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NORTH CAROLINA, DARE COUNTY

DECLARATION OF UNIT OWNERSHIP  
THE BREAKERS CONDOMINIUMS  
KILL DEVIL HILLS, NORTH CAROLINA

Nags Head Retreat, Inc., a Virginia stock corporation qualified to transact business in the State of North Carolina, and M.H. Hood Ellis, Substitute Trustee for Home Federal Savings and Loan Association of Norfolk, pursuant to Chapter 47A of the North Carolina General Statutes entitled "Unit Ownership Act" does hereby state and declare:

**SECTION 1. Statement of Submission**

A. Nags Head Retreat, Inc. is the record owner of the land hereinafter described and hereby declare and submit the same to the condominium form of ownership and use in accordance with Chapter 47A of the General Statutes of North Carolina, entitled Unit Ownership Act.

1. The name by which the condominium is to be identified is "The Breakers" located in the Town of Kill Devil Hills, Dare County, North Carolina.

2. The legal description of the land which is included in and submitted to condominium ownership is located in the Town of Kill Devil Hills, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

BEGINNING at an iron pipe situated in and on the eastern edge of the right of way of U.S. Highway No. 158 Business, sometimes known as Virginia Dare Trail, which said beginning point is located South 19 degrees East along the aforesaid highway, a distance of 130 feet from an iron pipe marking the intersection of the South line of the Cheshire Tract with the eastern margin of the aforesaid highway right of way and running thence from said beginning point North 71 degrees East and at right angles with the aforesaid highway a distance of 400 feet more or less to an iron pipe at the high water mark of the Atlantic Ocean, running thence along the high water mark of the Atlantic Ocean in a northern direction to a point in the South line of the property now or formerly belonging to Jaccie Burrus, which said point is a distance of 100 feet on a course of North 19 degrees West from the terminus point of the last preceding call; thence South 71 degrees West along the South line of Jaccie Burrus property a distance of 400 feet more or less to an iron pipe situated on the eastern edge of the right of way of the aforesaid highway; thence running South 19 degrees East and along the eastern margin of the aforesaid highway right of way a distance of 100 feet to the iron pipe at the point or place of beginning. The same being a portion of the land conveyed to Henry F. Day by Deed of Jessee E. Baum dated February 1, 1952, and recorded in Book 41 at page 401, Public Registry of Dare County, North Carolina. Henry F. Day is deceased and willed the pro-

perty to Elsie Day and exemplified copy of said Will is recorded in Will Book 3 at page 497, Public Registry of Dare County, North Carolina, and devised by Will of Elsie Saunders Day to H. Fenton Day, Jr., exemplified copy of said Will being recorded in Estate File No. 67 E-87, Office of the Clerk of Superior Court of Dare County, North Carolina.

SECTION 2. **Definitions.** All terms shall have the meaning as set out in Chapter 47A of the General Statutes of North Carolina and in addition thereto and for clarification, the following terms shall have the following meanings:

A. "Apartment unit" means "condominium unit" or "unit" and is synonymous therewith as defined in N.C.G.S. 47A-3(12).

B. "Association" or "Association of Unit Owners" means all of the unit owners acting as a group in accordance with the By-Laws and Declaration. As to The Breakers Condominiums, this term means The Breakers of Kill Devil Hills Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina.

C. "Articles" means the Articles of Incorporation of The Breakers of Kill Devil Hills Homeowners Association, Inc.

D. "Building" means a building, or a group of buildings, each building containing two or more units, and comprising a part of the property.

E. "By-Laws" means the By-Laws of The Breakers of Kill Devil Hills Homeowners Association, Inc.

F. "Common Areas" or "Common Elements" means all that portion of the condominium property which is not included in the individual condominium units and as further defined in N.C.G.S. 47A-3(2), except those items listed in paragraphs 'h' therein, unless specifically set out in this section.

G. "Common Expenses" means expenses for which the Condominium unit owners are liable to the Association as defined in the North Carolina Unit Ownership Act and in the condominium documents and includes:

1. All sums lawfully assessed against the unit owners by the association of unit owners;
2. Expenses of administration, maintenance, repair or replacement of the common areas and facilities, and Association owned property;
3. Expenses agreed upon as common expenses by the Association of unit owners;
4. Expenses declared common expenses by the provisions of Chapter 47A of the General Statutes, or by the Declaration or the By-Laws;
5. Hazard insurance premiums, if required.

