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DECLARATION OF  
HAMILTON CAY CONDOMINIUM  
Dare County, North Carolina

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Prepared by and return to WARD AND SMITH, P.A., 127 Racine Drive,  
Wilmington, NC 28406-7068



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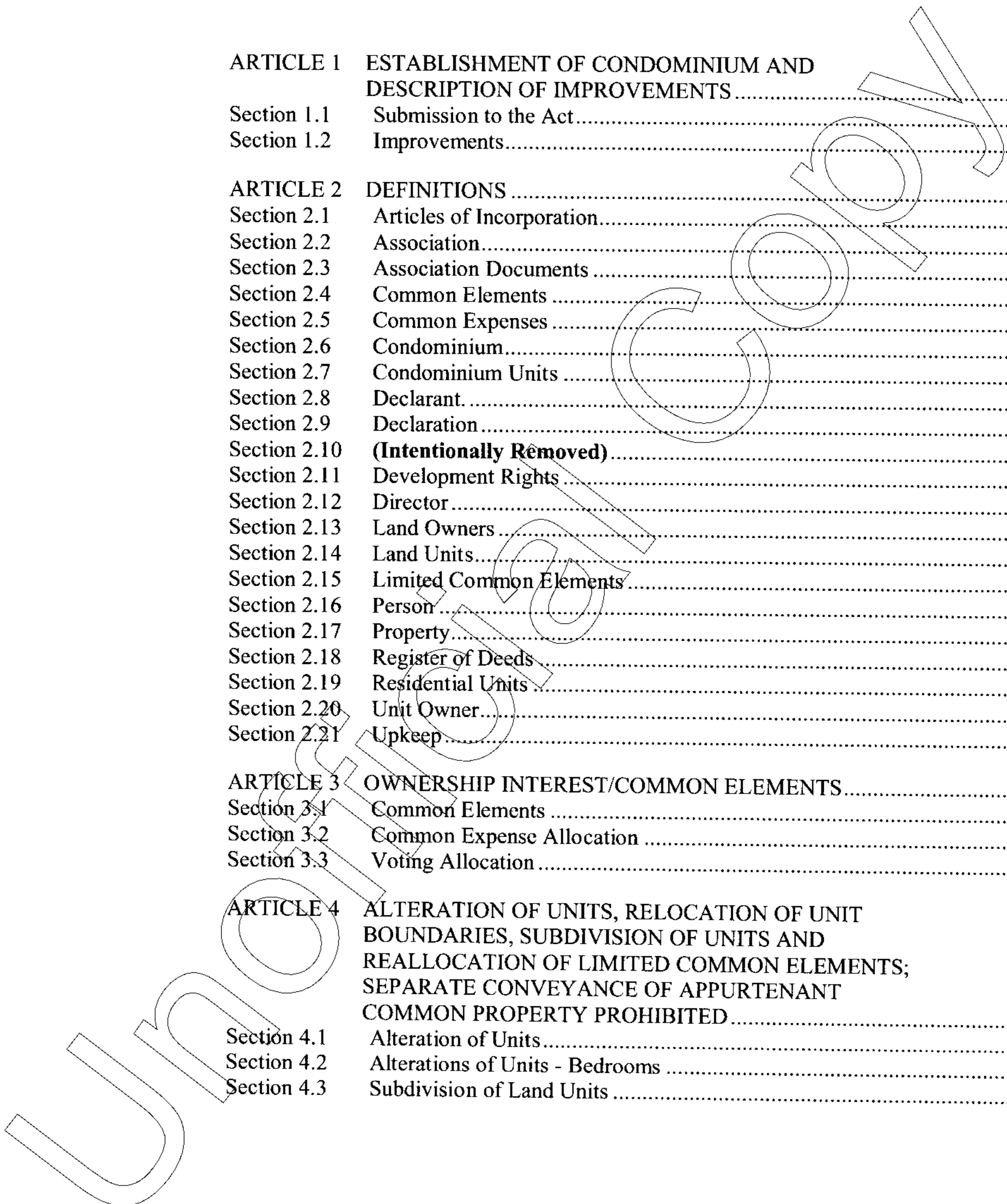
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Unofficial



THIS DECLARATION OF HAMILTON CAY CONDOMINIUM (hereinafter referred to as the "Declaration"), made this the 21 day of November, 2006, by BERMUDA BAY, L.L.C., a North Carolina limited liability company (hereinafter referred to as "Declarant") and VOC, L.L.C., a North Carolina limited liability company and Bermuda Bay Associates, L.L.C., a North Carolina limited liability company (collectively "Land Owners"), pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina (sometimes hereinafter referred to as the "Condominium Act" or the "Act") and consented by Wachovia Bank, National Association, and Townebank (collectively, "Lenders") to All Prospective Purchasers or Owners of property described herein;

WITNESSETH:

WHEREAS, Declarant and Land Owners are the owners in fee simple of certain real estate located in Dare County, North Carolina, said real estate being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, there is constructed on the property described on Exhibit "A" one (1) building, containing twelve (12) condominium units, and appurtenant facilities; and,

WHEREAS, in addition to the twelve (12) units described above, there are six (6) land condominium units located on the property described in Exhibit "A"; and,

WHEREAS, it is the desire of the Declarant and Land Owners to submit the property described on Exhibit "A," together with the improvements thereon constructed, to the provisions of the North Carolina Condominium Act to provide for the condominium form of ownership; and,

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of condominium units and the co-ownership by individual and separate owners thereof, as tenants in common, of all of the remaining property in the condominium (all portions of the Condominium except the Units hereinafter being referred to as "Common Elements").

NOW, THEREFORE, Declarant does hereby declare, and Land Owners hereby consent, that the property described on Exhibit "A" attached hereto and incorporated herein by reference shall be held, conveyed, encumbered, used, occupied, improved, sold, mortgaged, and otherwise conveyed subject to the rules, regulations, restrictions, covenants, conditions, uses and obligations set forth in this Declaration. All such rules, regulations, restrictions, covenants, conditions, uses and obligations are declared and agreed to be in furtherance of a plan for the creation of the Condominium and the use, enjoyment and rental of condominium units and shall be deemed to run with the land and be a burden on and a benefit to the Declarant, its successors and assigns, Land Owners, and on and to any Person acquiring or owning any interest in the real property in the Condominium and any improvements thereto, and such parties' grantees, successors, heirs, assigns, executors, administrators and devisees. Individual Unit Owners, their



employees, guests, tenants and all persons using or possessing any property within the Condominium are subject to the provisions of this Declaration.

ARTICLE 1.

ESTABLISHMENT OF CONDOMINIUM AND DESCRIPTION OF IMPROVEMENTS

Section 1.1 Submission to the Act. Declarant and Land Owners, as owners of the real property and appurtenant easements more particularly described on Exhibit "A," hereby submit said property and the appurtenant easements, and the improvements lying upon and within, to condominium ownership under the provisions of the Act, and hereby declare the same to be a condominium known and identified as "Hamilton Cay Condominium." A survey of the Property, and plats and plans of the improvements constituting the Condominium, containing the information required by N.C. Gen. Stat. § 47C-2-109(b) and (c), is recorded in the office of the Register of Deeds and is identified as Exhibit "B" attached to this Declaration, the same being incorporated herein by reference. The Condominium is located in Dare County, North Carolina.

Section 1.2 Improvements. Within the property described on Exhibit "A," there are a building and other improvements. As shown on Exhibit "B," Declarant and Land Owners have created eighteen (18) Units, and allocated certain Limited Common Elements to Units. Each Unit is identified by a specific or combination of numbers and/or letters, and no Unit bears the same designation as any other Unit. The Units are presently numbered/identified as 1 through 6 and 104-A1, 104-B1, 104-C1, 104-D1, 104-A2, 104-B2, 104-C2, 104-D2, 104-A3, 104-B3, 104-C3, and 104-D3, as shown on Exhibit "B." Exhibit "B" also depicts the Common Elements and Limited Common Elements and additional areas which are subject to Development Rights. Except for portions of the Development Area, no additional real estate will be subsequently allocated as Limited Common Elements.

ARTICLE 2.

DEFINITIONS

As used in this Declaration, the Bylaws and the exhibits attached hereto, and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

Section 2.1 Articles of Incorporation. "Articles of Incorporation" means the Articles of Incorporation for Hamilton Cay Owners Association filed in the office of the Secretary of State of North Carolina and recorded in the office of the Register of Deeds of Dare County, North Carolina, as the same may be amended from time to time.

Section 2.2 Association. "Association" means the Unit Owners association organized pursuant to the Act and incorporated under Chapter 55A of the General Statutes of North Carolina, and shall be known as Hamilton Cay Owners Association and its successor.





Section 2.3 Association Documents. "Association Documents" means collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, and the Rules and Regulations adopted by the Association, all as may be amended, restated and revised from time to time. Any exhibit, schedule, or amendment to an Association Document shall be considered a part of that document.

Section 2.4 Common Elements. "Common Elements" means and comprises (i) all of the real property, improvements and facilities of the Condominium, excluding however the Condominium Units as herein defined, (ii) all personal property and equipment held and maintained for the joint use and enjoyment of all the Owners of Condominium Units, and (iii) all permits for construction, maintenance and operation of the Condominium assigned by Declarant to the Association or otherwise procured or acquired by the Association.

Section 2.5 Common Expenses. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

Section 2.6 Condominium. "Condominium" means the Property described on Exhibit "A" together with all buildings and improvements existing thereon.

