

NORTH CAROLINA

ALAMANCE COUNTY

BOOK 444 PAGE 229

DECLARATION CREATING UNIT OWNERSHIP OF PROPERTY IN ALAMANCE  
COUNTY UNDER THE PROVISIONS OF CHAPTER 47-A of the GENERAL  
STATUTES OF NORTH CAROLINA

DECLARATION OF CONDOMINIUM

THIS DECLARATION made this 22 day of May, 1979, by M & L CONSTRUCTION COMPANY, INC.,  
Post Office Box 100, Burlington, North Carolina 27215 (Alamance County), hereinafter referred  
to as "Declarant", under and by virtue of the provisions of Chapter 47-A of the General  
Statutes of North Carolina;

W I T N E S S E T H :

Affecting the land and all improvements thereon as hereinafter more particularly des-  
cribed, lying and being in the City of Burlington, Alamance County, North Carolina and des-  
cribed as follows:

That certain tract or parcel of land in the City of Burlington, Alamance County, North Carolina  
adjoining the Southern margin of Moore Lane, the Western margin of Isley Place in the Northern  
margin of Kime Street, and bounded and described as follows:

BEGINNING at an iron stake and point in the Southern margin of Moore Lane and a corner with  
Central Heights Subdivision Property; (this said point of BEGINNING is located South 81 degs.  
48" East 179.58 ft. from an iron stake at the intersection of Southern margin of Moore  
Lane with Eastern margin of Central Avenue); thence from said point of BEGINNING and with the  
line of Central Heights Subdivision Property South 9 degs. 11' 12" West 6 ft. to a "control  
corner"; thence again with Central Heights Subdivision Property South 8 degs. 28' West 150.73 ft. to a  
"control corner"; thence again with Central Heights Subdivision Property South 9 degs. 01' 56"  
West 498.20 ft. to a "control corner", in the Northern margin of Kime Street; thence with the  
said Northern margin of Kime Street South 81 degs. 09' 8" East 60.10 ft. to a corner in the  
Northern margin of Kime Street at the intersection of the Western margin of Isley Place; thence  
in a Northern direction and with the Western margin of Isley Place North 8 degs. 23' 16" East  
182.13 ft. to a stake in the Western margin of said Isley Place; thence North 33 degs. 23' 41"  
East 77.81 ft. to a stake; thence North 33 degs. 46' 12" East 43.65 ft. to a stake in the West-  
margin of Isley Place; thence with the Western margin of Isley Place North 9 degs. 08' 18" East  
363.95 ft. to a point in the Western margin of Isley Place; thence a curve Northwesterly  
(radius-30 ft.) to a point in the Southern margin of Moore Lane; thence with the Southern margi  
of Moore Lane North 81 degs. 41' 48" West 110.36 ft. to the point of BEGINNING, and being as  
shown on Plat of record in the Alamance County Registry in Plat Book 24, at pages 57 and 58  
which lies South of Moore Lane and North of Kime Street on the Western side of Isley Place.

(See Deed Book 439 Page 411)

RECITALS, INTENT AND PURPOSE

WHEREAS, M & L Construction Company, Inc., located at 2905 South Fairway Drive,  
Burlington, Alamance County, North Carolina 27215,

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referred to as "Developer" hereinafter, as owner of the above described property in fee simple, has plans to erect or has erected a dwelling structure or structures upon the above described land for use as multi-family dwellings, containing among other things sixteen dwelling units, a parking area, yard areas and other appurtenances and facilities all as hereafter described; and

WHEREAS, by this Declaration, it is intended to subdivide the property into sixteen separate units of real property, which in accordance with the provisions hereinafter contained, shall be subjected to the benefits and burdens of condominium ownership, and

WHEREAS, a condominium is a method of ownership which when applied to a multi-dwelling property, provides for separate title to each separate residential unit, which title shall consist of an apartment dwelling unit and surrounding yard areas within each of sixteen units.

WHEREAS, notwithstanding such separation of title, the owners, by placing the condominium plan into effect will own each with the other certain common area property, including, intending to limit same, structural components of the entire building common to all apartment units and utility lines and wires; and

WHEREAS, it is desirable, therefore, that this Declaration provide for the basic requirements of such needs and for the proper use of the property, and that within these basic requirements, the Association of Owners hereinafter referred to, shall have the right and duty to effect the purposes of the Condominium; NOW THEREFORE,

DECLARATION. M & L Construction Company, Inc. hereby declares on behalf of its successors, grantees and assigns, and M & L Construction Company, Inc. hereby assigns to its grantees and their respective heirs, successors and assigns, as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the property whatsoever, the following:

The property from and after the date of the recordation of this Declaration in the Office of the Register of Deeds of Alamance County, North Carolina, shall be and continue subject to each and all of the terms hereof until this Declaration is terminated or abandoned in accordance with the later provisions of this Declaration.

I. DEFINITIONS: As used herein or elsewhere in the condominium documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as hereinafter set out:

1. UNIT. Any one of those parts of the Building and surrounding yard areas which are separately described on "Surveyor Plans" as "UNIT" followed by a letter.