H. "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

I. "Condominium" means the ownership of single units as a multi-unit structure with common areas and facilities.

J. "Declaration" means the instrument, duly recorded, by which the property is submitted to the provisions of Chapter 47A of the General Statutes, as hereinafter provided, and as such declaration from time to time may be lawfully amended.

K. "Developer" means Nags Head Retreat, Inc., a Virginia corporation qualified to transact business in the State of North Carolina.

L. "Limited common areas and facilities" means and includes those common areas and facilities which are agreed upon by all the unit owners to be reserved for the use of a certain number of units to the exclusion of the other units, such as special corridors, stairways, and elevators, sanitary services common to the units of a particular floor, and the like.

M. "Majority" or "majority of unit owners" means the owners of more than fifty percent (50%) of the aggregate interests in the common areas and facilities as established by the declaration, assembled at a duly called meeting of the unit owners.

N. "Person" means individual, corporation, partnership, association, trustee, or other legal entity.

O. "Property" means and includes the land, the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended to be submitted to the provisions of this chapter.

P. "Owner" means Nags Head Retreat, Inc.

Q. "Recordation" means to file of record in the office of the county register of deeds in the county where the land is situated, in the manner provided by law for recordation of instruments affecting real estate.

R. "Unit" or "condominium unit" means an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of its designated use and shall include such accessory spaces and areas as may be described in the declaration, such as garage space, storage space, balcony, terrace or patio, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

S. "Unit designation" means the number, letter, or combination thereof designating the unit in the declaration.

T. "Unit Owner" means a person, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns a unit within the building.

SECTION 3. Building Description. The condominium buildings constructed on the hereinabove described real property consist of two (2) separate buildings connected by an elevated deck area. One building consists of three (3) two-bedroom units, said units being arranged in a two-story townhouse arrangement, running along a line from northeast to southwest. The second building lies to the west of the first building and consists of six (6) condominium units. Of these six units, there are 2 two-bedroom, 2 three-bedroom and 2 one-bedroom units. The buildings are supported on reinforced concrete construction supported on treated wood pilings. The first floor of Units 7 through 9 is located on a reinforced concrete slab, raised above the existing grade, 18-20 inches. Units 1 through 6 are raised above grade approximately 8 to 9 feet and are supported on a combination of concrete block walls and load-bearing stud partitions.

All units are wood-frame construction meeting the requirements of North Carolina Building Code as modified or amended by the Town of Kill Devil Hills as in force on May 1, 1981. All interior partitions and living spaces are finished with gypsum dry wall, taped and painted. The thickness of the dry wall varies from a minimum of 1/2 inch to a maximum of 5/8 inches. The ceilings are finished with gypsum dry wall, with a sprayed, textured gypsum finish. Other speciality finishes are provided in accordance with the approved plans and specifications. Floors are covered, in part, with 100 percent nylon, medium-density carpet, of a medium height. Other floor areas are covered with 1/8 inch sheet vinyl.

\* The exterior siding material is 3/8 to 3/4 inch horizontal board cedar or cyprus siding. Exterior decks and all exposed exterior structural members are salt-treated lumber. The roofing is sheathed with 1/2 inch CBX plywood with 15-pound roofing felt and asphalt shingles, standard weight, UL wind resistant, Class C label.

All windows are in accordance with the approved plans. All window units are anodized metal frame or vinyl-clad wood, with a 1/2 inch double glazing system. Each unit has bathroom fixtures, plumbing fixtures, light fixtures and other accessories as shown on the approved plans.

Each unit includes the following appliances:

- 1 - 14-cubic foot frostless refrigerator
- 1 - four-burner electric range
- 1 - dishwasher

All other items of construction are in accordance with the approved plans and specifications.

SECTION 4. Apartment Unit Designation and Description. There are nine (9) condominium unit apartments in the condominium buildings, each apartment being designated by a

numerical figure. The six apartments in the western-most building are designated 1 through 6, running northeast to southwest, respectively. There are two one-bedroom units, two two-bedroom units, and two three-bedroom units in this building. The three-bedroom units are designated Unit 3 and Unit 6. In the numerical designation, the upper level one-bedroom unit is designated as Unit 5, whereas the ground floor one-bedroom unit is designated as Unit 4. The three two-bedroom apartment units in the eastern-most building are designated 7 through 9, running northeast to southwest, respectively.