Section 2.7 Condominium Units. "Condominium Units" or "Units," as such terms are used herein, means a physical portion of the Condominium designated for separate ownership, the boundaries of which are hereinafter defined and shown on Exhibit "B." The Condominium Units include Land Units and Residential Units.

Section 2.8 Declarant. "Declarant" means Bermuda Bay, L.L.C. and any Person or entity who succeeds to any Special Declarant Rights as provided herein or pursuant to the Condominium Act.

Section 2.9 Declaration. "Declaration" means this instrument and any amendments thereto.

Section 2.10 (Intentionally Removed).

Section 2.11 Development Rights. "Development Rights" means the rights reserved by Declarant under Article 28 of this Declaration, including the right to add additional real estate and property to the Condominium.

Section 2.12 Director. "Director" means a member of the Executive Board of the Association.

Section 2.13 Land Owners. "Land Owners" means Declarant, VOC, L.L.C. and Bermuda Bay Associates, L.L.C. The vertical boundaries of each Land Unit are the vertical planes represented by the perimetric boundaries identified for each Land Unit on Exhibit "B." The Units have no horizontal boundaries.



Section 2.14 Land Units. "Land Units" means Units identified as Units 1, 2, 3, 4, 6 and 7.

Section 2.15 Limited Common Elements. "Limited Common Elements" means those portions of the Common Elements allocated by operation of N.C. Gen. Stat. § 47C-2-102 for the exclusive use of one or more but fewer than all of the Units, those portions of the Common Elements described in this Declaration as Limited Common Elements and those portions of the Common Elements designated as Limited Common Elements on Exhibit "B."

Supplementing the provisions of N.C. Gen. Stat. § 47C-2-102(4), all exterior doors and door frames, except screen doors or storm doors as may have been permitted by the Association, exterior windows and window frames, and all related components of the exterior doors and exterior windows including glass, panes and screens, shall be Limited Common Elements, and are specifically allocated to the Units in which they are installed.

Each Residential Unit has been assigned a parking area under the building in which said Unit is located, said parking area designated for said Unit as Limited Common Elements and shown and delineated on Exhibit "B".

Section 2.16 Person. "Person" means a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity or any combination thereof.

Section 2.17 Property. "Property" means the real estate described on Exhibit "A," together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

Section 2.18 Register of Deeds. "Register of Deeds" means the office of the Register of Deeds for Dare County, North Carolina.

Section 2.19 Residential Units. "Residential Units" means all Units other than Land Units.

The walls, floors and ceilings of the Residential Units hereby are designated as the boundaries of each respective Residential Unit.

Except as otherwise modified herein, the provisions of N.C. Gen. Stat. § 47C-2-102(1), (2), (3), and (4) are incorporated herein by reference.

Section 2.20 Unit Owner. "Unit Owner" or "Owner" means any Person owning one or more Units, but shall not include a mortgagee unless such mortgagee has acquired title pursuant to foreclosure or some other process in lieu of foreclosure.



Section 2.21 Upkeep. "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Any word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in N.C. Gen. Stat. § 47C-1-103.

ARTICLE 3.

OWNERSHIP INTEREST/COMMON ELEMENTS

Section 3.1 Common Elements. Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit also shall own, as an appurtenance to the ownership of said Condominium Unit, an undivided interest in the Common Elements. The undivided interest in the Common Elements appurtenant to each of the Condominium Units which presently exists, subject to amendment as provided herein, shall be as set out in Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Elements that is appurtenant to each Condominium Unit has been determined by the Declarant to be equal as to all Units.

The proportional interest in the Common Elements appurtenant to each Condominium Unit shall be reallocated among all of the Condominium Units employing the same formula as stated above (equal as to all Units) when new Condominium Units are created pursuant to the exercise of Development Rights, including the replacement of a Land Unit with multiple Residential Units as contemplated by Section 4.3 herein.

Section 3.2 Common Expense Allocation. The portion of the Common Expenses of the Association allocated to each Unit is based upon the same formula used to determine the proportional interest in the Common Elements appurtenant to each Condominium Unit and is as set out in Exhibit "C." The proportion of the Common Expenses allocated to each Unit shall be reallocated among all of the Condominium Units employing the same formula as stated above when new Condominium Units are created pursuant to the exercise of Development Rights, including the replacement of a Land Unit with multiple Residential Units as contemplated by Section 4.3 herein.

Section 3.3 Voting Allocation. The vote in the Association allocated to each Unit shall be equal and shall be one (1) vote per unit.



ARTICLE 4.

ALTERATION OF UNITS, RELOCATION OF UNIT BOUNDARIES,  
SUBDIVISION OF UNITS AND REALLOCATION OF LIMITED  
COMMON ELEMENTS; SEPARATE CONVEYANCE  
OF APPURTENANT COMMON PROPERTY PROHIBITED

Section 4.1 Alteration of Units. Subject to the provisions of N.C. Gen. Stat. § 47C-2-108, 47C-2-111, 47C-2-112 and 47C-2-113, and to the limitations contained in this Article 4, Units may be altered, boundaries between adjoining Units may be relocated, Units may be subdivided, Limited Common Elements may be reallocated, and Common Elements may be allocated as Limited Common Elements.

Section 4.2 Alterations of Units - Bedrooms. No Owner of a Residential Unit originally constructed with two (2) bedrooms or three (3) bedrooms shall undertake any construction or action within the boundaries of the Unit to convert any other room or area within the Unit into an additional bedroom or increase the number of bedrooms above the 2 or 3 which were originally constructed as part of the Residential Unit.

Section 4.3 Subdivision of Land Units. Notwithstanding anything to the contrary herein, Land Owners may construct improvements upon and subdivide Land Units owned by Land Owner into multiple Residential Units, Limited Common Elements allocated to those Residential Units and Common Elements of the Condominium. In the event of such a subdivision, each Residential Unit shall have an equal appurtenant undivided interest in the Common Elements and allocation of Common Expenses to other Units in accordance with Sections 3.1 and 3.2 herein in lieu of the former Land Units interest in the same. Said subdivision shall be accomplished by recording a supplemental declaration to this Declaration and an incorporated recorded plat depicting the subdivided Residential Units, Limited Common Elements appurtenant thereto, and the new Common Elements.

Section 4.4 Common Elements Appurtenant to Units. The undivided interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Condominium Unit, which describes said Condominium Unit by the number designation assigned thereto by the map recorded as aforesaid without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.



ARTICLE 5.

CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units and Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Elements, and said Condominium Units and Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium and those hereinafter set forth:

Section 5.1 Single Family. Each Residential Unit shall be occupied and utilized only for single family residential purposes subject to the provisions of this Declaration.

Section 5.2 Occupancy Restrictions. The occupancy of each Residential Unit shall not exceed six (6) Persons at any time.

Section 5.3 Nuisances. No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Elements.

Section 5.4 Leasing. Except as set forth in this section, nothing contained herein shall prohibit the leasing or renting of a Residential Unit; provided, however, that:

(a) No Residential Unit shall be leased or rented for a period of less than one hundred eighty (180) consecutive calendar days without the prior written consent of the Association.

(b) All leases for any Residential Unit shall be in writing signed by the Owner and the tenant.

(c) All leases shall be in such form, and contain such provisions, as approved by the Executive Board, including provisions (a) requiring the tenant to comply with the Association Documents, (b) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (c) providing that the Association may exercise any and all remedies for a default under the



Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Unit by judicial process or otherwise.

A true executed copy of any lease for a Residential Unit shall be provided to the Association prior to the occupancy by the tenant of such Residential Unit. For purposes of this Declaration, "leasing" is defined as regular exclusive occupancy of a Residential Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity, or emolument. The Executive Board may adopt reasonable additional restrictions and rules regulating leasing and subleasing of Residential Units.

The Executive Board may also adopt reasonable rules, regulations and other requirements regarding the leasing or renting of a Residential Unit which may include, but not necessarily be limited to, rules and regulations insuring that the occupancy of the Residential Unit by Persons as tenants is consistent with the restrictions on occupancy set forth in Section 5.2 and prohibiting or restricting the leasing of more than twenty percent (20%) of the Residential Units at any one time within the Condominium.

Notwithstanding the above, the Declarant retains the right to lease any Residential Unit it owns for a period of not less than thirty (30) days.

**Section 5.5 Timesharing Prohibition.** No Unit may be used for, nor shall any Owner permit the use of a Unit for, a timesharing, fraction-sharing or similar program whereby the right to exclusive right of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

In addition to the foregoing, the Condominium is subject to those matters affecting the Property set forth on Exhibit "D" attached hereto and incorporated herein by reference.

## ARTICLE 6.

### PERPETUAL EASEMENTS IN COMMON ELEMENTS

**Section 6.1 Easements-Common Elements.** Subject to the Special Declarant Rights reserved to Declarant in this Declaration and the provisions of N.C. Gen. Stat. § 47C-3-112, all of the Common Elements, except the Limited Common Elements, shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units. For that portion of the Common Elements upon which a particular Unit is located as depicted on Exhibit "B," the easement to so locate a Unit shall be exclusive. Subject to the Special Declarant Rights, the Association shall have the exclusive right to



establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his tenants, guests, invitees and customers, may be entitled to use the Common Elements and to establish regulations concerning the use of said Common Elements.

Section 6.2 Easements-Units. Each Unit Owner hereby is granted a perpetual easement to locate heating and air conditioning systems and related equipment and other utilities, including underground propane tanks, upon the Common Elements. When so located, such heating and air conditioning systems, utilities, related pipes, ducts, conduits, wires and related facilities and equipment shall become and be deemed to be a part of the respective Condominium Unit to which they are affixed or serve. Prior to installing any heating and air conditioning systems, utilities or any facilities and equipment in the Common Elements, the Unit Owner shall obtain the consent of the Association as provided in Article 16 herein. This provision shall not apply to the heating and air conditioning systems and facilities and underground propane tanks which are presently located in the Common Elements and any replacements thereto or any heating and air conditioning systems and facilities and underground propane tanks.