2. UNIT OWNER. The person, persons or entity holding title in fee simple to a unit.

3. ASSESSMENT. That portion of the cost of maintaining, repairing and managing the property which is to be paid by each unit owner, which costs shall be shared equally by each unit owner.

4. ASSOCIATION. Condominiums West, Inc., the owners association corporation, and its successors, a corporate association not for profit, copies of the Articles of Condominiums West, Inc., the corporate association and its By-Laws are annexed hereto and made parts hereof of Exhibits "B" and "C".

5. BUILDING. The structure or structures being located on the property are built substantially in accordance with plans and specifications therefor, prepared by Alley, Williams, Carmen & King, Inc., Chapel Hill Road, Burlington, Alamance County, North Carolina, entitled, Condominiums West, Inc., Isley Place, Burlington, Alamance County, North Carolina.

6. COMMON ELEMENTS. The Common Elements include: All land and portions of the property not within the boundary of the units, all driveways, roadways, and parking areas, together with any other space or area not specifically included with the description of a unit.

7. COMMON EXPENSES. The actual and estimated cost of:

a. All expenses incurred for the maintenance and/or repair of the common elements and the exterior surfaces specifically including roof, outer walls, windows yards, and doors and maintenance and/or repair of the driveways and parking areas located on the property, specifically including all areas not specifically conveyed in individual units.

b. Management and administration of the Association, including, without limiting the same, to compensation paid by the Association to accountants, attorneys, and other employees;

c. Any other items held by or in accordance with other provisions of this Declaration of the Condominium documents to be Common Expenses.

8. COMMON SURPLUS. The excess of all receipts of the Association, including but not limited to assessments, over the amount of common expenses.

9. CONDOMINIUM DOCUMENTS. This Declaration and the Exhibits annexed hereto as the same from time to time may be amended. Said exhibits are as follows:

Exhibit "A": "Surveyor Plans." Site plan with floor plans for lower and upper floors, together with unit plan and share of interest attributed to the respective units, prepared by Alley, Williams, Carmen & King, Inc., Chapel Hill Road, Burlington, Alamance County, North Carolina.

Exhibit "B": Articles of Incorporation of Condominiums West, Inc.

Exhibit "C": By-Laws of Condominiums West, Inc.

Exhibit "D": Rules and Regulations of the Association.

Exhibit "E": Deed form.

10. ASSOCIATION. Condominiums West, Inc.

its assigns and/or successors.

*Mathews & Love*

11. PERSON. M & L Construction Company, Inc., Declarant, Association and any individual, firm, corporation, trustee or other entity capable of holding title to real property.

12. PLANS AND SPECIFICATIONS. The plans and specification referred to in Article I, Section 5 hereof.

13. UNITS DESIGNATED. Each of the sixteen (16) units, designated Condominiums West, Inc., Isley Place, Burlington, Alamance County, North Carolina contains 2 floors - four rooms, with 1 full & 2- $\frac{1}{2}$  baths, approx. 1432 square feet, with appurtenant yard areas as shown on the said plans contained in Exhibit "A".

There are no common living areas withing the structure or without.

14. PROPERTY. As defined and described in Declaration of Condominium.

15. PROCESS AGENT. The name of the agent who shall be authorized to receive service of process in all matters affecting the property or any unit owners thereof shall be: W. E. Love, Jr., 2905 S. Fairway Drive, Burlington, Alamance County, North Carolina.

16. SHARE. Except as hereinafter provided, the Owner or Owners of each unit will have one vote in determining the affairs of the Association; and each unit shall contain, as appurtenance thereto, a one-sixteenth (1/16) undivided interest in all common elements of the property.

II. COMMON ELEMENTS USE: The common elements shall be used in accordance with and subject to the following provisions:

1. COVENANT AGAINST PARTITION: In order to effectuate the intent hereof and to preserve the condominium and the condominium method of ownership, the property shall remain undivided and no entity or person, irrespective of the nature of his or

its interest in the property, shall bring any action or proceeding for partition or division of the property or any part thereof until the termination of the Declaration in accordance with provisions herein elsewhere contained or until the Building is no longer tenatable, whichever first occurs.

2. RULES AND REGULATIONS PROMULGATED BY ASSOCIATION: No person shall use, modify, change or reconstruct the common elements or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be promulgated by the Association.

3. MAINTENANCE AND REPAIRS of the Common Elements and all exterior surfaces & yards shall be the responsibility of the Association, but nothing herein contained however shall be construed so as to preclude the Association from delegating to persons, firms or corporations of its choice, such duties as may be imposed upon the Association by the terms of this subarticle II(3) and as are approved by the Association.

4. Expenses incurred or to be incurred for the maintenance, repair, management and operation of the Common Elements and all exterior surfaces & yards shall be collected from unit owners as assessed, in accordance with provisions contained elsewhere herein.

5. Subject to the rules and regulations from time to time pertaining thereto, all unit owners may use the Common Elements in such manner as will not restrict, interfere with or impede the use thereof by other unit owners.