Each of the condominium living units shall be known and designated by the number shown for each unit on the Floor Plans Sheet. Each unit shall consist of an enclosed space designated as a dwelling occupying part of one or more floors in a building as shown on the plats recorded in the Dare County Registry and lying between the unfinished surface of the floor and the unfinished surface of the ceiling of each floor or story of the building and between the interior finished surface on the inside of each unit. The balcony adjoining each unit shall be a part thereof and shall be bounded horizontally by vertical planes coinciding with the interior surface of the railings, and the exterior surface of the wall of the building, and extending vertically from the top of the unfinished floor of the balcony to a horizontal plane in an extension of the bottom of the unfinished ceiling of the unit.

Unit members 1, 2, 3, and 6 shall include the exclusive right to all parking and storage areas located beneath each respective condominium unit. Unit number 5 shall include the exclusive right to all space located directly above the condominium unit, including but not limited to loft and attic spaces.

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number*

Each condominium unit shall include the exclusive right to all space and facilities located within the area above described for each such unit including, but not limited to, partitions, doors, windows, plumbing, electric and other facilities located within that condominium unit, except such elements hereinafter described as general common elements.

Each apartment unit shall have access over a common area walkway leading to the center deck and pool area.

A full and exact copy of the plans of the buildings is attached as Exhibit A.

**SECTION 5. Common Elements, Areas and Expenses Related Thereto.**

A. The general common elements or areas located in The Breakers Condominiums shall be as follows:

1. Except as excluded in this Section 5, all of the land and the premises above described in Section 1 hereof, including all appurtenant rights thereto, shall be general common elements. All facilities located underground shall be general common elements, including any septic tank installation and associated pumps, tanks, drainfields, and lines, and waste treatment facilities and systems associated therewith.

2. At the ground level and extending thereupwards, all of the area of said premises not included in the condominium units as described in Section 4 hereof and all facilities not located in said condominium areas, including pool and center deck area, shall be general common areas.

3. Any lighting facilities, equipment and wiring installed to illuminate the above general common elements and all electric lines, both primary and secondary, leading to but exclusive of any individual unit electric meter, shall also be general common elements.

4. In addition, those items set out in N.C.G.S. 47A-3(2), except as herein reserved or excepted, shall be general common elements.

5. Also included as general common elements are water supply lines to the individual common units, vent lines, plumbing facilities, sanitary sewerage lines, waste pipes and vents, located outside the individual condominium units.

B. Each condominium unit or apartment owner shall own a share in the common elements and in any surplus funds possessed by The Breakers of Kill Devil Hills Homeowners Association, Inc., and shall be liable for the common expenses as follows:

<u>UNIT NO.</u>	<u>DESIGNATED MARKET VALUE</u>	<u>PROPORTIONATE SHARE</u>
1 (2 bedroom)	\$ 88,500	11.80 %
2 (2 bedroom)	86,500	11.52
3 (3 bedroom)	95,500	12.72
4 (lower 1 bedroom)	60,500	8.07
5 (upper 1 bedroom)	61,000	8.13
6 (3 bedroom)	97,500	12.96
7 (2 bedroom)	87,500	11.70
8 (2 bedroom)	85,500	11.40
9 (2 bedroom)	87,500	11.70
9 -TOTAL-	\$ 750,000	100.00 %

SECTION 6. Limited Common Elements or Areas.

There are no limited common elements or areas in The Breakers Condominiums.

SECTION 7. Easements.

A. Perpetual Non-Exclusive Easement in Common Areas. The common elements or areas shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement which easement is hereby created, in favor of all of the apartment or unit owners in the condominium for their use and for the use of their immediate families, guests, invitees and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Developer, the Condominium Association, and all unit owners, and may be used

for the providing of electric power, telephone, sewer, water, and other utility services and lighting facilities, including but not limited to television transmission facilities; security services, and facilities connected therewith. The Owners, for themselves, their heirs and assigns and the Association herein described reserve the right to impose upon the common elements henceforth and from time to time such easements and cross easements for any of the foregoing purposes as they deem to be in the best interest of and necessary and proper for, the owners of apartments and units in The Breakers Condominiums.