Section 6.3 Reserved Declarant Easements. Declarant, its successors and assigns, reserves a perpetual non-exclusive easement, over, upon and across the Common Elements, said easement hereby reserved to be for any and all purposes deemed desirable by Declarant, its successors and assigns, including, but not limited to, (i) the installation, maintenance, repair and replacement of utilities and other services and (ii) pedestrian and vehicular access to other property without regard to whether such other property is contiguous to the Condominium or owned by the Declarant.

Section 6.4 Land Owner Easements. Land Owners, their successors and assigns, are granted a perpetual non-exclusive easement, over, upon and across the Common Elements for any and all purposes related to the construction and development of Residential Units upon a Land Unit.

ARTICLE 7.

EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS

In the event that any Condominium Unit shall encroach upon any Common Elements, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements for so long as such encroachment naturally shall exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Condominium Unit for so long as such encroachment naturally shall exist. If any Condominium Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Elements in accordance with Article 20 hereof, there exist encroachments of portions of the Common



Elements upon any Condominium Unit, or of any Condominium Unit upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments naturally shall remain.

ARTICLE 8.

RESTRAINT UPON SEPARATION AND PARTITION  
OF COMMON ELEMENTS

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

ARTICLE 9.

ADMINISTRATION OF THE CONDOMINIUM BY  
HAMILTON CAY OWNERS ASSOCIATION

To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, an association of all Unit Owners has been incorporated pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "HAMILTON CAY OWNERS ASSOCIATION" (herein sometimes called the "Association"). The Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Bylaws. The Owner or Owners of each Condominium Unit automatically shall become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person, firm or association holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association, subject to the provisions of N.C. Gen. Stat. § 47C-3-105 and 47C-3-112, shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C. Gen. Stat. § 47C-3-102, including the right to assign future assessments, assessment





rights and income of the Association.

## ARTICLE 10.

### BERMUDA BAY OWNERS ASSOCIATION

Section 10.1 Master Association. The Condominium is located within the planned community known as Bermuda Bay which is subject to the provisions of Chapter 47F of the General Statutes of North Carolina (the "Planned Community Act"). To provide for the administration of Bermuda Bay, an association all Owners of Lots, as that term is defined in the Declaration of Covenants, Conditions and Restrictions for Bermuda Bay which has been recorded in the office of the Register of Deeds in Dare County, North Carolina (the "Bermuda Bay Declaration"), has been incorporated pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "Bermuda Bay Owners Association" (herein sometimes called the "Bermuda Bay Association").

Section 10.2 Membership in Master Association. The Owner or Owners of each Condominium Unit shall automatically become members of the Bermuda Bay Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit, and its appurtenant undivided interest in the Common Elements, and the membership of such Owner or Owners shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit.

Section 10.3 Administration of Bermuda Bay. In the administration, operation, and management of Bermuda Bay, the Bermuda Bay Association, subject to the provisions of the Planned Community Act, shall have the authority and power to enforce the provisions of the Bermuda Bay Declaration, to levy and collect assessments in the manner provided therein, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements of the Bermuda Bay Association and to exercise such other powers as set forth in the Bermuda Bay Declaration, the Act and the Planned Community Act.

Section 10.4 Delegation of Powers. The Board of Directors of the Association may delegate to the Bermuda Bay Association, from time to time as the Board of Directors in its discretion determines, those powers set forth in this Declaration and the Act that may be exercised by the Board of Directors of the Association. The Board of Directors of the Association may thereafter revoke such delegation, from time to time, in its sole discretion and resume the obligation and responsibility for the performance of such acts and powers formerly delegated to the Bermuda Bay Association. Upon the delegation of any such powers as permitted in this Section, all provisions of North Carolina Gen. Stat § 47-C-2-102, as may be applicable, shall apply.



ARTICLE 11.

USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION

Section 11.1 Use of Common Elements by Owners. The use of Common Elements by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be at all times subject to the Association Documents.

Section 11.2 Use of Limited Common Elements by Owners. The use of Limited Common Elements is restricted to the Owners and Owners' tenants, guests, invitees and customers, of the Unit and/or Units to which the Limited Common Elements are allocated.

ARTICLE 12.

RIGHT OF ENTRY IN EMERGENCIES

In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner or other Person in occupancy is present at the time of such emergency, the Board of Directors, or any other Person authorized by it, or the managing agent, shall have the right to enter such Unit, such Common Elements for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

ARTICLE 13.

RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS OR OTHER CONDOMINIUM UNITS

Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements or adjacent Condominium Units, the Owner of each Condominium Unit shall permit other Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

ARTICLE 14.

LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS; NO RIGHT TO ALTER COMMON ELEMENTS

Section 14.1 Consent to Modification of Residential Units. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, the rights described in Section 4.3 of this Declaration and the restriction in Section 4.2 of this Declaration, no Owner of a Residential Unit shall permit any modification or alteration to be made to a Residential Unit or



any betterment or improvement to the Limited Common Elements appurtenant to a Residential Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in its sole discretion, that such modifications, alterations, betterments or improvements would adversely affect or in any manner endanger the Condominium in part or in its entirety. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Owner shall cause any improvements or changes to be made to any Residential Unit or building (other than interior painting or other interior decoration) including the installation of electrical wiring, television or radio antennae or any other objects, machines or equipment which may protrude through the walls or roof of any Residential Unit or building, or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. Such consent shall not be unreasonably withheld. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Residential Unit Owner shall cause any object to be affixed to the Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Association being first obtained. In the event the Association shall grant its consent for such improvements or changes to be made, such improvements, including but not limited to all antennae and other objects, machines or equipment which may protrude through the walls or roof shall become and be deemed to be a part of the Residential Unit to which they are affixed. As a condition to the granting of written consent of the Association to an Owner for the installation of any improvements within the Limited Common Elements assigned to such Owner's Residential Unit, the obligation of Upkeep of such Limited Common Elements, and any improvements and betterments installed therein, shall be deemed to be the obligation of such Owner at the cost and expense of such Owner, and the Association shall have no further obligation to provide such Upkeep or bear the cost thereof as otherwise set forth in this Declaration.

Section 14.2 Indemnification-Unit Modification. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, the Board of Directors of the Association, in its sole discretion, may require a Residential Unit Owner desiring to add betterments or improvements to his Residential Unit or the Limited Common Elements appurtenant to his Residential Unit to indemnify the other Residential Unit Owners and the Association against any and all loss, cost and expense that may be occasioned by the addition of such betterments or improvements and further may require such Unit Owner to obtain liability insurance naming the other Residential Unit Owners and the Association as additional insureds in such amounts and upon such terms as the Board of Directors shall determine.

ARTICLE 15.

RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR

Subject to Declarant's Special Declarant Rights, the Association shall have the right to make or cause to be made such alterations or improvements to the Common Elements which do not prejudice the rights of the Owner of any Condominium Unit in the use and



enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

ARTICLE 16.

MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

Section 16.1 Owner Maintenance of Residential Units. Every Owner shall perform promptly all Upkeep within his Residential Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, or adversely impair the ability to rent such Owner's Residential Unit or any other Residential Unit, and every Owner shall be expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Residential Unit shall be liable and responsible for the Upkeep of all air conditioning and heating equipment, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service solely to his Residential Unit. Such Owner further shall be responsible and liable for the Upkeep of the surfaces of any and all walls, ceilings and floors in the interior of his Residential Unit including painting, decorating and furnishings, and all other accessories in his Residential Unit.

Section 16.2 Maintenance-Insurance Proceeds. Whenever the Upkeep of any item for which the Owner of a Residential Unit is obligated to perform at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of performing such Upkeep, except that the Owner of such Residential Unit shall be, in said instance, required to pay such portion of the costs of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such Upkeep.

Section 16.3 Limited Common Elements. Except as otherwise stated herein, all betterments and improvements added to the Limited Common Elements by the Unit Owners are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners. Upon approval by the Association of the installation of betterments and improvements to that portion of the Limited Common Elements adjoining the rear of each Unit, the obligation and cost of the Upkeep of such Limited Common Element area, and all betterments and improvements installed within, shall be that of the Owner.



ARTICLE 17.

MAINTENANCE AND REPAIR OF COMMON ELEMENTS  
BY THE ASSOCIATION

Subject to Declarant's Special Declarant Rights, and other than the Upkeep of Limited Common Elements required by the Owner pursuant to Sections 16.1 and 16.3, the Association shall be responsible for the Upkeep of the Common Elements, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements or in a Condominium Unit for the furnishing of utility and/or other services to the Common Elements or other Condominium Units. If any incidental damage is caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the Upkeep of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the Upkeep of any item for which the Association is obligated to perform at its expense is occasioned by any act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of such Upkeep, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay such portion of the cost of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such Upkeep. Whenever the Upkeep of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage is not covered by any insurance maintained in force by the Association, the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay the cost of such Upkeep. Establishment of liability for damage caused by the Owner of a Unit or the Association is subject to the provisions of N.C. Gen. Stat. § 47C-3-107(d). Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

ARTICLE 18.