6. ALTERATIONS AND IMPROVEMENTS. The Association shall have the right to make or cause to be made such alterations and improvements to the Common Elements (which do not prejudice the right of any unit owner, unless his written consent has been obtained), provided the making of such alterations and improvements are first approved by the Association and all first mortgages of individual units. The cost of such alterations and improvements shall be assessed as Common Expenses, unless the same are exclusively or almost exclusively for the benefit of the unit owner requesting the same, in which case such requesting unit owner shall be assessed therefor in such proportions as they approve jointly, and, failing such approval, in such proportions as may be determined by the Association.

7. SHARES OF UNIT OWNERS. The Shares of Unit Owners in the Common Elements shall be equal and may be altered only by amendment hereof executed in form for recording by all of the Unit Owners and first mortgagees of such Unit Owners. No such alteration shall affect the lien of prior recorded mortgages unless written consent of the holder of such mortgage is obtained and recorded.

8. The Share of a Unit Owner in the Common Elements is appurtenant to the Unit owned by him, and shall be inseparable from Unit Ownership.

## III. MAINTENANCE AND REPAIR OF UNITS:

1. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of:

- A. All exterior surfaces including but not limited to walks, windows, doors and roof of a unit, and all common areas or elements of the structure, & yards which directly affect the structural integrity of the structure or substantially affect the enjoyment of the structure by all owners of individual units.
- B. All incidental damage caused to a Unit by such work as may be done or caused to be done by the Association in accordance herewith.

2. BY THE UNIT OWNER: The responsibility of the Unit Owner shall be as follows:

- A. To maintain, repair and replace at his expense, all portions of the Unit except the portions of each to be maintained, repaired and replaced by the Association.
- B. To perform his responsibilities in such manner so as not to unreasonably disturb other persons in the Building.
- C. Not to paint or otherwise decorate or change the appearance of any portion of the Building not within the walls of the Unit, unless the written consent of the Association is obtained.
- D. Not to make any alterations in the portions of the Unit or Building which are to be maintained by the Association or remove any portion thereof or make any additions thereto or to do anything which would or might jeopardize or impair the safety or soundness of the Building without first obtaining the written consent of the Association and all First Mortgages of individual units, nor shall any Unit Owner impair any easement without first obtaining written consents of the Association and of the Unit Owner for whose benefit such easement exists.

## IV. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

1. REAL PROPERTY: Each Unit, together with the space within it and including the adjoining yard area as shown on the Surveyor Plans and together with all appurtenances thereto, shall for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the Property, subject only to the provisions of this Declaration.

2. BOUNDARIES: Each Unit shall be bounded as to external boundaries as shown on the Surveyor Plans attached hereto.

3. APPURTENANCES: Each Unit shall include and the same shall pass with each Unit as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all the right, title and interest of a Unit Owner in the property, which shall include but not be limited to:

- A. Common Elements: An undivided one-sixteenth (1/16) share in the Common Elements.
- B. The privilege to maintain not more than one (1) private passenger automobiles at and on parking spaces in accordance with the rules and regulations of the Association.
- C. Easements for the benefit of Units.

- D. Association membership and funds and assets held by the Association for the benefit of the Unit Owner.
- E. All such appurtenances shall be and continue to be subject to the easements for the benefit of other Units.
- F. The following easements from such Unit Owner to each other Unit Owner and to the Association:
  - i. Ingress and Egress: Easements through any Common Elements for ingress and egress for all persons making use of such Common Elements in accordance with the terms of the Condominium Documents.
  - ii. Maintenance; Repair and Replacement. Easements through the Unit and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Use of these easements, however, for access to the Units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
  - iii. Structural Support. Every portion of a Unit which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of the Common Elements.
  - iv. Utilities. Easements through the Units and Common Elements for all facilities for the furnishing of utility services shall include but not be limited to conduits, ducts, plumbing and wiring; provided; however, that the easement for such facilities through a Unit shall be only substantially in accordance with the Plans and Specifications of the Building.
  - v. Emergency Easements of Ingress and Egress. There shall be easements wherever and whenever reasonably required for emergency ingress and egress.

V. USE RESTRICTIONS: In order to provide for a congenial occupancy of the Building and to provide for the protection of the values of the Units, the use of the Property shall be restricted to and be in accordance with the following provisions:

- 1. The Units shall be used only for residential purposes; provided no more than one (1) persons not members of the immediate family of each Unit Owner may reside in either unit;
- 2. The Common Elements shall be used for the furnishing of services and support for which the same are reasonably intended for the benefit of the Units.
- 3. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents.
- 4. LAWFUL USE: No immoral, improper, offensive or unlawful use shall be made of the property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of Unit Owners and the Association of complying with the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same as hereinabove provided for the maintenance and repair

of that portion of the Property subjected to such requirements.

5. INTERPRETATION: In interpreting deeds, mortgages and plans, the existing physical boundaries of the unit or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the summary description herein provided and rather than the metes and bounds expressed in the deed, mortgage or plan, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the Building.

