



FOR REGISTRATION REGISTER OF DEED
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2011 OCT 28 09:37:12 AM
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INSTRUMENT # 2011029445

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

AMENDMENT TO DECLARATION
OF
314 DAVIS CONDOMINIUM

THIS AMENDMENT TO DECLARATION OF 314 DAVIS CONDOMINIUM ("Amendment") made and entered into the 25th day of October, 2011 by 314 Davis Condominium Owners Association, Inc., a North Carolina non-profit corporation (the "Association") and the Owners of Units 101 and 301 in 314 Davis Condominium (collectively, "Owners")

WITNESSETH

WHEREAS, Fourth & Davis, LLC (the "Declarant") caused to be recorded that certain Declaration of 314 Davis Condominium in Book 5568, at Page 999 in the office of the Register of Deeds of New Hanover County (as amended and supplemented, the "Declaration") The terms set forth in this Amendment shall have the same meanings as set forth in the Declaration unless otherwise defined or the context shall otherwise prohibit, and

WHEREAS, pursuant to Section 26.1 of the Declaration and consistent with N C Gen Stat § 47C-2-117, the Association may amend the Declaration with the affirmative vote or written agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and

Prepared by **WARD AND SMITH, P.A.**, University Corporate Center, 127 Racine Drive, Post Office Box 7068, Wilmington, NC 28406-7068
Please return to **WARD AND SMITH, P.A.**, University Corporate Center, 127 Racine Drive, Post Office Box 7068, Wilmington, NC 28406-7068
Attention Justin M Lewis

WHEREAS, the Association has obtained the written agreement of the Owners of Units 101 and 301, to which two of the three total votes (66 67%) in the Association are allocated, which number when rounded to the nearest whole number is sixty-seven percent (67%); and

WHEREAS, pursuant to and in compliance with N C. Gen Stat § 47C-2-117 and the Declaration, the Association has obtained the written agreement of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated

NOW THEREFORE, pursuant to the authority above recited, the Association hereby amends the Declaration as follows

1 Section 21.2(a) of the Declaration is deleted in its entirety and the following is inserted in lieu thereof

(a) Notices of Action An institutional holder, insurer, or guarantor of a first Mortgage which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an eligible holder ("Eligible Holder")), will be entitled to timely written notice of

(i) Any condemnation or casualty loss that affects either a material portion of the Property ("material" shall mean a loss affecting the Property greater than ten percent (10%) of the Annual Budget) or the Unit securing its Mortgage,

(ii) Any sixty (60) day delinquency of the payment of assessments or charges owed by the Owner of any Unit on which it holds a Mortgage, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant, which is not cured within sixty (60) days,

(iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association, and

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees, including without limitation, material amendments to the Association Documents and extraordinary actions of the Association. "Extraordinary Actions" shall include (a) merging or consolidating the Association, (b) determining not to require professional management if that

management has been required by the Association Documents, a majority of Eligible Holders, or a majority vote of the Members, (c) expanding the Association and Condominium to include property other than the Development Property, which increases the overall land area of the Property or number of Units by more than ten percent (10%), (d) abandoning, partitioning, encumbering, mortgaging, conveying, selling, or otherwise transferring or relocating the boundaries of Common Elements (except for granting easements which are not inconsistent with or which do not interfere with the intended use of the Common Elements, dedicating Common Elements as required by a public authority, limited boundary line adjustments made in accordance with the provisions of the Declaration, or transferring Common Elements pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association), (e) using insurance proceeds for purposes other than construction or repair of the insured improvements, and (f) making capital expenditures, other than for repair or replacement of existing improvements, during any period of twelve (12) consecutive months costing more than 20 percent (20%) of the Annual Budget

(v) Any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before any action is taken, and

(vi) Any meeting of the Association.

The notices required by this Section 21.2 (a) shall be deemed properly given if delivered to the Mortgagee's address maintained in the register of the Association maintained in accordance with Article 21 of this Declaration, including any alternate addresses provided to the Association by the Mortgagees pursuant to Article 21. In the event that no address for a Mortgagee is included on the register maintained in accordance with Article 21, said Mortgagee will be deemed to waive the right to notice under this section.

2 Section 21 2(b) of the Declaration is amended by deleting the last five words of the Section, "taking of the Common Elements," and inserting the following in lieu thereof "taking of Units and/or the Common Elements "

3 Section 21.2 of the Declaration is further amended by adding the following Subsection.

(d) Rights An Eligible Holder which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates), will be entitled to the following rights

(i) The same right as Members to inspect the Association's records pursuant to Article 31 of this Declaration, and

(ii) The right of a majority of the Eligible Holders to demand professional management of the Association, and

(iii) The right of a majority of the Eligible Holders to demand an audit of the Association's financial records

4 Section 22.4 of the Declaration is amended by adding the following sentence to the end of the Section "Notwithstanding the above, any capital expenditure, other than for repair and replacement of the Common Elements, during a fiscal year which is greater than an amount equal to twenty percent (20%) of the Annual Budget for said fiscal year, shall be approved by the Members at a meeting duly called for said purpose as set forth in Article 2 of the Bylaws "

5 Article 25 of the Declaration is deleted in its entirety and the following is inserted in lieu thereof

25 1 Termination The Condominium may be terminated only in strict compliance with N C Gen Stat § 47C-2-118.