AUTHORITY TO PURCHASE INSURANCE

All required or permitted insurance policies (other than title insurance and insurance on betterments and improvements to the Limited Common Elements, if any) upon the Property (other than the personal property of the Unit Owners) shall be purchased by the Association in the name of the Association, as Trustees for the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or memoranda of insurance to the Association and to any Unit Owner, mortgagee, or beneficiary of a deed of trust. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability as may be permitted or required by law, and such insurance shall, if available,



contain a waiver of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests.

ARTICLE 19.

INSURANCE COVERAGE TO BE MAINTAINED;  
USE AND DISTRIBUTION OF INSURANCE PROCEEDS

Section 19.1 Insurance Coverages. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Casualty insurance covering the Common Elements, and to the extent reasonably available, the Residential Units, including all buildings and all improvements upon the land and all personal property included within the Condominium, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to at least eighty percent (80%) of the maximum insurable replacement value thereof (exclusive of land, excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and, (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief. Casualty insurance obtained for the buildings and improvements shall provide such coverage commonly known as "all inclusive building" coverage and/or "completed condominium unit" coverage as such terms are used in the insurance industry, and shall include, but not be limited to, all components of the Residential Units together with fixtures, cabinets, built in appliances and all other such improvements which were part of the original completed Residential Units, except for betterments and improvements installed by the Owner.

(b) Public liability and property damage insurance in such reasonable amounts and covering all occurrences commonly insured against including, death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, and in such forms as shall be required by the Association, including, but not limited to, legal liability, hired automobiles, non-owned automobile and off-premises employee coverage. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.

Section 19.2 Premiums - Common Expenses. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.

Section 19.3 Insurance Claim Adjustment. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective



interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear.

Section 19.4 Mortgagee-Insurance Proceeds. In the event a mortgage endorsement has been issued for a Condominium Unit, the share of any insurance proceeds of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

Section 19.5 Use of Insurance Proceeds. Proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated except as specified in Article 20.

Section 19.6 Reimbursement of Initial Insurance Premiums. Declarant and Land Owners shall pay the premium(s) of the initial insurance policies required by this Article 19 and shall be reimbursed for the pro rata portion of the cost thereof by each Unit Owner at the time each Residential Unit is conveyed to a Person other than Declarant or Land Owner, or reimbursed by the Association.

Section 19.7 Insurance Policy Requirements. Insurance policies carried pursuant to this Article 19 shall provide that:

- (a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household, if applicable;
- (c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;
- (d) If, at the time of any loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and
- (e) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to



the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or endorsements have been issued at their respective last known addresses.

Section 19.8 Insurance Coverage-Betterments. The Association shall not be required to maintain insurance coverage for any betterments or improvements to the Units and/or Limited Common Elements added by any Unit Owner and a Unit Owner may be required to maintain such liability coverage as is otherwise provided herein. Until such time as any improvements to a Land Unit are complete and the Land Unit is subdivided as contemplated in Section 4.3 of this Declaration, those improvements are betterments and improvements of the Land Unit and shall not be insured by the Association.

Section 19.9 Insurance Availability Notification. If the insurance described in this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

Section 19.10 Flood Insurance. The Association shall maintain flood insurance on the building and all improvements upon the land, the Common Elements, and all personal property of the Condominium (except personal property of the Condominium Unit Owners).

Section 19.11 Fidelity Insurance. If desired, the Association may maintain fidelity insurance.

ARTICLE 20.

RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

Section 20.1 Reconstruction-Costs. Any portion of the Condominium for which insurance is required pursuant to Article 19 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of all Owners of Units not to be rebuilt or Owners of Units assigned to Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lien holders, as their interests may appear, and (3) the remainder of the proceeds shall be distributed to all of the Unit Owners or lien holders, as their interests may appear, in proportion to their Common Element interest. If Unit Owners vote not to rebuild any Unit, that Unit's allocated interests automatically shall be reallocated upon the vote as if the Unit had been condemned pursuant to N.C. Gen. Stat. § 47C-1-107(a), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations. Unless otherwise prohibited, any





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

Section 20.2 Estimates of Replacement Costs. Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.

Section 20.3 Priority of Repair. When the damage is to Common Elements, Limited Common Elements and Condominium Units, the insurance proceeds will be applied first to the costs of repairing the Common Elements, secondly to the cost of repairing the Condominium Units, and thirdly to the cost of repairing the Limited Common Elements.

Section 20.4 Association Right to Insurance Adjustments. Each Condominium 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.

ARTICLE 21.

ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of the Owners of all of the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Condominium Unit. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any Condominium Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

ARTICLE 22.

ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Condominium Units. To properly administer the



operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses (not including the payment of real estate and personal property taxes) which are sometimes herein referred to as "Common Expenses." To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management and improvement of the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

**Section 22.1 Levy of Assessments.** Except as specifically otherwise provided for in this Article or elsewhere in this Declaration, all assessments levied by the Association shall be levied pursuant to the allocation of Common Expenses set forth in Exhibit "C," as same may be amended from time to time. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests of the Common Expenses exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

**Section 22.2 Assessments - Limited Common Elements.** Any Common Expense associated with the maintenance, repair or the replacement of a Limited Common Element be assessed equally against the Units to which that Limited Common Element is assigned. Any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited in such proportions as determined by the Board.

**Section 22.3 Payment of Assessments.** Assessments provided for herein may be payable in installments as directed by the Board of Directors of the Association. Such assessments shall commence upon closing of the sale of the first Unit.

**Section 22.4 Association Budget.** The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the fiscal year set forth in the Bylaws). Such Budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph E hereof, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of such Annual Budget by the Board of Directors of the Association, copies of said Annual Budget or summaries thereof shall be delivered to each Owner of a Condominium Unit. Within thirty (30) days after adoption of any proposed Budget, the Board of Directors shall set a date for a meeting of the Unit Owners



to consider ratification of the Annual Budget which date shall be not less than fourteen (14) nor more than thirty (30) days after the mailing of copies of such Annual Budget or summary thereof to the Unit Owners. There shall be no requirement that a quorum be present at the meeting. The Annual Budget is ratified unless at that meeting a majority of all the Unit Owners reject the Annual Budget. In the event the proposed Annual Budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify (i.e. fail to reject by a majority of all Unit Owners) a subsequent budget proposed by the Board of Directors. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

**Section 22.5 Capital Improvement Fund.** The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements, which capital improvement and replacement fund (Capital Improvement Fund) shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

**Section 22.6 Assessments-Association Property.** All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, and the Bylaws of the Association. As monies for any assessment are paid into the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by other Owners of Condominium Units. Although all funds and Common Surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and



constitute an asset of the Association which may be used in the operation and management of the Condominium.

Section 22.7 Delinquent Assessments. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owing to the Association shall be due and payable at the office of the Association. In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any such installment, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Executive Board, and the entire outstanding balance of the Assessment, including such delinquent installment, may be declared due and payable in full immediately by the service of notice to such effect upon the defaulting Owner.

Section 22.8 Liability for Assessments. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners personally shall be liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys' fee, whether suit be brought or not.

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

Section 22.9 Lien for Assessments. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted the right to place a lien upon each Condominium Unit, and any Limited Common Elements assigned to such Unit, and its appurtenant undivided interest in the Common Elements for nonpayment of any assessment levied against a Unit remaining unpaid for thirty (30) days or longer, which lien also shall secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien also shall secure all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien provided for



herein. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages and deeds of trust may be foreclosed under power of sale in the State of North Carolina. The Association shall be entitled to bid at any foreclosure sale and may apply as cash credit against its bid all sums due as provided herein. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or may acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the office of the Clerk of Superior Court of Dare County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due, the date when due and shall comply with any other requirements under N.C. Gen. Stat. § 47C-3-116. The claim of lien shall be recordable at any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid, but shall be extinguished unless a proceeding to enforce the lien is instituted within three (3) years after the docketing thereof. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided and all fees, charges, late charges, fines and interest as set forth in N.C. Gen. Stat. § 47C-3-116. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be prior to all liens and encumbrances on a Unit except (1) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (2) liens for real estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

**Section 22.10 Foreclosure/Assessment Obligation.** If the holder of a first mortgage or first deed of trust of record, or other purchaser of the Unit, obtains title to the Unit as a result of foreclosure or deed in lieu of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners including such purchaser, and its heirs, successors and assigns although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment



from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Section 22.11 Statement of Assessment Status. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association for such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement. The Association, at the Board's discretion, may impose a reasonable fee for provision of said statement.

Section 22.12 Election of Collection Remedies. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

Section 22.13 Initial Contribution to Working Capital Fund. Upon the sale and closing of the purchase of each Unit by the Declarant or Land Owner to a Person other than Declarant, the purchaser of each Unit shall pay a non-refundable contribution to the working capital of the Association in an amount equal to three (3) monthly installments of the annual Common Expense liability to be assessed against such Unit for the first year of operation of the Condominium. The contribution to working capital may be utilized to reimburse the Declarant the costs of premiums for insurance purchased by the Declarant for the benefit of the Condominium and the Association.

## ARTICLE 23.

### COMMON SURPLUS

"Common Surplus," meaning all funds and other assets of the Association remaining after the payment of or the provision for Common Expenses, including reserves, shall be owned by the Owners of all Condominium Units in the same proportion as their Common Expense liabilities. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in Common Surplus as declared herein. All Common Surplus remaining after payment of or provision for Common Expenses, including prepayment of reserves, must be paid to the Unit Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense liabilities.



ARTICLE 24.

TERMINATION

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

ARTICLE 25.