6. REGULATIONS: Regulations concerning use of the Property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of such regulations are furnished to each Unit Owner prior to the time that the same become effective. The initial regulations, which shall be deemed effective until amended by the Association, are annexed hereto and made a part hereof as Exhibit "D". Any amendments thereto shall be recorded in the Official Records of Register of Deeds, Alamance County, Graham, North Carolina,

as amendments to said Exhibit. Such regulations shall not impair or limit the right of mortgagees, as elsewhere recited.

VII. ADMINISTRATION: The administration of the Property, shall be governed by the following procedures:

1. The Association shall be established under the name Condominiums West, Inc.

as an Association not for profit. Any other form of organization for the Association may be submitted after first obtaining the written approval of all the members thereof.

2. The By-Laws of the Association shall be in the form attached as Exhibit "C" until such are amended in the manner therein provided.

3. The duties and powers of the Association shall be those set forth in this Declaration, the Articles of Corporate Association and the By-Laws, together with those reasonably implied to effect the purposes of the Association and this Declaration; provided, however, that if there are conflicts or inconsistencies between this Declaration and either the Articles of Corporate Association or the By-Laws, the terms and provisions of this Declaration shall prevail and the Unit Owners covenant to vote as soon as practicable in favor of such amendments in the Articles of Corporate Association and/or By-Laws as will remove such conflicts or inconsistencies. All of the powers and duties of the Association shall be exercised in accordance with the provisions of this Declaration.



4. Notice or demands, for any purpose, shall be given by the Association to Unit Owners and by Unit Owners to the Association and other Unit Owners in the manner provided for notices to members of the Association by the By-Laws of the Association.

5. Deadlocks. Should any issue to be determined by the Association be undecided by reason of a failure of the unit owners to agree as to a course of action, each owner taking subject to this Declaration agrees that the dispute shall be resolved as follows:

Each of the eight (8) units shall nominate one representative and the two nominees shall appoint a third, and the three together shall promptly hear the dispute presented by the owners and shall decide among themselves by majority vote that course best serves the interests of all owners of units. And, the decision of such group of nominated mediators shall be final, all unit owners having agreed by accepting the property subject to this restriction that no further appeal or delay of the decision of the mediators shall be permitted, except on a showing of fraud or other breach of the fiduciary relationship of the parties. All expenses of such mediation shall be borne equally by the Unit Owners.

VIII. INSURANCE. The insurance which shall be carried upon the property shall be governed by the following provisions:

1. AUTHORITY TO PURCHASE. All insurance policies upon the property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the Unit Owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the Units or any of them, and, if insurance companies will agree, shall provide that the insurer waives his rights of subrogation as to any claims against Unit Owners, the Association and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Insurance Trustee (as hereinafter defined), who may first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

2. UNIT OWNERS. Each Unit Owner shall obtain insurance, at his own expense, affording coverage upon his personal property, and for his personal liability and as may be required by law, but all such insurance shall contain some waiver of subrogation as that referred to in Article VIII. 1. hereof (if the same is available) and may be obtained from an insurance company from which the Association obtains coverage against the risk, liability or peril, if the Association has such coverage.

## 3. COVERAGE.

A. Casualty. The building and all other insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

i. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement.

ii. Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Building, including but not limited to vandalism, malicious mischief, windstorm and water damage.

B. Public liability and property damage in such amounts and in such forms as shall be required by the Association, including, but not limiting the same to water damage, legal liability, and off premises employee coverage.

C. Workman's Compensation policy, if required, to meet the requirements of law.

D. All liability insurance shall contain cross-liability endorsements - to cover liabilities of the Unit Owners as a group to a Unit Owner.

4. PREMIUMS. Premiums upon insurance policies purchased by the Association

shall be paid by the Association and charged as common expenses.

5. All insurance policies purchased by the Association shall be for the benefit

of the Association and the 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 North Carolina National Bank, as Trustee, or to any other bank

with trust powers as may be approved and selected by the Association. Such Trustee or

any other bank acting as such, is herein referred to as the Insurance Trustee. The In-

urance Trustee shall not be liable for payment of premiums nor for the renewal of policies,

nor for the sufficiency of coverage, nor for the form or contents of the policies, nor

nor failure to collect any insurance proceeds. The sole duty of the Insurance Trustee

shall be to receive such proceeds as are paid and to hold the same in trust for the

purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners

and their respective mortgagees, in the following shares, but such shares need not be

set forth upon the records of the Insurance Trustee:

A. Common Elements: Proceeds on account of damage to Common Elements - that undivided share for each Unit Owner and his mortgagee, if any, which is set forth in Exhibit "A".

B. Units. Proceeds on account of Units shall be held in the following undivided shares:

i. Partial destruction when the building is to be restored - for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each damaged unit. Upon the request of the Insurance

Trustee, the Association shall certify to the Insurance Trustee the appropriate portions as aforesaid, and each Unit Owner shall be bound by and the Insurance Trustee may rely upon such certification.

- ii. Total destruction of the Building or where building is not to be restored - for all Unit Owners the share of each being that share set forth in Exhibit "A".

- C. Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear.

6. DISTRIBUTION OF PROCEEDS. Proceeds of insurance policies received by the

Insurance Trustee shall be distributed to or for the benefit of the beneficial owners

after first paying or making provision for the payment of expenses of the Insurance

Trustee in the following manner:

- A. Reconstruction or Repair. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him or it.
- B. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittance to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him or it.
- C. Certificate. In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the name of the Unit Owners and their respective shares of the distribution. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate.