25 2 Mortgagee Approval Notwithstanding Subsection 25 1 above, any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs, or for any other reasons, must be approved or agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages, as evidenced by the register maintained in accordance with Article 21 Said approval by any Mortgagee shall be deemed granted when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after said Mortgagee receives notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested Said notice will be deemed properly given if delivered to the Mortgagee's address maintained in the register of the Association maintained in

accordance with Article 21 of this Declaration, including any alternate addresses provided to the Association by the Mortgagees pursuant to Article 21. In the event that no address for a Mortgagee is included on the register maintained in accordance with Article 21, said Mortgagee will be deemed to waive the right to notice under this section and shall be deemed to approve any termination hereunder.

6. Section 26.1 of the Declaration is amended by deleting the words and numbers, "fourteen (14)" from the third sentence of the section and inserting the following in lieu thereof "twenty-five (25) "

7 Article 26 of the Declaration is further amended by adding the following sections

Section 26.4 VA Approval Notwithstanding any other provision herein, during the period of time in which Declarant has the right to appoint, remove, and replace members of the Board, any amendment to the Declaration, Bylaws or other Association Documents and any Extraordinary Action by the Association must be approved in writing by the Department of Veterans Affairs ("VA") prior to becoming effective. The Condominium may not be merged with another condominium without prior written approval by the VA. However, the Declarant shall not be required to obtain VA approval when exercising its Development Right to add portions of the Development Property to the Condominium pursuant to this Declaration.

Section 26.5 Mortgagee Approval. In addition to the approval required above, any material amendment to the Association Documents or amendment to the Association Documents of a material adverse nature to Mortgagees, must be approved or agreed to by Mortgagees representing at least fifty-one percent (51%) of the votes of Units subject to Mortgages. "Material Amendments" include any addition, deletion or modification of any provision regarding the following

- a) Assessments,
- b) Method of imposing or determining assessments and other charges to be levied against Unit Owners,
- c) Reserves in the Annual Budget as provided in Article 22,
- d) Maintenance obligations,
- e) Allocation of rights to use the Common Elements;

- f) Provisions regarding the standards for maintenance, architectural design, or exterior appearance of improvements on Units;
- g) Reduction of insurance requirements,
- h) Restoration or repair of improvements on the Common Elements;
- i) Annexation or withdrawal of property to or from the Condominium,
- j) Voting rights,
- k) Restrictions affecting the lease or sale of Units; and
- l) Any provision which is for the express benefit of Mortgagees

Said approval by any Mortgagee shall be deemed granted when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after said Mortgagee receives notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Said notice will be deemed properly given if delivered to the Mortgagee's address maintained in the register of the Association maintained in accordance with Article 21 of this Declaration, including any alternate addresses provided to the Association by the Mortgagees pursuant to Article 21. In the event that no address for a Mortgagee is included on the register maintained in accordance with Article 21, said Mortgagee will be deemed to waive the right to notice under this section and shall be deemed to approve any amendment hereunder.

8. Except as expressly provided in the paragraphs above, the terms and provisions of the Declaration shall continue in full force and effect in accordance with the terms as the same is modified hereby.

IN TESTIMONY WHEREOF, the Association and the Owners, acting pursuant to the authority above recited, have caused this Amendment to be executed under seal and in such form as to be legally binding, effective the day and year upon recording this Amendment in the office of the Register of Deeds of New Hanover County, North Carolina

[Signatures to Follow]

314 DAVIS CONDOMINIUM OWNERS
ASSOCIATION, INC (SEAL)

By *Jon Randal Harmon* (SEAL)
Jon Randal Harmon, President

New Hanover COUNTY, NORTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein and, if other than in an individual capacity, in the capacity indicated, having been first authorized to do so

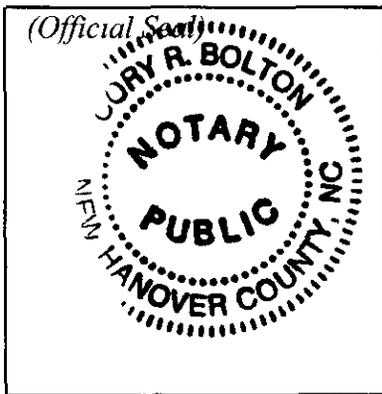
Jon Randal Harmon

Date 10/25/11

Eoyl Bolton
Signature of Notary Public

My commission expires 12/29/2015

(Official Seal)



Notary seal or stamp must appear within this box

OWNER OF UNITS 101 AND 301

FOURTH & DAVIS, LLC

(SEAL)

By

Jon Randal Harmon (SEAL)
Jon Randal Harmon, Manager

NEW HANOVER COUNTY, NORTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein and, if other than in an individual capacity, in the capacity indicated, having been first authorized to do so:

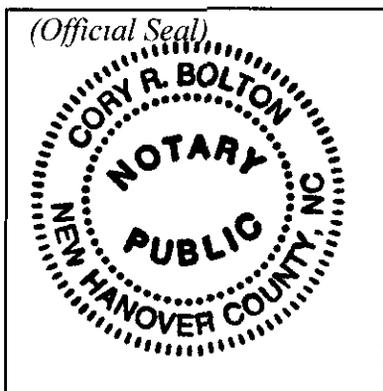
Jon Randal Harmon

Date 10/25/11

Cory R Bolton
Signature of Notary Public

My commission expires 12/29/2015

(Official Seal)



Notary seal or stamp must appear within this box



JENNIFER H MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 10/28/2011 09 37:12 AM
Book: RE 5594 Page 2450-2458
Document No.: 2011029445
9 PGS \$26.00
Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

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