B. Encroachment Easement. The entire condominium property, including common areas and individual condominium units or apartments shall be subject to easements for encroachments which now exist, caused by the settlement or movement of the building, or caused by minor inaccuracies in construction or reconstruction, which encroachments shall be permitted to remain undisturbed and which said easement shall run in favor of each individual condominium unit owner, the Association and the Developer.

C. Easement for Recreation, Parking, Access, Egress and Ingress.

There is hereby conveyed and reserved a non-exclusive easement of access, egress and ingress to and from the condominium buildings and U.S. Highway 158 Business and the Atlantic Ocean and for other purposes herein expressed over, upon and across all of the lands dedicated to unit ownership and described in Section 1 of this declaration.

The herein conveyed easement shall be subject to such regulations and rules as to the use thereof as may be promulgated by the Association from time to time, which said regulations may control and regulate parking, assignment of parking spaces, walkways, driveways and passageways. The aforesaid easement is also subject to the right of the Association and the owners to construct, build or place thereon such recreational facilities as, but not limited to, a swimming pool as in the discretion of the owners or the Association may be deemed desirable.

D. Easement for Construction. There is retained, by the owners, a construction easement over, upon and across the common elements or areas and also, over, upon and across those lands set out and described in Paragraph C of this Section for the purposes of constructing improvements on the properties now owned by the Owners, said easement to run in favor of the Owners, their heirs, and assigns, their contractor and subcontractors, laborers, and materialmen. This easement shall expire and become null and void upon completion of the permanent improvements on said properties.

E. Easements for Utilities, Sewerage and Waste Treatment Facilities. There is conveyed hereby an easement of right of way in and to the lands described in Paragraph C of this Section, for the benefit of the condominium unit owners and the association, for the construction, operation and maintenance of all utility lines, pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines and facilities related thereto, which said easement shall also inure to the benefit of the owners, and all

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future property owners located or to be located in the tract owned by the owners.

SECTION 8. Statement of Purpose, and Restrictions as to use.

A. The Breakers Condominiums are residence-type condominiums and shall be used for single family residencies, vacation or resort living units by the unit owner, his family, servants and guests, or tenants and lessees, their servants and guests, and for no other purposes. No condominium unit may be used for a commercial, professional, or home business enterprise or as a hotel or motel, provided, however, that this section will not prevent any unit owner from renting or leasing his condominium unit either himself or through his agent.

B. Each condominium unit is subject to alienation, mortgage or transfer as is any other real property located within the State of North Carolina, however, no condominium unit owner may mortgage or convey by deed of trust his apartment or condominium unit or convey the same as collateral, to any person, firm or corporation except as said conveyance, mortgage or deed of trust shall be a first lien deed of trust or first mortgage or a purchase money mortgage or deed of trust on the condominium unit, unless prior approval is obtained from the Association.

C. The space within any of the condominium units and common elements shall not be further subdivided and any instrument, whether a conveyance, mortgage, deed of trust or otherwise, which describes only a portion of the space within any apartment shall be deemed to describe the entire apartment unit owned by the person, firm or corporation executing such instrument.

D. No condominium unit owner shall show any sign, advertisement or notice on any of the common elements, windows, porches, or balconies, or upon his condominium unit and shall erect no exterior antenna or antenna upon any portion or any part of his apartment or on any of the common elements.

E. An individual condominium unit owner may keep a pet or pets in his unit, but only under the regulations as promulgated by the Association from time to time, and no person may keep any other animals, livestock, or poultry nor may any of the same be raised, bred or kept upon any portion of the condominium property, including the common elements, balconies and terraces. The Association shall have the authority to declare any pet or pets a nuisance and may cause the owner thereof to remove the same from the condominium property.

F. No apartment or unit owner shall permit or suffer anything to be done or kept in his unit which will increase the insurance rates on his unit or the common elements, or which will obstruct or interfere with the rights of other owners or otherwise; nor shall an individual unit owner commit or permit any nuisance, immoral or illegal act in his unit, or on the common elements.

G. No trailer, tent, storage shed, garage or other similar outbuilding or structure shall be placed on the pro-



perty at any time, either temporarily or permanently, excepting that individual boat trailers, not exceeding the size of one parking space, may be permitted provided said parking space or area is properly assigned to the individual unit owner who owns the said boat trailer or with the express written consent of any other unit owner for the use of his assigned parking space therefor. This restriction shall not apply to the Owners, their contractor, subcontractors, laborers or materialmen until such time as all apartment or condominium units have been constructed and sold in The Breakers Condominiums.