#### IX. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE.

1. If any part of the Common Elements shall be damaged by casualty, the deter-

mination of whether or not to reconstruct or repair the same shall be made as follows:

- A. Partial destruction, which shall be deemed to mean destruction which does not render one or more of the units untenable - shall be reconstructed or repaired unless at a meeting of the members of the Association which shall be called prior to commencement of such reconstruction or repair, this Declaration is terminated.
- B. Total destruction, which shall be deemed to mean at least total destruction of one unit and partial destruction of the other - shall not be reconstructed or repaired unless at a meeting which shall be called within ninety (90) 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 thereafter, the Unit Owners vote to reconstruct or repair.
- C. Any such reconstruction or repair shall be substantially in accordance with the Plans and Specifications unless otherwise agreed by all Unit Owners by appropriate amendments to this Declaration.
- D. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Unit Owner upon whose property such en-

encroachment exists, provided that such reconstruction was either substantially in accordance with the Plans and Specifications or as the building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building stands subject to this Declaration.

- E. Certificate. The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certification as soon as practical.

3. RESPONSIBILITY. If the damage is only to those parts of one dwelling unit

or which the responsibility of maintenance and repair is that of the Unit Owner, then the 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. However, it is intended that the Association shall bear the expense of maintenance or repair only to those parts of the structure which affect the structural integrity of the Building or the actual enjoyment of all units equally.

- A. Estimates of costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of 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 Association desires.
- B. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) assessments shall be made against the Unit Owners who own the damaged property in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the Unit Owners who own the damaged property in sufficient amounts to provide funds for the payment of such costs.
- C. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such cost in the following manner:
- i. Association. If the amount of the estimated cost of reconstruction and repair exceeds the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the sums paid upon assessments to meet such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the cost of reconstruction and repair.
  - ii. Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be distributed in payment of the costs of reconstruction and repair in the following manner:
    - a. Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction or repair lies with the Unit Owner; to such contractors, suppliers and personnel as do the work or supply the materials or services required for

such reconstruction or repair, in such amounts and at such times as the Unit Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Unit Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of the Unit Owner to make such reconstruction or repair within a reasonable time.

- b. Association - Lesser damage. If the amount of the estimated costs of reconstruction and repair is less than the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided; however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the amount hereafter provided for the reconstruction and repair of major damage.
- c. Association - Major Damage. If the amount of the estimated costs of reconstruction and repair of the building or other improvement is more than the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs in the manner required by the Association and upon approval of an architect qualified to practice in and employed by the Association to supervise the work.
- d. Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the Unit Owners and their mortgagees who are the beneficial owners of the fund.
- e. When the damage is to both the Common Elements and Units, the insurance proceeds shall be applied first to the costs of repairing the Common Elements and the balance to the Units in the shares above stated.

D. Insurance Adjustments. Each Unit Owner shall be deemed to have delegated to 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 Unit, subject to the rights of mortgagees of such Unit Owners.

X. TAXES AND SPECIAL ASSESSMENTS. Each condominium unit and its percentage

of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of other unit holders. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a separate parcel for taxing purposes.

XI. ASSESSMENTS. Assessments against the Unit Owners shall be made or approved

by the Association and paid by the Unit Owners to the Association in accordance with the

following provisions:

1. Share of Expense. Common Expenses - Each Owner shall be liable for his share of the Common Expenses, and any Common Surplus shall be owned by each Unit Owner in a like share.
2. Assessments other than Common Expenses. Any assessments, the authority to levy which is granted to the Association by the Condominium Documents, shall be paid by the Unit Owners to the Association in the proportions set forth in the provisions of the Condominium Documents authorizing the assessment.
3. Accounts. All sums collected by the Association from assessments may be commingled in a single fund but they shall be held for the Unit Owners in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments were made. Such accounts shall be as follows:
  - A. Common Expense Account - to which shall be credited collections of assessments for all Common Expenses as well as payments received for defraying costs of the use of Common Elements.
  - B. Alteration and Improvement Account - to which shall be credited all sums collected for alteration and improvement assessments.
  - C. Reconstruction and Repair Account - to which shall be credited all sums collected for reconstruction and repair assessments.
  - D. Emergency Account - to which shall be credited all sums collected for emergencies.
4. Assessments for Common Expenses. Assessments for Common Expenses shall be made for the calendar year annually in advance on or before the second Monday in December of the year preceding for which the assessments are made and at such other and additional times as, in the judgment of the Association, additional Common Expenses assessments are required for the proper service, maintenance and operation of the Common Elements. Such annual assessments shall be due and payable in three (3) equal consecutive monthly payments, on the first day of each month, beginning with January of the year for which the assessments are made. The total assessments shall be in the amount of the estimated Common Expenses for the year including a reasonable allowance for contingencies and reserves less the amounts of unneeded Common Expense Account balance and less the estimated payments to the Association for defraying the costs of the use of Common Elements. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment.
5. Other assessments shall be made in accordance with the provisions of the

Condominium Documents and if the time of payment is not set forth in the Condominium Documents, the same shall be determined by the Association.