AMENDMENT OF DECLARATION OF CONDOMINIUM

This Declaration may be amended as follows:

Section 25.1 Amendments Proposed by Association. An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President. It shall be the duty of the Secretary to give to each member written or printed notice of any meeting called to consider the amendment or amendments, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of at least sixty-seven percent (67%) of the votes in the Association which are allocated to Unit Owners in the Condominium in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the Register of Deeds Office of Dare County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments.

As an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. The written agreement shall include the proposed amendment or amendments in reasonably detailed form. To be effective, the written agreement must be executed by Unit Owners of Units to which at least sixty-seven percent (67%) of the votes of the Association are allocated. Once approved, the



amendment or amendments shall be transcribed, certified, executed, recorded and a copy sent to all Owners as specified above.

Section 25.2 Amendments by Declarant. Declarant may amend the Declaration as set forth herein and in the Act without the consent of any other Person or the Association to exercise Development Rights.

Section 25.3 Amendments Requiring Declarant Consent. Provisions in this Declaration creating, relating to or involving the exercise of Special Declarant Rights and Development Rights more particularly set forth in Article 27 of this Declaration may not be amended, altered, rescinded or changed in any manner without the prior consent of the Declarant.

Section 25.4 Amendments Requiring Unanimous Consent. Except to the extent expressly permitted by the Act or other provisions of this Declaration (in compliance with the Act), no amendment may create or increase special Declarant Rights, create or increase Development Rights, increase the number of Units, change the boundaries of any Unit, change the allocated interest of any Unit, or change the uses to which any Unit is restricted in the absence of unanimous consent of the Unit Owners.

## ARTICLE 26.

### REMEDIES IN EVENT OF DEFAULT

Section 26.1 General Default Remedies. The Owner or Owners of each Condominium Unit shall be governed by and shall comply with all provisions of the Association Documents and the Act, as any of the same are now constituted or as they may be amended from time to time. In addition to other rights set forth in the Association Documents and the Act, a default by the Owner of any Condominium Unit shall entitle the Association to the following relief: (i) to levy fines, institute actions to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, (ii) the Executive Board, or its agent, shall have the right to enter a Unit or Limited Common Element appurtenant thereto, on which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents, and the Board shall not thereby be deemed guilty in any manner of trespass, (iii) to use self-help to remove or cure any violation of the Association Documents (including, without limitation, the towing of vehicles); and (iv) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction or improvements may be altered or demolished, except in emergencies, judicial proceedings shall be instituted by the Association against such defaulting Owner or its tenant.

Section 26.2 Cumulative Remedies. All rights, remedies and privileges granted to the Association pursuant to the Association Documents and the Act shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election





of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

Section 26.3 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

Section 26.4 No Waiver by Declarant. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

Section 26.5 Attorneys' Fees. In any proceeding arising because of an alleged default by a Unit Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court, but in no event shall any Unit Owner be entitled to such attorneys' fees except as otherwise provided in N.C. Gen. Stat. § 47C-3-116(e).

Section 26.6 No Waiver by Mortgagee. The failure of a first mortgagee to enforce any right, provision, privilege, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

ARTICLE 27.

SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS RESERVED UNTO DECLARANT

In addition to each and every right of Declarant as set forth in this Declaration, Declarant, its successors and assigns, specifically reserves all Special Declarant Rights and Development Rights hereinafter set forth.

Section 27.1 Special Declarant Rights Reserved by Declarant.

(a) All Special Declarant Rights, as that term is defined in the Act, and any other Special Declarant Rights as are set forth in the Act and the Association Documents.

(b) The right to use any portion or all of the Common Elements for the purpose of aiding in the sale or rental of Units. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit the same and to distribute audio and visual promotional materials upon the Common Elements.



(c) The right to maintain sales offices, management offices and models in any and/or all of the Units owned or leased by Declarant. Any Units leased or owned by Declarant may be used by Declarant for such purposes, and such offices and models may be relocated as Units are sold or leases expire.

(d) The right to use easements through the Common Elements for utility services, drainage and vehicular and pedestrian traffic, or otherwise, across, under or through the Common Elements as may be considered by Declarant desirable for the purpose of making improvements within the Condominium.

(e) The right to exercise any Development Right.

(f) The right to perform construction work, and to store materials in secure areas, in Units, and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of the Executive Board. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's Development Rights and Special Declarant Rights, whether arising under the Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, and other entities to fulfill the plan of development.

(g) The right to appoint, remove and replace the officers and members of the Executive Board.

(h) Subject to the procedures set forth in the Articles, the Declarant shall have veto power over all actions taken by the Executive Board or any committee thereof as may have been appointed by the Board or established by the Bylaws or this Declaration.

Section 27.2 Development Rights Reserved by Declarant.

(a) All Development Rights as the same are defined in this Declaration and in the Act.

(b) The rights to: add real estate to the Condominium; create Units, Common Elements and Limited Common Elements within the existing Condominium or to be added to the Condominium; but not to exceed a total of one hundred thirty-two (132) Units; subdivide Units; convert Units into the Common Elements; and, withdraw property, Units and Common Elements from the Condominium. The Development Right reserved to add Units shall not restrict the Declarant to the construction of buildings or Units of the same size and style as the existing buildings and Units in the Condominium.

(c) The Development Rights reserved by Declarant must be exercised within fifteen (15) years from the date of the recording of this Declaration in the office of the Register of Deeds of Dare County, North Carolina.



The exercise of any or all of the Development Rights reserved by Declarant shall be pursuant to, and subject to the provisions of, the Act.

Section 27.3 Phasing of Development Rights. Declarant reserves the right to exercise any of the Development Rights with respect to the Units owned by the Declarant at different times. No assurances are made by Declarant regarding the Units owned by Declarant as to when the Declarant may exercise its Development Rights or in what order. No assurances are made by Declarant regarding whether or not all the Units Declarant reserves the right to create will be created. The exercise of any Development Right as to some of the Units owned by Declarant will not obligate Declarant to exercise any of Declarant's Development Rights as to other Units owned by Declarant.

Section 27.4 Limitation on Special Declarant Rights. The Special Declarant Rights reserved hereunder shall terminate no later than the earlier of (i) ten (10) days after the conveyance of one hundred percent (100%) of the Units, including Units which may be created pursuant to the Special Declarant Rights and the Declarant's Development Rights, to Owners other than a Declarant; (ii) five (5) years after the termination of the right to exercise Development Rights, or (iii) upon the recording by Declarant of an instrument in the office of the Register of Deeds of Dare County, North Carolina terminating the Special Declarant Rights.

Section 27.5 Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the improvements within the Condominium that has not been represented as property of the Association. Declarant reserves the right to remove from the Property any and all goods and improvements used in development, marketing, and construction, regardless of whether they have become fixtures.

Section 27.6 Interference with Special Declarant Rights.

(a) Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

(b) In relation to Declarant's exercise of any Special Declarant Right, the provisions of the Declaration which prohibit or require approval of construction of or additions or alterations to any improvements shall not be applicable.

Section 27.7 Assignment of Declarant's Rights and Duties. Any and/or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any Person which will assume any and/or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations, and duties hereunder. Declarant may



limit and restrict the rights and powers which are assigned to any person, corporation, or association in the instrument which assigns such rights. The term "Declarant" as used herein includes all such assignees and their successors and assigns, subject to such restrictions or limitations as may be imposed in the instrument assigning such rights.

ARTICLE 28.

SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS  
ASSIGNED AND GRANTED TO LAND OWNERS

In addition to other rights granted to Land Owners as set forth in this Declaration, Declarant hereby assigns to Land Owners the Special Declarant Rights and Development Rights hereinafter set forth. This assignment is in accordance with Section 47C-3-104 of the Act, and by execution of this Declaration, Land Owner accepts assignment of these rights as transferee.

Section 28.1 Special Declarant Rights Granted to Land Owners.

(a) The right to use any portion or all of the Common Elements for the purpose of aiding in the sale or rental of Units. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit the same and to distribute audio and visual promotional materials upon the Common Elements.

(b) The right to maintain sales offices, management offices and models in any and/or all of the Units owned or leased by the Land Owner. Any Units leased or owned by Land Owner may be used by Land Owner for such purposes, and such offices and models may be relocated as Units are sold or leases expire.

(c) The right to use easements through the Common Elements for utility services, drainage and vehicular and pedestrian traffic, or otherwise, across, under or through the Common Elements as may be necessary for the purposes of making improvements to the Land Unit owned by the Land Owner.

(d) The right to perform construction work, and to store materials in secure areas, in Units, and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by Land Owner without the consent or approval of the Executive Board. Land Owner has such an easement through the Common Elements as may be reasonably necessary for the purposes of exercising Land Owners' Development Rights and Special Declarant Rights as granted in this Declaration. Such easements include the right to convey utility and drainage easements to public utilities, municipalities, and other entities to fulfill the plan of development for the Land Owners' Land Unit.

(e) The right to subdivide the Land Owners' Land Unit as set forth in Section 4.3 herein.



Section 28.2 Development Rights Granted to Land Owners.

(a) The rights to: create Residential Units, Common Elements and Limited Common Elements upon the Land Owners Land Unit; subdivide Land Unit; convert portions of the Land Unit into the Common Elements; and, withdraw the Land Owners' Land Unit from the Condominium. The Development Right granted to Land Owners to add Residential Units shall be restricted to the construction of buildings or Residential Units of the same size and style as the existing buildings and Residential Units in the Condominium, unless varied or different plans are approved in writing by the Declarant.

(b) The Development Rights granted to Land Owners must be exercised within fifteen (15) years from the date of recording of this Declaration in the office of the Register of Deeds.

Section 28.3 Phasing of Development Rights.