\* H. No condominium unit owner shall make structural modifications or alterations in his unit or the permanent fixtures therein unless he has previously obtained written approval therefor, in writing from the Board of Directors of the Association.

I. Unit owners shall abide by and be subject to such rules and regulations as may be adopted by the Association and as may be set out herein or in the by-laws of the Association as the same from time to time may be amended.

#### SECTION 9. Use and Transfer of Parking Spaces.

A. The Owner shall assign the use of two (2) particular parking spaces to a particular condominium unit at the time the unit is originally acquired from the Owner. The assignment of use shall be made by describing the particular parking space by reference thereto in a book entitled "Parking Space Assignments" which book shall be maintained by the Owner and at such time as the Owner transfers all authority to the Association, which said book shall be for the purpose of listing each assignee of each parking space and the transfer thereof. Upon a conveyance of or the passing of title to the condominium unit to which said parking space is assigned, the owner of the said unit making the conveyance shall deliver notice of transfer thereof to the Association which shall thereupon cause to be executed a new assignment in the assignment book.

B. Parking spaces may be separately transferred upon the following conditions:

1. At any time a parking space may be surrendered or transferred by a unit owner to the Association.

2. The use of a parking space may be transferred by a unit owner to any other unit owner within the condominium provided that written notice thereof, executed by the transferor and the transferee shall be submitted to the Association which shall record such transfer in the assignment book.

3. The association shall have the absolute right to assign parking spaces assigned or transferred to the association and requests for the assignment of parking spaces held by the association shall be considered by the Association on a first come, first served basis or on such other terms and conditions as may be adopted by the Association.

C. No trucks used for commercial purposes, or trucks over one-half ton capacity may be parked overnight. Only

vehicles bearing current license and registration tags may be parked overnight. The association shall have the right to authorize the towing away of any violating vehicles with costs to be borne by the owner or operator thereof.

SECTION 10. Maintenance and Alteration of Apartments.

A. The Association shall maintain, repair and replace all portions of the condominium building, except interior surfaces and walls, contributing to the support of the apartment building, which portions shall include but not be limited to the outside walls of the apartment building and all fixtures, including plumbing and electrical fixtures, on the exterior thereof; boundary walls of apartments; floor slabs and roofs; and load-bearing piers and load-bearing walls.

B. The responsibility of the apartment unit owner shall be:

1. To maintain, repair and replace at his expense all portions of his apartment unit except the portions to be maintained, repaired and replaced by the association.

2. Not to paint, or otherwise decorate or change the appearance of any portion of the exterior of the condominium building.

3. To repair any frozen pipes, repair any stopped sewer and sink lines, to repair any heating and air conditioning equipment, whether located within an apartment unit or on a limited common element, and to replace any broken window panes or doors that serve an individual apartment unit.

4. To promptly report to the Association any defect or need for repairs, the responsibility for which is that of the Association.

C. Neither a unit owner nor the Association shall make any alteration in the portions of an apartment unit or the building which is to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of the building or impair any easement, without first obtaining approval in writing of owners of all apartment units in the condominium building.

SECTION 11. Maintenance and Alterations of Common Elements and Association Property.

A. The maintenance and operation of the common elements, and property, real and personal, owned by the Association shall be the responsibility and expense of the Association.

B. After the completion of the improvements including the common elements which are contemplated by this Declaration, there shall be no alteration or further improvements of the real property constituting the common elements without ~~prior~~ approval in writing by the owners of not less than 75 percent of the common elements and any such alteration or improvement shall not directly interfere with

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the rights of any unit owner, without first obtaining his written consent. There shall be no change in the shares and rights of any unit owner in the common elements which are altered or further improved, whether or not such unit owner contributes to the cost thereof, except by an Amended Declaration.

**SECTION 12. Assessments.**

A. Assessments against apartment unit owners for common expenses shall be made pursuant to North Carolina General Statutes Section 47A-12 and the By-Laws of the Association shall be allocated as set forth in Section 5, paragraph B of this Declaration.

B. Any sums assessed by the Association for the share of the common expenses chargeable to any unit, and remaining unpaid for a period of thirty (30) days or longer, shall constitute a lien on such apartment unit when filed for record in the Office of the Clerk of Superior Court of Dare County by the Association under the provisions of Article 8 of Chapter 44 of the North Carolina General Statutes and any amendments or supplements thereto. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, (b) all sums unpaid on deeds of trust and other encumbrances recorded against the unit prior to the docketing of this lien and (c) materialmen's and mechanics liens.