6. Assessments for Emergencies. Assessments for Common Expenses of emergencies which cannot be paid from the Common Expense Account shall be made by the Association, from time to time as the need arises.

7. Assessments for Liens. All liens of any nature including taxes and special assessments levied by governmental authority which are a lien upon more than one Unit or upon any portion of the Common Elements, shall be paid by the Association as a Common Expense and shall be assessed against the Units in accordance with the shares of the Units concerned or charged to the Common Expense Account, whichever in the judgment of the Association is appropriate.

8. Assessment Roll. The assessments against Unit Owners shall be set forth upon a roll of the Units which shall be available in the Office of the Association for inspection at all reasonable times by Unit Owners or their duly authorized representatives. Such roll shall indicate for each Unit the name and address of the owner or owners, the assessment for all purposes and the amounts of all assessments paid and unpaid. A certificate made by the Association as to the status of a Unit Owner's assessment account shall limit the liability of any person for whom made other than the Unit Owner. The Association shall issue such certificates to such persons as a Unit Owner may request in writing.

9. Liability for Assessments. The owners of a Unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantees therefor. Such liability may not be avoided by a waiver of the use of enjoyment of any Common Element or by abandonment of the Unit for which the assessments are made. A purchaser of a unit at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments prorated to the period after the date of such sale. Such a purchaser as aforesaid shall be entitled to the benefit of all prepaid assessments paid beyond the date such purchaser acquired title.

10. Lien for Assessments. The unpaid portion of an assessment which is due shall be secured by a lien upon:

- A. The Unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in the public records of Alamance County. The Association shall not, however, record such claim of lien until the assessment is unpaid for not less than twenty (20) days after it is due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied.

- B. All tangible personal property located in the Unit except that such lien shall be subordinate to prior bona fide liens of record.

11. Application.

- A. Interest: Application of Payments. Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest but all sums not paid on or before twenty (20) days after the date when due shall bear interest at the maximum legal rate plus any reasonable collection charges from the date when due until paid. All payments upon account shall be applied first to interest and then the assessment payment first due. All interest collected shall be credited to the Common Expense Account.
- B. Suit. The Association at its option may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens securing the assessments or by any other competent proceeding and in either event, the Association shall be entitled to recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon, and all costs incident to the collection and the action, suit or proceeding, including, without limiting the same to reasonable attorney's fees.

XII. COMPLIANCE AND DEFAULT. Each Unit Owner shall be governed by and shall

comply with the terms of the Condominium Documents and Regulations adopted pursuant thereto and said Documents and Regulations as they may be amended from time to time. A default shall entitle the Association of other Unit Owners to the following relief:

1. Legal Proceeding. Failure to comply with any of the terms of the Condominium Documents and Regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, to an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or by a Unit Owner on behalf of the Association.

2. All Unit Owners 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 any unit or its appurtenances. Nothing herein contained however shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

3. Costs and Attorneys' Fees. In any proceeding existing because of an alleged default in payment by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

4. No waiver of Rights. The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium



uments shall not constitute a waiver of the right of the Association or Unit Owner  
 eni e such right, provision, covenant or condition in the future.

5. All rights, remedies and privileges granted to the Association or a Unit  
 er pursuant to any terms, provisions, covenants or conditions of the Condominium Docu-  
 its shall be deemed to be cumulative, and the exercise of any one or more shall not be  
 emed to constitute an election of remedies nor shall it preclude the party thus exer-  
 sing the same from exercising such other and additional rights, remedies or privileges  
 may be granted to such party by the Condominium Documents or at law or in equity.

XIII. AMENDMENT. Except for alterations in the shares which cannot be done  
 ept with the consent of all Unit Owners whose shares are being affected, and their  
 rtgagees, the Condominium Documents may be amended in the following manner.

1. Declaration. Amendments to the Declaration shall be proposed and adopted  
 follows:

- A. Notice. Notices of the subject matter of the proposed amendment in reason-  
 ably detailed form shall be included in the Notice of any meeting at which  
 a proposed amendment is considered.
- B. Resolution. A resolution adopting a proposed amendment may be adopted  
 only by the unanimous vote of the Unit Owners.
- C. Recording. A copy of each amendment shall be certified by the Association  
 as having been duly adopted and shall be effective when recorded in the  
 public records of Alamance County, North Carolina. Copies of the same shall  
 be sent to each Unit Owner and his mortgagee in the manner elsewhere pro-  
 vided for the giving of notices but the same shall not constitute a con-  
 dition precedent to the effectiveness of such amendment.

2. Association. Articles of Incorporation and By-Laws. The Articles of In-  
 rporation and the By-Laws of the Corporate Association shall be amended in the manner  
 ovided by such documents.

XIV. TERMINATION. The Condominium shall be terminated, if at all, in the  
 llowing manner:

1. The termination of the Condominium may be effected by the agreement of all  
 it Owners and First Mortgagees, which agreement shall be evidenced by an instrument  
 instruments executed in the manner required for conveyance of land. The termination  
 all become effective when such agreement has been recorded in the public records of  
 amance County, North Carolina.