(a) Land Owners may exercise any of the Development Rights with respect to any Land Units owned by the Land Owner at different times. Land Owners reserve the right to exercise any of the Development Rights with respect to the Land Units owned by the Land Owners at different times. No assurances are made by Declarant or Land Owners regarding the Land Units owned by Land Owners as to when the Land Owner may exercise its Development Rights or in what order. No assurances are made by Declarant or Land Owners regarding whether or not all the Unit Land Owners reserve the right to create will be created. The exercise of any Development Right as to some of the Land Units owned by Land Owners will not obligate any Land Owner to exercise any of Land Owners' Development Rights as to any other Land Units owned by Land Owners.

Section 28.4 Limitation on Special Declarant Rights Granted to Land Owners. The Special Declarant Rights granted to Land Owners hereunder shall terminate no later than the earlier of: (i) five (5) years after the termination of the right to exercise Development Rights, or (ii) upon the recording by Land Owner of an instrument in the office of the Register of Deeds of Dare County, North Carolina terminating that Land Owners' Special Declarant Rights.

Section 28.5 Land Owners' Personal Property. Land Owners may retain all personal property and equipment used in the sales, management, construction, and maintenance of the improvements within the Condominium that have not been represented as property of the Association. Land Owners may remove from the property any and all goods and improvements used in the development, marketing, and construction, regardless of whether they have become fixtures.

Section 28.6 Interference with Special Declarant Rights Granted to Land Owners.



(a) Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right granted to a Land Owner without the prior written consent of the affected Land Owner.

(b) In relation to Land Owners' exercise of any Special Declarant Right granted to Land Owner, the provisions of the Declaration which prohibit or require approval of construction of or additions or alterations to any improvement shall not be applicable, subject to Section 28.2(a) herein.

ARTICLE 29.

CONFLICT WITH CONDOMINIUM ACT; SEVERABILITY

Should any of the terms, conditions, provisions, paragraphs or clauses of this Declaration conflict with any provisions of the Condominium Act, the provisions of the Condominium Act shall control unless the Condominium Act permits the Declaration to override the Condominium Act, in which event the Declaration shall control. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

ARTICLE 30.

LIBERAL CONSTRUCTION

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

ARTICLE 31.

DECLARATION BINDING ON ASSIGNS  
AND SUBSEQUENT OWNERS

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



The Association shall have current copies of the Declaration, Bylaws of the Association, and other rules and regulations concerning the Condominium, and the books, records and financial statements available for inspection by Unit Owners and by holders, insurers and guarantors of mortgages during normal business hours at the office of the Association.

ARTICLE 32.

CONDEMNATION

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and/or the awards paid on account thereof shall be used and applied in accordance with N.C. Gen. Stat. §47C-1-107.

ARTICLE 33.

TAXES

Pursuant to the provisions of N.C. Gen. Stat. § 47C-1-105, each Unit and its appurtenant undivided interest in the Common Elements 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 Owner shall be liable solely for the amount of taxes against his individual Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. Neither any building, the Property nor any of the Common Elements shall be deemed to be a parcel. Provided, however, pursuant to the provisions of N.C. Gen. Stat. § 47C-1-105, any areas in which Declarant has Development Rights shall be separately taxed and assessed against Declarant until Declarant exercises Declarant's Development Rights therein or Declarant's Development Rights expire, terminate or are released by Declarant.

ARTICLE 34.

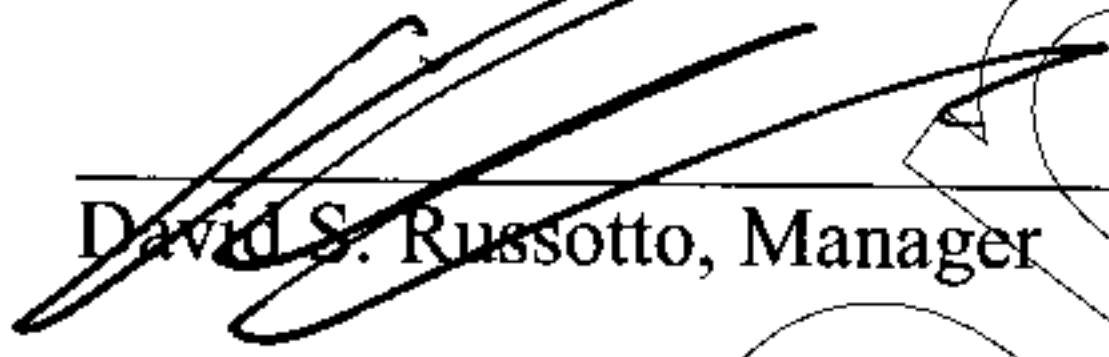
LIMITATION OF ACTION AGAINST DECLARANT AND LAND OWNERS

The Association shall not (a) file a complaint or grievance or initiate or participate in any other proceedings on account of an act or omission of Declarant or any Land Owner with any governmental agency which has regulatory or judicial authority over the Property or any part thereof or (b) assert and prosecute a claim against or in any manner sue Declarant without first having obtained the affirmative written consent of Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.




IN TESTIMONY WHEREOF, Declarant and Land Owners have caused this instrument to be executed under seal and in such form as to be binding, all by authority duly given, this the day and year first above written.

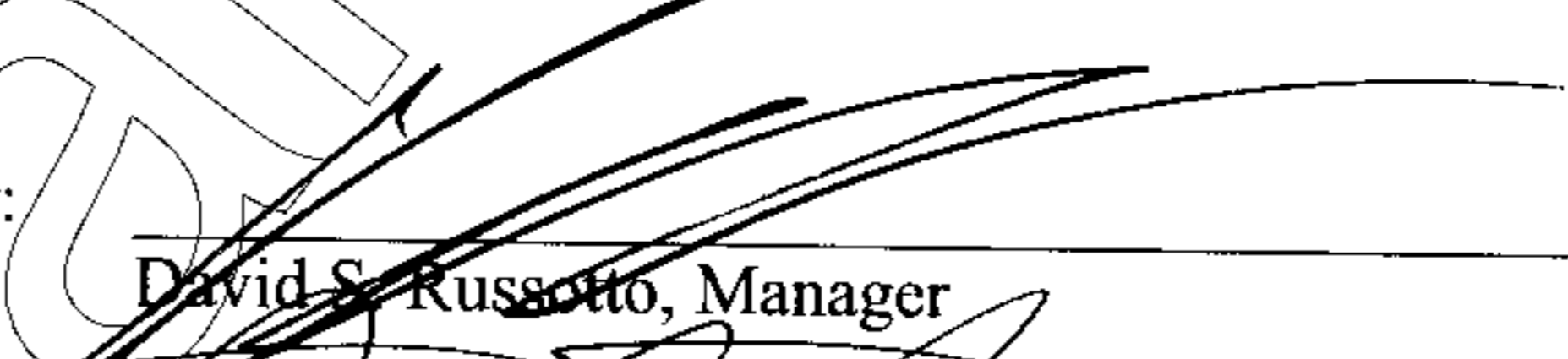
BERMUDA BAY, L.L.C. (SEAL)  
A Limited Liability Company

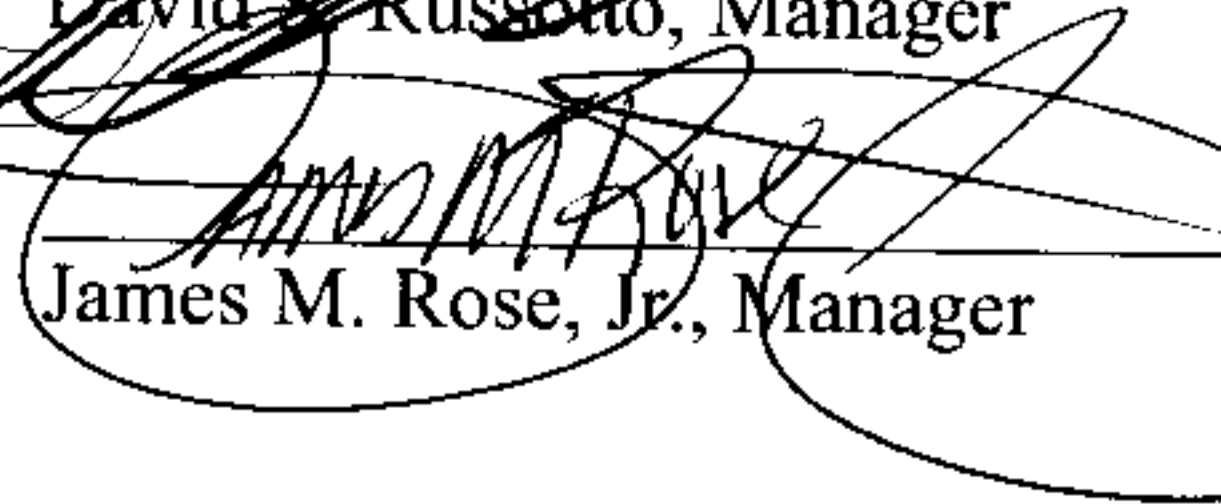
By:   
David S. Russotto, Manager

BERMUDA BAY ASSOCIATES, L.L.C. (SEAL)  
A Limited Liability Company

By:   
David S. Russotto, Manager

VOC, L.L.C. (SEAL)  
A Limited Liability Company

By:   
David S. Russotto, Manager

And:   
James M. Rose, Jr., Manager

Unofficial





STATE OF NORTH CAROLINA  
COUNTY OF CURRITUCK

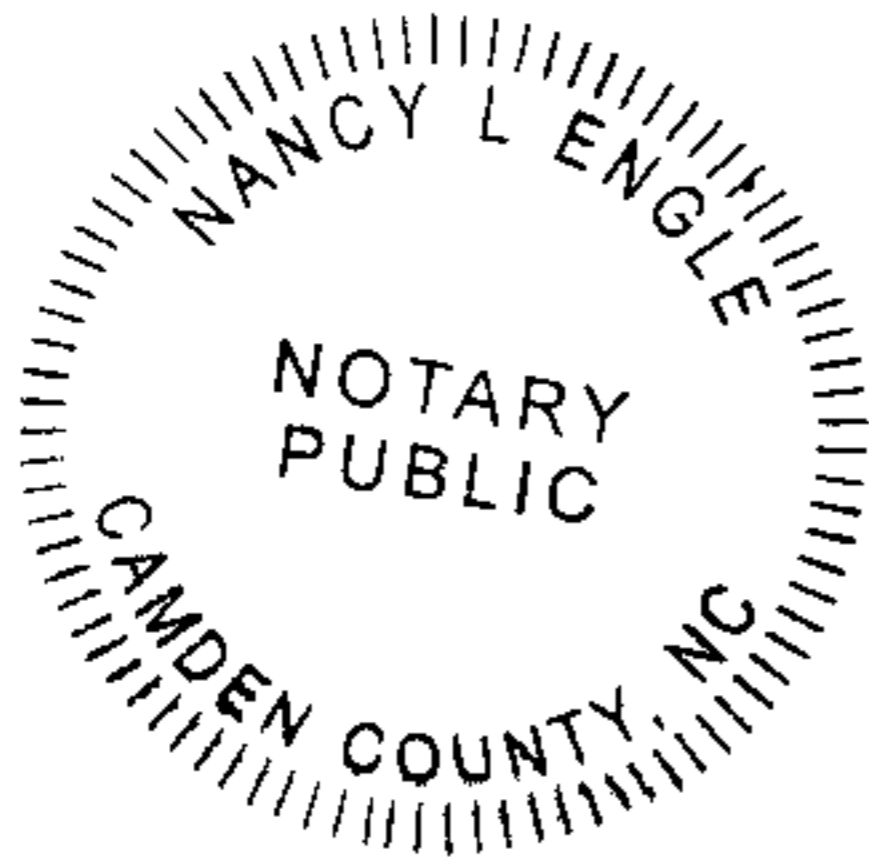
I, NANCY L. ENGLE, a Notary Public in and for said County and State, do hereby certify that David S. Russotto before me this day personally appeared, who being by me first duly sworn, says that he is a manager of BERMUDA BAY, L.L.C., the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date November 17, 2006

(Official Seal)

Nancy L. Engle  
Signature of Notary Public NANCY L. ENGLE

My commission expires: 6/25/2011



Unofficial



STATE OF NORTH CAROLINA  
COUNTY OF CURRITUCK

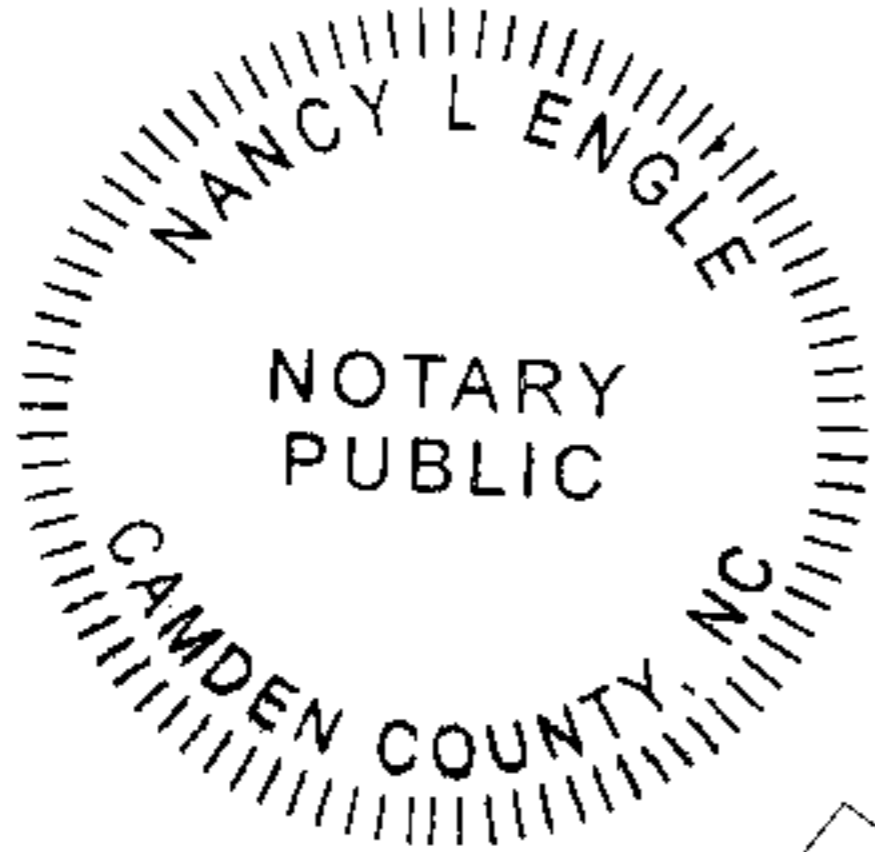
I, NANCY L. ENGLE, a Notary Public in and for said County and State, do hereby certify that David S. Russotto before me this day personally appeared, who being by me first duly sworn, says that he is a manager of BERMUDA BAY ASSOCIATES, L.L.C., the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date November 17, 2006

(Official Seal)

Nancy L. Engle  
Signature of Notary Public NANCY L. ENGLE

My commission expires: 6/25/2011



Unofficial



STATE OF NORTH CAROLINA  
COUNTY OF CURRITUCK

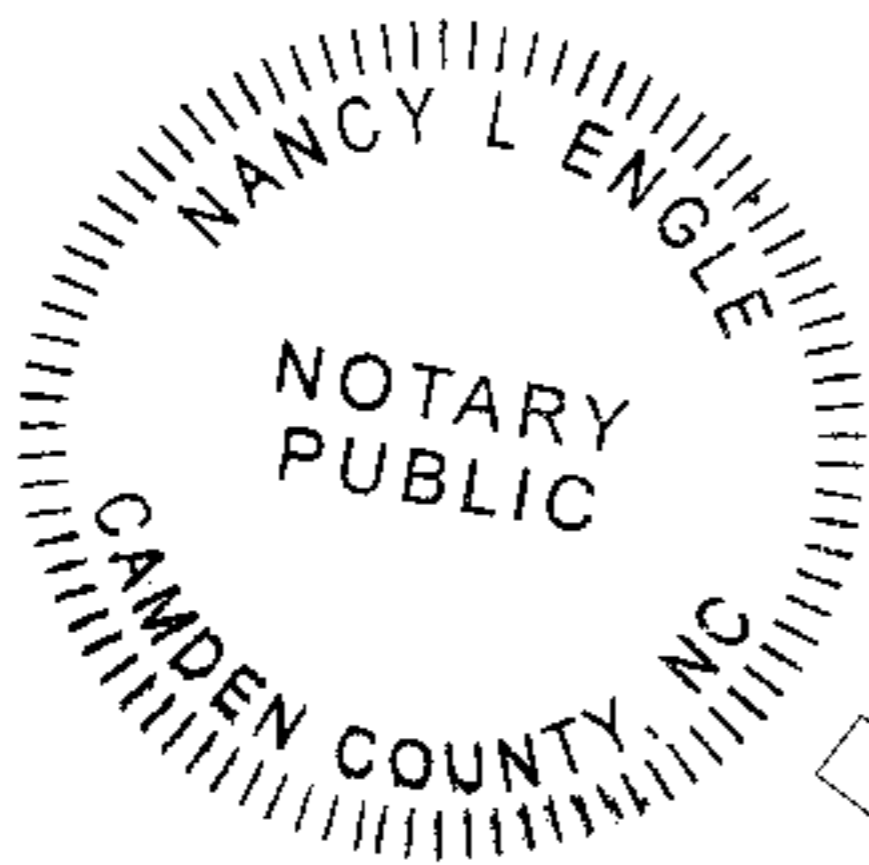
I, NANCY L. ENGLE, a Notary Public in and for said County and State, do hereby certify that David S. Russotto before me this day personally appeared, who being by me first duly sworn, says that he is a manager of VOC, L.L.C., the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date November 17, 2006

(Official Seal)

Nancy L. Engle  
Signature of Notary Public NANCY L. ENGLE

My commission expires: 6/25/2011



Unofficial



STATE OF NORTH CAROLINA  
COUNTY OF Dare

I, Kelly Renee Clem, a Notary Public in and for said County and State, do hereby certify that James M. Rose, Jr. before me this day personally appeared, who being by me first duly sworn, says that he is a manager of VOC, L.L.C., the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date November 17, 2006

(Official Seal)

Kelly Renee Clem  
Signature of Notary Public Kelly Renee Clem

My commission expires: June 6, 2007

Kelly Renee Clem  
Notary Public, State of North Carolina  
Appointed in Dare County

Kelly Renee Clem  
Notary Public, State of North Carolina  
Appointed in Dare County

Unofficial



STATE OF NORTH CAROLINA  
COUNTY OF DARE

The foregoing certificate of Notary Public is certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Dare County, North Carolina, in Condominium Book \_\_\_\_\_, Page \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Register of Deeds

040845-00001-001  
WLMAIN\147690\3

Unofficial



**EXHIBIT A**  
**(Legal Description - Initial Condominium Property)**

All of that tract or parcel of land lying and being situate in Kill Devil Hills, Dare County, North Carolina, shown and depicted on the map entitled "CONDOMINIUM PLAT OF HAMILTON CAY CONDOMINIUM," dated NOVEMBER 17, 2006, recorded in Unit Ownership File 6, Pages 230 through 235, in the Dare County Registry, less and except the Stormwater Pond and extension of Bermuda Bay Boulevard each being noted on said map as to be conveyed to Bermuda Bay Master Association.

Unofficial

COPY



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Page: 47 of 53  
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EXHIBIT B

For survey and plat and plans see Unit Ownership File 6, at Pages 230  
through 235 in the office of the Register of Deeds of Dare County.

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EXHIBIT C

UNITS

<u>Allocated Interests</u>	#1	#2	#3	#4	#6	#7	#104-A1	#104-B1	#104-C1	#104-D1	#104-A2	#104-B2
Undivided Interest in Common Elements Appurtenant to each Unit	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%
Portion of Common Expenses allocated to each Unit	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%
Votes allocated to each Unit	1	1	1	1	1	1	1	1	1	1	1	1

<u>Allocated Interests</u>	#104-C2	#104-D2	#104-A3	#104-B3	#104-C3	#104-D3	<u>TOTALS</u>
Undivided Interest in Common Elements Appurtenant to each Unit	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	100%*
Portion of Common Expenses allocated to each Unit	5.556%	5.556%	5.556%	5.556%	5.556%	5.556%	100%*
Votes allocated to each Unit	1	1	1	1	1	1	18

\* Rounded to the nearest one-hundredth of a percent pursuant to the provisions of N.C. Gen. Stat. § 47C-2-107.

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EXHIBIT D

1. Any and all matters as may be revealed by an accurate survey of the property by registered surveyor.
2. Taxes for the year 2007 and subsequent years.
3. Construction Deed of Trust Securing Future Advances for the benefit of TowneBank, recorded in Book 1672, Page 155 (Units 2, 3 and 4 only).
4. Construction Deed of Trust Securing Future Advances for the benefit of TowneBank, recorded in Book 1672, Page 160 (All Units except for Units 1, 2, 3, 4 and 7).
5. Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing for the benefit of Wachovia Bank, recorded at Book 1578, Page 352 (Units 1 and 7 only).
6. Utility easements of record to Virginia Electric and Power Company (now North Carolina Power).
7. Easements of record to Norfolk and Carolina Telephone (now Carolina Telephone and Telegraph Company).
8. Easements and other matters shown on the map or plat recorded in Plat Cabinet F, at Slide 247.
9. Easement for underground waters and subsurface waters in the area recorded in Book 1567, at Page 409.
10. Agreement for sewer utility service recorded in Book 1578, at Page 354.
11. Amended and restated agreement for sewer utility service recorded in Book 1692 at Page 21.
12. Easement recorded in Book 1578, at Page 353.
13. Rights of the general public, the State of North Carolina and the United States in public trust waters.
14. Water Meter Agreement filed in Book 1614, Page 403, Dare County Registry.
15. Tri-party agreement filed in Book 1566, Page 257, Dare County Registry.
16. Building restriction lines, easements and other matters as shown on map or plat recorded in Book 104, Page 224, Dare County Registry.
17. Wastewater disposal utility easement filed in Book 1578, Page 349, Dare County Registry.



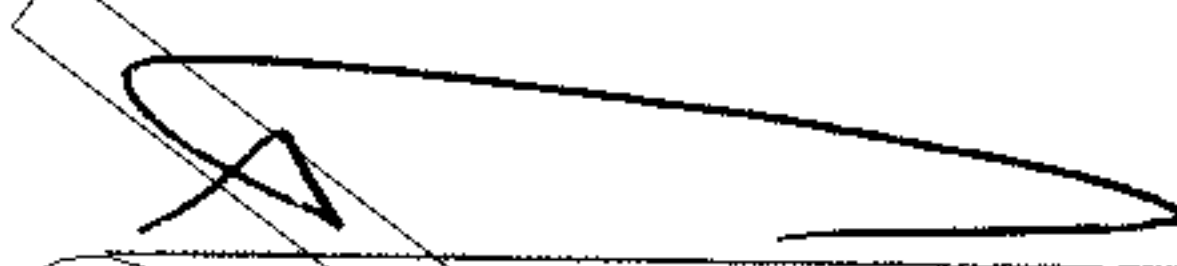
CONSENT OF LIENHOLDER

Wachovia Bank, National Association, Beneficiary pursuant to the Deed of Trust recorded in Book 1578, at Page 353 in the office of the Register of Deeds of Dare County, North Carolina, hereby executes this Consent of Lienholder to consent to the imposition of the condominium regime on the property described at the Exhibit "A," and any subsequent amendments thereto pursuant to the exercise of Development Rights, to the Declaration of Hamilton Cay Condominium.

IN TESTIMONY WHEREOF, Beneficiary has properly executed this Consent of Lienholder, this 16<sup>th</sup> day of NOVEMBER, 2006.

WACHOVIA BANK, NATIONAL ASSOCIATION

By:

  
Vice President

Unofficial Copy



VIRGINIA  
STATE OF ~~NORTH CAROLINA~~  
COUNTY OF VIRGINIA BEACH  
CITY

I, Stephanie Parsons, a Notary Public in and  
for said County and State, do hereby certify that Trent Dudley personally came  
before me this day and acknowledged that he is Vice President of Wachovia Bank, National  
Association, and that he, as Vice President being authorized to do so, executed the  
foregoing on behalf of the corporation.

Date 11/16/06

Stephanie B. Parsons  
Signature of Notary Public

Stephanie Parsons, Notary Public  
Printed or typed name

My commission expires: 03/31/2010

(Official Seal)



Unofficial



CONSENT OF LIENHOLDER

Townebank, Beneficiary pursuant to the Deed of Trust Securing Future Advances recorded in Book 1672, at Page 155 in the office of the Register of Deeds of Dare County, North Carolina, and the Deed of Trust Securing Future Advances recorded in Book 1672, Page 160 in the office of the Register of Deeds of Dare County, North Carolina, hereby executes this Consent of Lienholder to consent to the imposition of the condominium regime on the property described at the Exhibit "A," and any subsequent amendments thereto pursuant to the exercise of Development Rights, to the Declaration of Hamilton Cay Condominium.

IN TESTIMONY WHEREOF, Beneficiary has properly executed this Consent of Lienholder, this 16 day of November, 2006.

TOWNEBANK

By: S. Wayne Humphreys  
Exec Vice President

Unofficial



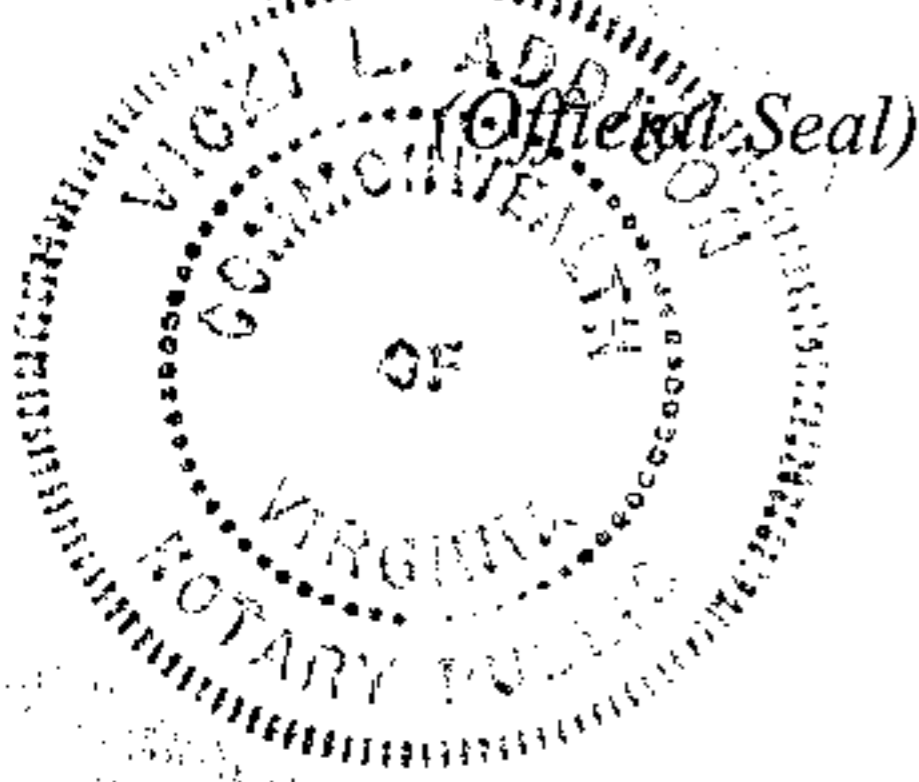
VIRGINIA  
STATE OF NORTH CAROLINA  
COUNTY OF Chesapeake  
City

I, Viaki L. Addison, a Notary Public in and  
for said County and State, do hereby certify that S. Wayne Humphreys personally came  
before me this day and acknowledged that he is Exec. Vice President of Townebank, and that he, as  
Exec. Vice President being authorized to do so, executed the foregoing on behalf of  
Townebank.

Date 11-16-06

Viaki L. Addison  
Signature of Notary Public

Viaki L. Addison, Notary Public  
Printed or typed name  
My commission expires: 4-30-2007



040845-00001-001  
WLMAIN1476903

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