C. A lien created pursuant to Paragraph B above may be foreclosed by suit by the Board of Directors of the Association, acting on behalf of the apartment unit owners, in like manner as a foreclosure of a deed of trust or mortgage of real property. The Board of Directors of the Association, acting on behalf of the apartment unit owners, may maintain a suit to recover a money judgment for unpaid common expenses without foreclosing or waiving the lien securing said common expenses. The unit owner shall be responsible for all court costs, interest and reasonable attorney's fees incurred in the collection, by foreclosure or otherwise, of said lien for common expenses. Except for purchasing at foreclosure as herein stated, the Association shall not purchase or own a condominium unit.

D. Any sum assessed by the Association for the share of the common expenses due prior to the acquisition of title to an apartment unit pursuant to a foreclosure proceeding of a mortgage or deed of trust shall not be assessed against the mortgage or deed of trust of record who forecloses said mortgage or other purchaser of the apartment unit as a result of the foreclosure of a mortgage. Any sums assessed against the apartment unit which is the subject of a foreclosure of a mortgage shall be collectible, from the former owner, or if not collectible, from all apartment unit owners, including the purchaser at the foreclosure sale, in the proportions which their shares in the common elements bear to each other.

E. No apartment unit owner may exempt himself from contributing toward the common expenses by waiver of the use or enjoyment of the common elements and facilities or by abandonment of the apartment unit belonging to him.

SECTION 13. Association. The operation of the condominium shall be by The Breakers of Kill Devil Hills Homeowners Association, Inc., hereinafter called the Association, a non-profit corporation under the laws of North Carolina which shall be organized and shall fulfill its functions pursuant to the following provisions.

A. The members of the Association shall be the condominium unit owners.

B. The Association has been incorporated under the Articles of Incorporation, a true copy of which is attached as Exhibit B. The Articles of Incorporation may be amended as permitted by law without amending this Declaration.

C. A true copy of the initial By-Laws of the Association is attached as Exhibit C, but may be amended as therein provided or as permitted by law without amending this Declaration, except as required by law.

D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such member's apartment unit.

E. Whenever the decision of an apartment unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person, in person or by proxy who would cast the vote of such owner if in an Association meeting. Where any unit is owned as a tenancy in common or as a tenancy by the entirety, said tenants may determine between or among themselves how the vote to which they are entitled shall be cast, but the chairman of the meeting of the Association shall not accept any division of a vote that said owners would otherwise be entitled to cast if said tenants do not unanimously agree between or among themselves as how their vote would be cast.

SECTION 14. Insurance.

A. Insurance policies upon the condominium property covering the items described in Paragraph B of this Section shall be purchased by the Association for the benefit of the Association and the apartment unit owners and their mortgagees as their interests may appear. Such policies and endorsements shall be issued in the name of and deposited with the Board of Directors of the Association as trustee for each of the apartment unit owners in the percentages of interest of each apartment unit owner established in this Declaration in Section 5.

B. Insurance shall cover the following:

1. All buildings, improvements and personal property constituting the common elements shall be insured in an amount equal to the maximum insurable replacement value without deduction for depreciation, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, including flood insurance and such other risks

as are customarily covered with respect to buildings similar to the buildings on the land, such as vandalism and malicious mischief.

2. Public liability insurance in such amounts and with such coverages as shall be required by the Board of Directors of the Association, and with a cross-liability endorsement to cover liabilities of the apartment unit owners as a group to an apartment unit owner.

3. Workmen's compensation as required by law.

4. Such other insurance as the Board of Directors of the Association may determine from time to time to be desirable.

C. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

D. The Board of Directors of the Association, acting on behalf of the apartment unit owners, is hereby irrevocably appointed agent for each apartment owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.

E. All apartment unit owners and mortgagees of apartment unit owners shall be furnished copies of each insurance policy purchased by the Association, showing the name of the insurance trustee, the name of the insurance company, the policy number, the effective date and the expiration date of the policy, the total amount of the policy and the name and address of the insurance agent issuing the policy. The policy shall also provide that the apartment unit owner and the mortgage of each apartment unit owner shall be furnished notice of any change in or cancellation of the policy thirty (30) days prior to the effective date of said change or cancellation.