2. Destruction. If it is determined in the manner elsewhere provided, that the  
 roperty shall not be reconstructed after casualty, the Condominium Plan of Ownership  
 ill be terminated and the Condominium Documents revoked. The determination not to re-  
 ons t after casualty shall be evidenced by a Certificate of the Association certifying  
 s to the facts effecting the termination, which certificate shall become effective upon  
 eing recorded in the public records of Alamance County, North Carolina.

3. Shares of Unit Owners after Termination. After termination of the Condominium, the Unit Owners shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the unit or units formerly owned by such Unit Owners shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be as set forth in Exhibit "A". All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the Unit Owners and their first mortgagees in proportion to the amount of the assessments paid by each Unit Owner. The costs incurred by the Association in connection with a termination shall be a Common Expense.

4. Following termination, the property shall be subject to partition proceedings upon the due application of any Unit Owner.

XV. COVENANTS RUNNING WITH THE LAND. All provisions of the Condominium Documents shall be construed to be covenants running with the land and including but not limited to every unit and the appurtenances thereto; and every Unit Owner and claimant of the property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of the Condominium Documents.

#### XVI. LIENS.

1. Protection of Property. All liens against a unit other than for permitted mortgages, taxes or special assessments will be satisfied or otherwise removed within thirty (30) days from the date the lien attaches. All taxes and special assessments upon a unit shall be paid before becoming delinquent.

2. Notice of Lien. A Unit Owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

3. Notice of Suit. Unit Owners shall give notice to the Association of every suit or other proceeding which will or may affect the title to his unit or any other part of the property, such notice to be given within five (5) days after the Unit Owner receives notice thereof.

4. Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

#### XVII. JUDICIAL SALES.

1. No judicial sale of a Unit nor any interest therein shall be valid unless the sale is a result of a public sale with open bidding.

2. In the event proceedings are instituted to foreclose any mortgage on any unit the Association on behalf of one or more of the Unit Owners or any Unit Owner shall have the right to redeem from the mortgage for the amount due thereon or to purchase such unit at the foreclosure sale for the amount set forth to be due by the Mortgagee in the foreclosure proceedings, and should the mortgagor fail to redeem from such mortgage, or in case of such redemption by the Association or any Unit Owner, the Association or Unit Owner, the Association or Unit Owner thus redeeming shall take and have absolute fee simple title to the property redeemed, free from any claim or right of any grantee, his heirs or assigns or such mortgagor, and every person claiming by, through or under such mortgagor. Nothing herein contained shall preclude a mortgage institution, banker, savings and loan association, insurance company or any other recognized lending institution from owning a mortgage on any unit, and such lending institution shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof and the laws of the State of North Carolina and to bid upon said unit at the foreclosure sale, provided said lending institution owning said mortgage shall give to the Association, its successors or assigns, written notice by certified mail of the said default mailed at least thirty (30) days prior to the institution of foreclosure proceedings during which 30 days the Association shall have the right to cure such default by payment to such mortgagee of all sums due upon such default and following such payment, such mortgagee shall be required to waive such default, and if such default is not cured as aforesaid, and should the Association or any member thereof individually or collectively fail to purchase such mortgage, together with any costs incident thereto, from such mortgagee taking title on such foreclosure sale or taking title in lieu of foreclosure sale, may acquire such unit and occupy the same and let, relet, sell and resell the same. If the Association or any members as aforesaid redeems such mortgage or cures such default, it shall have a lien against the Unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past-due assessment. The Town of Burlington, Alamance County, or any other duly authorized agency of said municipality or county shall be exempt from the provisions of the Article.

XVIII. If any term, covenant, provision, phase or other element of the Condominium Documents is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, provision, covenant or element of the Condominium Documents.

XIX. UNIT DEEDS. Any transfer of a Unit shall include all appurtenances there-

to either or not specifically described.

XX. CAPTIONS. Captions used in the Condominium Documents are inserted solely

as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the Condominium Documents.

XXI. GENDER, SINGULAR, PLURAL. Whenever the context so permits, the use of

the plural shall include the singular, the plural and any gender shall be deemed to include all genders.

XXII. SEVERABILITY. If any provision of this Declaration or any section,

sentence, clause, phrase or word, or the application thereof in any circumstances be judi-

cially held in conflict with the laws of the State of North Carolina, then the said laws

shall be deemed controlling and the validity of the remainder of this Declaration and the

application of any such provision, section, sentence, clause, phrase or word in other

circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 22<sup>nd</sup>

day of May, 19 79.

M & L CONSTRUCTION COMPANY, INC.

By:

President

ATTEST:

W. Clary Holt  
Assistant Secretary

NORTH CAROLINA

ALAMANCE COUNTY

I, BESSIE PHILLIPS, a Notary Public, certify that

W. CLARY HOLT personally appeared before me this day and acknowledged

that s/he is <sup>Assistant</sup> Secretary of M & L CONSTRUCTION COMPANY, INC.,

a corporation, and that, by authority duly given and as the act of the corporation, the fore-

going instrument was signed in its name and by its President, sealed with its corporate

seal and attested by ~~him~~/himself as its Secretary.

WITNESS my hand and Notarial Seal, this 22<sup>nd</sup> day of May, 19 79.

My commission expires:

August 1, 1980

HS4L ←

Bessie Phillips  
Notary Public

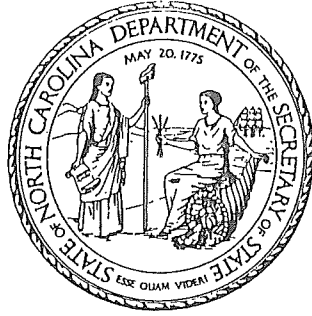
STATE OF NORTH CAROLINA, COUNTY OF ALAMANCE

The foregoing certificate(s) of Bessie Phillips

a Notary (or Notaries) Public of the governmental units designated is (are) certified to be correct.

on the 22 day of May, 19 79 at 4:20 o'clock P.M.

# State of North Carolina



Department  
of the  
Secretary of State

To all to whom these presents shall come, Greeting:

*I, Thad Eure, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached ( 2 sheets) to be a true copy of*

ARTICLES OF INCORPORATION

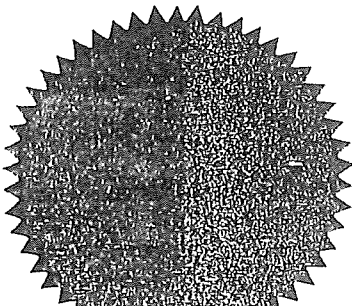
OF

CONDOMINIUMS WEST, INC.

*and the probates thereon, the original of which was filed in this office on the 23rd day of August 1978, after having been found to conform to law.*

*In Witness Whereof, I have hereunto set my hand and affixed my official seal.*

*Done in Office, at Raleigh, this 23rd day of August in the year of our Lord 1978.*



Secretary of State

By   
Deputy Secretary of State

## ARTICLES OF INCORPORATION

OF

CONDOMINIUMS WEST, INC.

A NON-PROFIT CORPORATION

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators for the purpose of creating a non-profit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act", and the several amendments thereto, do hereby set forth:

1. The name of the corporation is CONDOMINIUMS WEST, INC.
2. The period of duration of the corporation shall be perpetual
3. The purposes for which the corporation is organized are:
  1. To administer and take all necessary action for the operation of condominiums.
  2. The powers of the Corporation shall be subject to and shall be exercised in accordance with the provisions of the Declaration of Condominium which governs the use of the property.
4. The corporation is to have the following class or classes of members:  
Each owner or set of owners of units in the Condominium shall be a member of the Corporation, and no other persons or entities shall be entitled to membership.
5. Directors of the corporation shall be elected in the following manner:  
At the Annual Meeting of the members.
6. The address of the initial registered office of the corporation is as follows:  
Street address 2905 South Fairway Drive  
City or town Burlington  
County Alamance

The name of the initial registered agent of the corporation at the above address is W. E. Love, Jr.

7. The number of directors constituting the initial board of directors shall be three, and the names and addresses of the persons who are to serve as directors until the first meeting of the corporation or until their successors are elected and qualified are:

NAME	STREET ADDRESS	CITY OR TOWN
W. Clary Holt	2223 South Church	Burlington
W. E. Love, Jr.	2905 South Fairway Drive	Burlington
J. Fred Matthews	2003 Edgewood Avenue	Burlington

8. The names and addresses of all the incorporators are:

NAME	STREET ADDRESS	CITY OR TOWN
W. Clary Holt	2223 South Church Street	Burlington

9. In addition to the powers granted corporations under the laws of the State of North Carolina, the corporation shall have full power and authority as reasonably necessary to implement the purpose of the Corporation, including but not limited to the following:

- A. To make and collect assessments against members to defray the costs of the Condominium.
- B. To use the proceeds of assessments in the exercise of its powers and duties.
- C. To make and amend regulations respecting the use of the property in the Condominium.
- D. To enforce by legal means the provisions of the Condominium Documents, these Articles, the By-Laws of the Corporation and the regulations for the use of the property in the Condominium.
- E. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Corporation.

IN TESTIMONY WHEREOF, we have hereunto set our hands, this the 18<sup>th</sup> day of August, A.D. 1978.

W. Clary Holt

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE :

This is to certify that, on the 18<sup>th</sup> day of August, A.D. 1978, before me, a Notary Public personally appeared

W. Clary Holt

who, I am satisfied, are the persons named in and who executed the foregoing Article of Incorporation, and I having first made known to them the contents thereof, they did each acknowledge that they signed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and official seal, this the 18<sup>th</sup> day of August, A.D. 1978.

Russie Phillips  
Notary Public

My commission expires:

August 1, 1980

Filed for record at 11:55 o'clock A M, on 8-24-78, Book No. 28 Page 42, this the 28 day of Aug, 19 78, North Carolina, Alamance County MARGARET I. HARTS  
Register of Deeds

Margaret I. Harts  
Assistant Register of Deeds