the Executive Board, at any time, may grant easements for utility purposes for the benefit of the Condominium Property including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; gas mains; telephone and television or cable television wires, cables, fiber optic lines and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements; and each Owner hereby grants to Declarant or the Executive Board, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. During the Declarant Control Period, Declarant shall have an easement over the Common Elements as may be reasonably necessary to complete the construction of the Building and the other improvements within the Condominium Property.

Section 9.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by the Executive Board, shall have the right to enter any Unit or Limited Common Element for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Section 9.5 Relocation of Boundaries: Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units.

(1) Following the recordation of this Declaration, except for the relocation of boundaries between adjoining Units by Declarant pursuant to **Section 6.1**, the boundaries between adjoining Units may be relocated only upon application to the Executive Board by the Owners of such adjoining Units ("**Adjoining Owners**") and upon approval by the Executive Board of such application; provided, however, that no such relocation of boundaries shall be binding upon any mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such mortgagee.

(2) Any such application to the Executive Board must be in such form and contain such information as may be reasonably required by the Executive Board, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Executive Board determines within thirty (30) days after submission to it of the application (including any supporting plans, engineering reports or other information that the Executive Board may reasonably request) that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Upon approval of the proposed relocation of boundaries, the Executive Board shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units and reallocates among the Adjoining Owners (based upon the resulting square footage of the altered Units) the interests in the Common Elements which were formerly allocated to each affected Unit. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Adjoining Owners.

(b) Subdivision of Units.

(1) Following the recordation of this Declaration, except for the subdivision of Units by Declarant pursuant to **Section 6.1**, Units may be subdivided only upon application to the Executive Board by the Owner of the Unit to be subdivided ("**Subdividing Owner**") and upon approval by the Executive Board of such application; provided, however, that no such subdivision shall be binding upon any mortgagee holding a Mortgage on any subdivided Unit, unless consented to in writing by such Mortgagee.

(2) Any such application to the Executive Board must be in such form and contain such information as may be reasonably required by the Executive Board, and shall be accompanied by, a plat detailing the proposed relocation of boundaries and an opinion letter

from an attorney, acceptable to the Executive Board, confirming that the proposed subdivision and the resulting Units shall comply with the terms of the Declaration and applicable zoning and subdivision ordinances, including any applicable laws regarding minimum parking requirements. Unless the Executive Board determines within thirty (30) days after submission to it of the application (including any supporting plans, engineering reports or other information that the Executive Board may reasonably request) that the proposed subdivision is unreasonable, the application shall be deemed approved. Upon approval of the subdivision, the Executive Board shall cause to be prepared and filed, at the Subdividing Owner's expense, an amendment to this Declaration and a plat which identifies the Unit involved, describes and depicts the new Units created, and gives the dimensions of the altered Units and reallocates among the created units (based upon the resulting square footage of the created Units) the vote, and the interests in the Common Elements which were formerly allocated to the subdivided Unit. Such amendment shall also contain operative words of conveyance and be signed by the Subdividing Owner and consented to by its mortgagee, if any, and shall be indexed by the Register of Deeds in the name of the Subdividing Owner.

(c) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form permitted by law.

Section 9.6 Conveyance or Encumbrance of Common Elements. While the Condominium Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of (except for easements which may be granted or reserved by Declarant or the Association pursuant to the terms hereof) or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of the Owners entitled to cast at least eighty percent (80%) of the votes in the Association, including at least eighty percent (80%) of the votes entitled to be cast by Owners other than Declarant, and at least eighty percent (80%) of all Mortgagees. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of Assessments provided for in **Section 8.2** of this Declaration. Nothing in this **Section 9.6** shall be construed to limit the right of any Owner to convey or to encumber such Unit Owner's allocated interest in the Common Elements as an

appurtenance to and in connection with the conveyance or mortgaging of such Unit Owner's Unit.

Section 9.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership, access to and possession of such Unit Owner's Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, Rules and Regulations set forth in the Condominium Documents, or adopted by the Executive Board.

Section 9.8 St. Peters Homeowners Association, Inc. In order to obtain certain approvals in conjunction with the initial development of the property upon which the Condominium is located, certain proffers were made to St. Peters Homeowners Association, Inc., a North Carolina non-profit corporation ("St. Peters Association") which shall be binding upon the Condominium and which shall run with the title to the Condominium Property as follows:

(a) Right to Rent Parking Spaces. The Association shall make up to fifteen unreserved parking spaces available for lease by the St. Peter's Association. The Association may require St. Peter's Association to enter into separate agreements with respect to any such leases. The maximum monthly rate to be charged by the Association for each such space for calendar year 2005 shall be \$100.00 per month. In each year following 2005, the maximum monthly rate shall increase at the rate of three percent (3%) per year, compounded annually.

(b) Right to Use Amenities. The owners and occupants of St. Peters Condominiums shall have the right to use the Condominiums common amenities, including the pool and fitness center for a monthly fee equal to the cost of a YMCA family membership in Charlotte, and under the same rules and regulations as are generally applicable to the residents or occupants of the Condominium. In addition to the payment of the monthly fee, such use shall also be conditioned upon each such user entering into such agreements (including liability waivers) as may be required by the Executive Board in connection with the use of such amenities.

(c) Right to Use Dumpster. Provided that St. Peters Association enters into a separate agreement with the Association and pays such an annual fee as is required by the Association, then St. Peters Association shall have the non-exclusive right to use a garbage dumpster located upon the Condominium Property.

(d) West End Easement. Declarant hereby reserves a non-exclusive easement for the owners and occupants of St. Peters Condominium for pedestrian access across the sidewalks located on the portion of the Condominium Property adjacent to the northwest corner of the St. Peters Condominium Property as more particularly shown on **Exhibit D**. The use of such sidewalks shall be subject to the same rules and regulations as are otherwise applicable to the Owners.

ARTICLE X
ASSESSMENTS

Section 10.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against such Unit Owner's individual Unit, provided, however, real property ad valorem property taxes will not be separately assessed against the Units until the first full calendar year following recordation of the Declaration. Real property ad valorem taxes for the calendar year during which the Declaration is recorded shall be paid by Declarant (subject to reimbursement from each purchaser for its pro rata share at closing).

Section 10.2 Common Expenses.

(a) Allocation of Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner shall contribute as its share of the Common Expenses, all in accordance with the definition of "**Common Expenses**" set forth above, the Bylaws, and the provisions of the North Carolina Condominium Act, an amount equal to the Owner's applicable Base Assessment plus the amount of Common Expenses (in excess of the aggregate amount of the Base Assessments) multiplied by the respective Owner's share of Common Elements Interest.

(b) Commencement of Assessments. Assessments for all Units may begin as of the date of the first conveyance of a Unit to an Owner other than Declarant, or at any time within sixty (60) days thereafter as determined by the Declarant; provided that until the Executive Board levies a Common Assessment, Declarant shall be solely responsible for the Common Expenses in accordance with the terms of the North Carolina Condominium Act. The due dates for payment of such Common Assessments shall be established by the Executive Board and shall be collected at least monthly. The Bylaws also grant the Executive Board the right to impose a Special Assessment and Individual Unit Assessment against the Unit Owners as more particularly described therein.

Section 10.3 Common Surplus. The term "**Common Surplus**" means and refers to all funds and other assets of the Executive Board, including excess of receipts of the Executive Board from Assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in proportion to their respective allocated Common Elements Interests; provided, however, that the Common Surplus shall be held by the Executive Board and either: (i) deposited in the reserve fund; (ii) credited toward Common Expenses for subsequent year(s); or (iii) distributed to the Owners in proportion to their respective allocated Common Elements Interests, subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in **Section 11.6** below, 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 in proportion to their respective allocated Common Elements Interests.

ARTICLE XI
INSURANCE

Section 11.1 Property Insurance. The Association shall obtain and maintain (either directly or through coverage obtained by the Master Association) at all times a policy of property insurance on the Building and Common Elements (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Building and Common Elements at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of \$10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with either (i) "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's *Insurance Reports*, (ii) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's *Insurance Reports - International Edition*, (iii) an "A" or better rating in Demotech's *Hazard Insurance Financial Stability Ratings*, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's *Insurer Solvency Review*, or (iv) a "BBB" or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*. The policy shall provide that the Association is a named insured and that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain a standard extended coverage endorsement and a standard "all risk" endorsement (unless the policy contains "broad form" covered causes of loss), and an inflation guard endorsement, if available, an earthquake endorsement, if available, and a building ordinance or law endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees and agents that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and mortgagees named in the mortgage clause; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to each mortgagee.

The insurance coverage required under this **Section 11.1** shall be reviewed at least annually by the Executive Board, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage which most closely approximates the required coverage with the deductible provisions as determined by the Executive Board.

Section 11.2 Liability Insurance. The Executive Board shall obtain and maintain (either directly or through coverage obtained by the Master Association) one or more policies of commercial general liability insurance in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The Executive Board may satisfy its liability insurance coverage requirements under this **Section 11.2** by means of a primary policy with per

occurrence coverage limits of less than \$1,000,000.00, so long as it also maintains one or more "umbrella" or excess liability policies sufficient to provide total coverage in excess of \$1,000,000.00 per occurrence. The liability insurance policies shall include endorsements covering cross liability claims of one insured against another, including the liability of the Executive Board or the Owners as a group to one or more Owners, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Executive Board and to all insureds, including all Owners and mortgagees. The Executive Board shall review such limits annually.

Section 11.3 Fidelity Coverage. The Executive Board shall obtain fidelity coverage against dishonest acts on the part of all persons handling, or responsible for handling funds belonging to or administered by the Executive Board. Any such fidelity insurance policy must name the Executive Board as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, plus the amount of any reserves maintained by the Association, or the amount required by any Mortgagee, whichever is greater. Additionally, the policy must include a provision that calls for no less than ten (10) days' written notice to the Executive Board prior to cancellation or substantial modification. Any manager hired by the Executive Board shall be required to provide its own fidelity insurance policy which must provide the same coverage and contain the same terms as required by this **Section 11.3**.

Section 11.4 Other Insurance Policies. The Executive Board shall be authorized to obtain such other insurance coverage, including workman's compensation or employee liability insurance, as the Executive Board shall determine from time to time desirable or necessary.

Section 11.5 Premiums & Deductibles. Premiums upon insurance policies purchased by the Executive Board, and any amounts paid as a result of a deductible, shall be paid by the Executive Board and charged as a Common Expense. The Executive Board shall maintain at all times sufficient funds in its reserve account in order to cover the cost of any deductible amounts required under the property insurance policy maintained pursuant to **Section 11.1**. The foregoing notwithstanding, each Unit Owner agrees that if any portion of the Condominium Property which is covered under the Association's insurance policy is damaged or destroyed by an Owner or his or her family, invitees, or tenants, then such Owner shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to such property or improvements, which amount shall be due within ten (10) days after the delivery of written notice of such costs to the responsible Unit Owner(s) or twenty (20) days after mailing of such notice to the responsible Unit Owner(s) by certified mail, whichever occurs first. In the event, a Unit Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Executive Board and the amount so advanced shall be assessed to such Owner as an Individual Unit Assessment.

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Executive Board (as opposed to policies procured by the Executive Board of the Master Association) shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee, and each Owner irrevocably appoints the Executive Board as its attorney-in-fact for that purpose. The sole duty of the Executive Board as insurance

trustee shall be to receive such proceeds as are paid and deposit the same with a bank or trust company to be held in trust until either applied to restore the damage as described in **Article XII** below or distributed as set forth herein and for the benefit of the Owners and their mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his mortgagee, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

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

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Executive Board.

(2) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event, a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the mortgagee and the Owner as their respective interests may appear.

(d) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed by the Executive Board to or for the benefit of the Owners in the following manner:

(1) If it is determined, as provided in **Article XII** below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,

(i) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged improvements;

(ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of such Units and the Units to which those Limited Common Elements were allocated or to their mortgagees, in proportion to their respective Common Elements Interests; and

(iii) the remainder of the proceeds shall be distributed to all Owners or mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their mortgagees, if any, jointly, in proportion to their respective Common Elements Interests.

Section 11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon such Unit Owner's Unit, the improvements therein, and such Unit Owner's personal property as well as public liability insurance, and such other insurance coverage as such Unit Owner may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Executive Board within thirty (30) days after purchase of a Unit and shall provide, upon renewal, evidence of such renewal.

ARTICLE XII DUTY TO REPAIR OR RECONSTRUCT

Section 12.1 Reconstruction and Repair. In the event of damage to or destruction of the Building or any Common Element as a result of fire or other casualty, the Executive Board shall arrange for the prompt restoration and replacement of the damaged or destroyed Building or Common Element unless (1) the Condominium is terminated in accordance with the provisions of **Article XV** below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners decided not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Building or Common Elements, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Executive Board shall repair or replace such damaged property), and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of **Section 11.6(d)(2)** of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. §47C-1-107(a).

Section 12.2 Obligations of Owners. Each Owner will, at such Unit Owner's sole cost and expense, keep and maintain such Unit Owner's Unit and the Limited Common Elements allocated solely to such individual Unit Owner in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit, without the prior written consent of the Executive Board, except as authorized under N.C.G.S. §47C-2-111. Upon the failure of an Owner to so maintain such Unit Owner's Unit the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