F. Each apartment unit owner shall obtain and maintain insurance coverage on their respective condominium units in an amount equal to the maximum insurable replacement value without deduction for depreciation, as determined annually by the Board of Directors of the Association. Such insurance coverage shall afford protection against loss or damage of fire and other hazard covered by a standard extended coverage endorsement, including flood insurance and such other risks as are customarily covered with respect to similar buildings, such as vandalism and malicious mischief.

G. Each apartment unit owner shall furnish the Association with copies of each insurance policy purchased by the unit owner, showing the name of the insurance trustee, if any, the name of the insurance company, the number of the policy, the effective date and the expiration date of the policy, the total amount of the policy and the name and address of the insurance agent issuing the policy. The policy shall also provide that the Association shall be furnished notice of any change or cancellation of the policy thirty (30) days prior to the effective date of said change or cancellation. Upon notice of impending cancellation of insurance coverage, the Board of Directors of the

Association may take action to maintain insurance coverage in an amount it deems sufficient and assess the cost of all premiums paid against the apartment unit owner. Such assessment shall be made in accordance with, and governed by, the provisions of Section 12 above.

H. The Association will not purchase or obtain insurance to cover the units or personal property of a unit owner, nor will the Association purchase or obtain insurance to cover the individual liability of an apartment unit owner for injuries and damages suffered by anyone or anything within the apartment unit if said injuries or damages are not a liability of the Association.

SECTION 15. Repair and Replacement of Destroyed Property.

A. Damage to or destruction of the building and improvements shall be promptly repaired and restored by the Board of Directors of the Association using the proceeds of insurance for that purpose. If there is a deficiency in the proceeds of the insurance policies, the apartment unit owners shall be assessed, as a common expense, the difference between the amount of insurance proceeds and the amount necessary to repair, rebuild or replace the damaged building or improvement to its original condition.

B. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures or buildings, which plans are attached hereto as Exhibit A.

C. If the building shall be more than two-thirds (2/3rds) destroyed by fire or other disaster and the owners of three-fourths (3/4ths) of the units duly resolve not to proceed with repair or restoration, then and in that event:

1. The property shall be deemed to be owned as a tenancy in common by the unit owners;
2. The undivided interests in the property owned by the unit owners as tenants in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;
3. Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the unit owner in the property as provided herein;
4. The property shall be subject to an action for sale for partition at the suit of any unit owner, in which event, the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective undivided ownership of the common areas and facilities, after first paying out of the respective shares of unit owners, to the extent sufficient for that purpose, all liens on the unit of each unit owner; and

5. All real property owned by the Association itself shall be transferred by recordable instrument to the individual unit owners in the same proportions as their ownership in the common areas appears.

D. Proceeds remaining from any insurance policies after damages for which proceeds have been paid for repair or restoration, and such repair or restoration has been completed, shall be paid to the Association to be applied to common expenses.

E. If damage occurs only to those parts of an apartment unit for which the responsibility of maintenance and repair is that of the apartment unit owner as provided in Section 10, then the apartment unit owner shall be responsible for construction and repair after casualty.

#### SECTION 16. Compliance and Default.

A. Each apartment unit owner shall be governed by and shall comply with the terms of this Declaration, the By-Laws of the Association and the regulation adopted pursuant thereto, and by such documents and regulations as the same may be amended from time to time. A violation or default shall entitle the Association, or other apartment unit owners, to the relief described in Paragraph D of this Section in addition to the remedies provided by the Unit Ownership Act.

B. An apartment unit owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests, tenants, employees, agents or lessees. This provision shall apply even though the maintenance, repair or replacement would otherwise be a common expense to be paid by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of an apartment unit or its appurtenances.

C. The failure of the Association or any apartment unit owner to enforce any covenant, restriction or other provision of this Declaration, or the Articles or By-Laws of the Association shall not constitute a waiver of the right to do so thereafter.

D. Any unit owner, the manager, Board of Directors of the Association or a combination of unit owners may invoke any appropriate civil remedy to enforce the terms of this Declaration or the By-Laws of the Association.

#### SECTION 17. Amendments. This Declaration may be amended by the Association in the following manner:

A. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the members of the Association at which a proposed amendment is to be considered.

B. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association

or by any member of the Association. Directors and members not present in person or by proxy at any meeting considering the amendment may express their approval in writing, providing, such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by not less than 75 percent of the entire membership of the Association.

C. No amendment shall discriminate against any apartment unit owner or against any apartment unit or class or group of apartment units unless the apartment unit owners so affected shall consent. No amendment shall change any apartment unit owner's share in the common elements appurtenant to his unit, nor increase the apartment unit owner's share of the common expenses unless the record owner of the apartment unit and all record owners of liens thereon shall join in the execution of the amendment.

D. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the office of the Dare County Register of Deeds.

SECTION 19. Agent for Service of Process.

A. Thomas L. White, Esq., whose address is Kellogg, White, Evans & Sharp, Kellogg Building, Ananias Dare Street, P. O. Box 189, Manteo, North Carolina 27983, is hereby designated as the agent upon whom service of process may be made in any action or proceeding brought against the condominiums.

SECTION 20. Termination.

A. This condominium may be terminated by all of the apartment unit owners executing an instrument for that purpose to be recorded in the Dare County Registry. Said instrument must also include the consent of all holders of liens on apartment units that his or its lien may be transferred to the percentage of the undivided interest of the apartment unit owners subsequent to termination.

B. When a termination has been effected as herein provided, all the property previously subject to the Unit Ownership Act shall be deemed to be owned by all of the apartment unit owners as tenants in common, including those parcels of land over which an apartment unit is situated. And further, the Association, prior to dissolution, shall convey to all the unit owners, as tenants in common, all real property owned by the Association by a duly executed deed of conveyance. Each tenant's undivided interest shall be that percentage of the undivided interest previously owned by such apartment unit owner in the common elements and facilities.

SECTION 21. Status of Owners.

A. Upon initial creation of The Breakers of Kill Devil Hills Homeowners Association, Inc., the Owners shall have control of and shall appoint the Board of Directors



therefor. At such time as six (6) units are sold in the condominium buildings, the Owners, within fifteen (15) days, shall turn over and deliver control of the Condominium Association Board of Directors to the duly-elected officers of The Breakers of Kill Devil Hills Homeowners Association, Inc., as provided in the Articles of Incorporation and the By-Laws.

B. For as long as the Owners are the record owners of one or more condominium apartment units which remain unsold, the Owners shall be responsible for and pay their pro rata portion of the common expenses as determined by the Association.

C. Until the Owners have sold all of the apartment units, neither the condominium unit owners, nor the Association, nor the use of the condominium property shall interfere with the completion of the contemplated improvements and sale of the condominium units. The owners may make use of the unsold condominium apartment units and common areas as may facilitate completion of the construction thereof and sale, including but not limited to the maintenance of a sales office, model apartment, the showing of the property and displaying of advertising signs.

SECTION 22. Severability. If any provision of this Condominium Declaration or any of the condominium documents is held to be invalid or unconstitutional by a Court of competent jurisdiction, the validity of the remainder of this Declaration and the other condominium documents shall not be affected thereby.

SECTION 23. M.H. Hood Ellis, Substitute Trustee for Home Federal Savings and Loan Association of Norfolk, joins in this Declaration for the sole purpose of consenting to the submission of the property herein described to unit ownership in accordance with Section 47A of the General Statutes of North Carolina, which property is described in that certain deed of trust from Nags Head Retreat, Inc. to J. Kenyon Wilson, Jr. of Elizabeth City, North Carolina, as Trustee, dated May 4, 1981, and duly recorded in the public registry of Dare County, North Carolina, provided, however, that in no way shall this joinder affect the validity of the lien aforementioned in the deed of trust, the same being expressly retained on all property described herein.

IN TESTIMONY WHEREOF, the authorized officers of Nags Head Retreat, Inc. and M.H. Hood Ellis, have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

NAGS HEAD RETREAT, INC.

ATTEST:

By: \_\_\_\_\_ (Seal)  
President

\_\_\_\_\_  
Secretary

VIRGINIA  
City of Virginia Beach

I, a notary public, do hereby certify that Alan C. Jensen, President, and Douglas E. Kahle, Secretary of Nags Head Retreat, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
M.H. Hood Ellis  
Substitute Trustee

NORTH CAROLINA  
County of \_\_\_\_\_

I, \_\_\_\_\_, a notary public in and for the aforesaid State and County do hereby certify that M.H. Hood Ellis, Substitute Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notary seal this \_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
Notary Public

My Commission Expires: