

DECLARATIONDOCKERY  
REGISTERED DEEDS

THIS DECLARATION, made this the 5<sup>th</sup> day of July, 1989, by Dare Development Corporation, a North Carolina Corporation ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, General Statutes of North Carolina.

## WITNESSETH:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the Town of Kill Devil Hills, State of North Carolina, legally described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Developer desires to submit all of said property to the Act.

NOW, THEREFORE, Developer, as the owner of said property, hereby declares as follows:

## ARTICLE I.

Definitions

Definitions. As used herein, the following words and terms shall have the following meanings:

- 1.1 Act. The North Carolina Condominium Act, Chapter 47C, General Statutes of the State of North Carolina.
- 1.2 Association. Lakeside Villas Condominium Association, Inc., a Non-Profit Corporation organized under Chapter 55A, General Statutes of the State of North Carolina.
- 1.3 Board. The Board of Directors of the Association.
- 1.4 By-Laws. The By-Laws of the Association which are hereby incorporated herein and made a part hereof by this reference.
- 1.5 Common Elements. All portions of the Condominium except the Units. Limited Common Elements are Common Elements.
- 1.6 Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
- 1.7 Condominium. The Condominium created by this Declaration.
- 1.8 Declarant. Developer and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration to add Additional Real Estate, except Security Holders and except persons whose interest in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declaration Rights pursuant to Section 47C-3-104 of the Act. As used herein, Developer and Declarant are used interchangeably.
- 1.9 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date three (3) years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant, or (ii) the date upon which Declarant surrenders control of the Condominium, or (III) the date sixty (60) days after the Declarant has conveyed seventy-five (75%) percent of the Units to Unit Owners other than a Declarant.
- 1.10 First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the office in which the First Mortgage is recorded, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one

holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the By-Laws.

1.11 Floor Plans. The floor plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended.

1.12 Limited Common Elements. Those portions of the Common Elements allocated by operation of Section 47C-2-102(2) and (4) of the Act for the exclusive use of one but fewer than all of the Units and also Limited Common Elements specifically allocated to Units on Exhibit B.

1.13 Occupant. Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

1.14 Person. A natural person, corporation, partnership, trust or other entity, or any combination thereof.

1.15 Property. The real estate described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.16 Security for an Obligation. The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

1.17 Security Holder. Any person owning a Security for an Obligation in a Unit.

1.20 Special Declarant Rights. The rights reserved herein and in the By-Laws for the benefit of a Declarant, as follows: to complete the improvements indicated on the Floor Plans; to maintain sales offices, management offices, models and signs advertising the Condominium; to use easements through the Common Elements; to elect, appoint or remove members of the Board during the Declarant Control Period. Declarant shall have no right to subdivide or convert Units owned by Declarant.

1.21 Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit C. Each Unit is designated and delineated on the Floor Plans.

1.22 Unit Boundaries. The boundaries of each Unit, both vertical and horizontal planes, as shown on the Floor Plans, including the undecorated surfaces of the exterior walls, exterior doors and exterior windows; the undecorated surfaces of the exterior shingles of the roof; all portions of any wood or concrete pilings at the point that they leave the ground; and included within the Unit Boundaries are all decorations such as interior paneling, tiles, wall paper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof; and all spaces, interior partitions and other fixtures and improvements within such boundaries; in substance, each individual separate building shall constitute in its entirety a singular Unit.

1.23 Unit Owner. The person or persons, including the Declarant, owning a Unit in fee simple, including contract-for-deed purchasers of a Unit, but excluding contract-for-deed purchasers of a Unit who are Security Holders, and also excluding all other Security Holders.

## ARTICLE II.

### Submission of Property to the Act

2.1 Submission. Developer hereby submits the Property to the Act.

2.2 Name. The Property shall hereafter be known as the Lakeside Villas Condominium.

2.3 Division of Property into Separately Owned Units. Developer, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into six (6) units and does hereby designate all such Units for separate ownership, subject, however, to the provision of Section 2.4 hereof. The Units are hereby designated as Unit 1820A, 1820B, 1820C, 1822A, 1822B and 1822C.

2.4 Alterations of Units. Subject to the provision of the By-Laws, a Unit may be altered pursuant to the provision of Sections 47C-2-113(a) and (b) of the Act.

2.5 Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section 1.12, Limited Common Elements include those set forth on Exhibit B and are hereby allocated to Units as shown on Exhibit B.

2.6 Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and of a percentage of the Common Expenses, are as stated on Exhibit C. The allocation of undivided interest in the Common Elements and of the Common Expenses and in voting rights is made pursuant to the relative values of the Units. The votes in the association are allocated to pursuant to the percent interest in the Common Expenses.

2.7 Encumbrances. The liens, defects and encumbrances on the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit D.

2.8 Condominium Ordinances. The Condominium is not subject to any code, real estate use law, ordinance, charter provision or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon a condominium which are not imposed upon physically similar developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

2.9 Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights as defined in 1.20 and is further set out in the By-Laws. The land subject to these Special Declarant Rights is all that real property set forth in Exhibit "A". These Special Declarant Rights shall terminate on the date seven (7) years from the date of recordation of this Declaration unless sooner terminated as provided herein or by written notice of termination filed by Declarant in the Dare County Registry of Deeds.

Declarant provides no assurances as to the order in which portions of the property may be subject to the Special Declarant Rights. Exercise of a Special Declarant Right as to a portion of the property does not require the exercise of a Special Declarant Right as to any other portion of the property.

2.10 Partition. Common elements are not subject to partition. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

2.11 Unit Boundaries. Each Unit shall include all the space within the boundaries thereof and all those items set forth in Section 47C-2-102 of the Act. A more particular description of the Unit Boundaries is as follows:

(a) Upper and Lower (Horizontal) Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (parametric) boundaries:

(1) Upper Boundaries: The horizontal plane comprised of the top of the roofing tiles and shall include all piping and venting which extends above said boundary.

(2) Lower Boundary: The top of the ground but not including the ground.

(b) Vertical (Parametric) Boundaries: The vertical boundaries of the Unit shall include the exterior portions of all walls, including all exterior doors and windows bounding the Unit extended to the intersections with each other and with the upper and lower boundaries.

(c) The Unit shall include the heating and air conditioning apparatus including all portions thereof including, but not limiting thereto, its air handler, coils, ducts, condenser, gas lines and thermostat.

(d) Each Unit shall further consist of all steps, stairs, balconies, decks and other physical structures attached to and which are a part of each individual building as detailed on the plans which are recorded contemporaneously herewith.

### ARTICLE III.

#### Easements

3.1 Perpetual Non-Exclusive Easement in Common Areas. The common elements or areas shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement which easement is hereby created in favor of all of the apartment or unit owners in the condominium for their use and for the use of their immediate families, guests, invitees, and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Developer, the condominium associations, and all unit owners, and may be used for ingress and egress for the providing of electric power, telephone, sewer, water, and other utility services and lighting facilities, including but not limited to television transmission facilities, security services, and facilities connected therewith. The Declarant, for themselves, their heirs, and assigns, and the Association herein described reserve the right to impose upon the common elements henceforth and from time to time such easements and cross-easements for any of the foregoing purposes as they deemed to be in the best interest of and necessary and proper for, the owners of apartments and units.

3.2 Easement for Construction. There is retained, by the Declarant, and their successors, heirs, and assigns, a construction easement over, upon, and across the common elements or areas and also over, upon, and across those lands set out and described in Exhibit "A" and "A-1" of this Declaration, for the purposes of construction improvements on the properties now owned or hereafter acquired by the Declarant, said easement to run in favor of the Declarant, their heirs, successors, and assigns, their contractor and subcontractors, laborers, and materialmen. This easement shall expire and become null and void upon the completion of all of the permanent improvements which are to be constructed upon said properties.

3.3 Easement for Utilities, Sewerage, Waste Treatment Facilities. There is conveyed hereby an easement of right of way in and to the lands described in Exhibit "A" and any additional lands made subject to this Declaration for the benefit of the condominium unit owners and the Association, for the construction, operation, and maintenance of all utility lines, and pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines and facilities related thereto, which said easement shall also inure to the benefit of the Declarant, and all future property owners located or to be located in the Additional Real Estate added to this Declaration.

3.4 Easement for Pipes, Wires, Flues, Ducts, Cables, Conduits, Public Utility Lines, and Other Common Elements Located Inside of Units. Each unit owner shall be subject to an easement in common with the owners of all other units to use all pipes, wires, ducts, flues, cables, conduits, public utility lines, and other Common Elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, wires, ducts, flues, cables, conduits, public utility lines, and other common elements serving such other units and located in such units. The Board of Directors and their authorized agent of the Associates shall have a right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common elements contained therein, if any, or elsewhere in the building.

3.5 Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of any Unit now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

3.6 Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

3.7 Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the By-Laws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

3.8 Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purposes.

3.9 Easements To Run With Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article III shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the Condominium or any part of any thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article III, whether or not specifically mentioned in any such conveyance or encumbrance.

#### ARTICLE IV.

##### Restrictions, Conditions and Covenants

4.1 Compliance with Declaration, By-Laws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the By-Laws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, and aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

4.2 Administration of Condominium. The Condominium shall be administered in accordance with the provision of the Act, this Declaration and the By-Laws.

4.3 Use Restricted; Use by Declarant.

(a) The Units shall be occupied and used by Unit Owners and Occupants for residential purposes only.

(b) Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models. The total number of such offices or models maintained at any time by a Declarant

shall not exceed the number set out above, and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.

(c) Declarant also may maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

(d) The foregoing provisions of this Section or any other provision of this Declaration or the By-Laws notwithstanding, the Association may maintain an office in the Condominium for management of the Condominium.

4.4 Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction) to or in his Unit or the Common Elements.

4.5 Alterations of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

4.6 Pets. No pet shall be allowed in the Condominium, except as may be provided by the rules and regulations promulgated from time to time by the Board or the Association or in the By-Laws.

4.7 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the By-Laws.

4.8 Restrictions, Conditions and Covenants To Run With Land. Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

## ARTICLE V.

### Assessments

5.1 Assessment Liens. The Board has the power to levy assessments against the Unit for Common Expenses. Any assessments levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit when filed of record in the Office of the Clerk of Court in Dare County, North Carolina. The Association's lien may be foreclosed in a like manner as a mortgage upon real estate under Power of Sale under Article 2A of Chapter 45 of the General Statutes of the State of North Carolina. All fees, charges, late charges, fines, and interest charged pursuant to this Declaration and pursuant to Chapter 47C are enforceable as Assessments under this Section. The Lien under this Section is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances (specifically including, but not limiting 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 of Dare County, and (b) liens for real estate taxes and other governmental assessments or charges against the Unit.

5.2 Personal Liability of Transferees; Statement; Liability of First Mortgagee.

(a) The personal obligation of assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit as a personal obligation unless said delinquent assessments are expressly assumed as a personal obligation by said transferee. However, any lien rights against the Unit shall remain in full force and effect.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to Section 8.10 of the By-Laws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.

(c) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust or by assignment, in lieu of foreclosure, obtains title to such Unit, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to the acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Unit Owners, including such purchaser, and its heirs, successors and assigns.

## ARTICLE VI.

### Management, Maintenance, Repairs Replacements, Alterations and Improvements

#### 6.1 Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provision of Section 6.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 6.1(b) hereof. All damage caused to a Unit by any work on or to the Common Element done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

#### 6.2 Common Expenses Association with Limited Common Elements or Benefitting Less Than All Units.

(a) Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any Common Expense benefitting less than all of the Units against the Units benefitted in proportion to their Common Expense liability.

6.3 Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reasons of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

6.4 Waiver of Claims. Except only as provided in Section 6.5 (a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim

against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, that this waiver shall not apply to any such loss or damage due to intentional acts.

#### 6.5 Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's duties or obligations or exercising any of the Association's powers under the Act, this Declaration or the By-Laws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 6.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(b) By Unit Owners. Each Unit Owner and Occupant shall allow other Units Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit of, or performing the duties and obligations under the Act, this Declaration or the By-Laws of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous conditions or situation, such right of entry shall be immediate. Notwithstanding Section 6.4, the person making such entry shall be responsible for repair of any damage caused by such person to be the entered Unit or Limited Common Element.

### ARTICLE VII.

#### Insurance

##### 7.1 Authority to Purchase; Notice.

(a) Except as otherwise provided, all insurance policies relating to the property shall be purchased by the Board of Directors prior to the conveyance of the Condominium Unit to any party other than Declarant. The Board of Directors shall not be liable for failure to obtain coverages required by this Article VII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at a demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each Unit Owner written notice of the procurement of, subsequent changes, or termination of, insurance coverages obtained on behalf of the Association.

(b) Each such policy shall provide that:

(i) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;

(ii) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents or employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that



the Board of Directors or the Managing Agent cure the defect and neither shall have so cured such defect within sixty (60) days after such demand:

(iii) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors and the Managing Agent, and in the case of physical damage insurance, to all Mortgagees.

(c) All policies of insurance shall be written by reputable companies licensed to do business in the State of North Carolina. Physical damage policies shall be in form and substance and with carriers acceptable to Mortgagees holding a majority of the Mortgages (based upon one vote for each Mortgage owned).

(d) The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a Common Expense, except where the claim is for components of a Unit.

## 7.2 Physical Damage Insurance.

(a) The Board of Directors may obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, insuring the Common Areas including fixtures and appliances initially installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by Unit Owners, and covering the interest of the Association, the Board of Directors and all Unit Owners and their Mortgagees, as their interest may appear, (subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors as Insurance Trustee contained in Section 7.6), in an amount not less than eighty (80%) percent of the replacement cost of the insured property (exclusive of the land, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage). The liability insurance is to cover liability which might arise out of the use, ownership, or maintenance of the Common Elements.

(b) Such policy shall also provide:

(i) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these By-Laws not to do so;

(ii) The following endorsements (or equivalent): (a) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); (b) "contingent liability from operation of building laws or codes"; (c) "increased cost of construction" or "condominium replacement cost"; and (d) "agreed amount" or elimination of co-insurance clause ; and

(iii) That any "no other insurance" clause expressly exclude individual Unit Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees, unless otherwise required by law.

(c) A duplicate original of the policy of physical damage insurance and all renewals thereof, and any sub-policies or certificates and endorsements issued hereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy

of physical damage insurance or any renewal thereof the Board of Directors shall obtain an appraisal from any insurance company, or such other source as the Board of Directors may determine, of the then current replacement cost of the property (exclusive of the land, excavations, foundation and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 7.2. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to the Common Elements in excess of one (1%) percent of the then current replacement cost of the property. The Mortgagee of a Unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such Unit.

7.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring any member of the Board of Directors, the Managing Agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owner (and their invitees, agents and employees) arising out of, or incident to the Ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and contain:

(a) a cross liability endorsement under which the rights of a name insured under the policy shall not be prejudiced with respect to his action against another named insured;

(b) hired and non-owner vehicle coverage;

(c) deletion of the normal products exclusion with respect to events sponsored by the Association; and

(d) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Board of Directors shall review such limits once a year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than Three Million Dollars (\$3,000,000.00).

7.4 Other Insurance. The Board of Directors may obtain and maintain:

(a) adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the Managing Agent. Such fidelity bonds shall:

(i) name the Association as an obligee;

(ii) be written in an amount not less than one-half (1/2) of the total annual Condominium Assessments for the year or the amount required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; and

(iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(b) if required by any governmental or quasi-governmental agency, including without limitation the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulation of such agency;

(c) workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

(d) such other insurance as the Board of Directors may determine or as may be requested from time to time by a Majority of the Unit Owners.

7.5 Separate Insurance By Unit Owner. (a) Each Unit Owner shall be obligated to obtain insurance, at his own expense, for casualty insurance upon his individual Unit. Such insurance shall be in an amount not less than eighty (80%) percent of the replacement cost of the insured property (exclusive of the land, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board of Directors of the Association with the assistance of the Unit Owner and the insurance company affording such coverage). The Association shall be named as an additional insured on each individual Unit Owners insurance policies obtained pursuant to this Section.

Each Unit Owner shall maintain public liability insurance for the benefit of the Unit Owner and the Association for such amounts and with such coverage as shall be determined by the Board.

All insurance policies obtained pursuant to this Sub-Section 7.5 (a) shall contain provisions as set forth in Section 7.2 (b).

(b) Copies of all insurance policies which are required of the Unit Owner pursuant to this Section shall be provided to the Association and all such policies shall name the Association as an additional insured. Should any Unit Owner fail to obtain such policies as called for by this Section, then, the Association shall have the right to obtain such insurance on behalf of the Unit Owner and may assess such Unit Owner a special assessment for the cost of such insurance.

(c) Each Unit Owner shall have the right, at his own expense, to obtain insurance upon his fixtures and personal property.

#### 7.6 Insurance Trustee.

(a) All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Unit Owners, their Mortgagees and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board of Directors as "Insurance Trustee" to be applied pursuant to the terms of Articles VII.

(b) The Board of Directors as "Insurance Trustee" shall receive such proceeds as are paid to it and shall hold the same in trust for the purposes elsewhere stated. The Board of Directors of the Association, acting on behalf of the Apartment Unit Owners is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association, and to authorize the officers of the Association to execute and deliver releases upon payment of claims.

7.7 Unavailability of Insurance. In the event any required insurance is not available, the Board of Directors must deliver notice of the fact to all of the Owners.

### ARTICLE VIII.

#### Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with the provision of Section 47C-3-113(e) and (h) of the Act. All such insurance obtained by a Unit Owner pursuant to Sub-Section 7.5 (a) shall be applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act.

### ARTICLE IX.

#### 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 the awards paid on account thereof shall be used and applied in accordance with Section 47C-1-107 of the Act.

ARTICLE X.

Termination

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XII.

Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation Sections 47C-2-107 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

ARTICLE XIII.

Rights of First Mortgagees:  
VA, FNMA and FHLMC Provisions

The following provisions shall take precedence over all other provisions of this Declaration and the By-Laws:

13.1 Amendments during Declarant Control Period. If at least one Unit is subject to financing or loan guarantees by the Veteran's Administration or Federal Housing Administration then any amendments to this Declaration or to the By-Laws during the Declarant Control Period shall be subject to the prior approval of the Federal Housing Administration or Veterans Administration provided, however, that, if said Administrator fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

13.2 Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the First Mortgagees and the insurers and guarantors of a First Mortgage on any Unit, current copies of the Declaration, the By-Laws, other rules and regulations governing the Condominium and the books, records and financial statement of the Association. The Association shall provide an most recent financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, By-Laws, other rules and regulations governing the Condominium, and the most recent annual financial statement (if one is prepared).

13.3 Successors' Personal Obligation for Delinquent Assessments. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.

13.4 Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners and any aggrieved Unit Owner shall have a right of action against the Association for failure to comply with the provision of this Declaration, the By-Laws and the rules, regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the By-Laws.

13.5 Management and Other Agreements. Any management agreement between the Declarant or the Association and a professional manager or any other agreement providing for services of the developer, sponsor, builder or Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than ninety (90) days' prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

13.6 Right of First Refusal. The right of a Unit Owner to sell, transfer, mortgage or otherwise convey his interest in his Unit shall not be subject to any right of first refusal.

13.7 Consent of First Mortgagees. This Section 13.7 shall be effective only if, at the time this Section would apply, at least one Unit is subject to FNMA financing. Any decision to terminate the Condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of Eligible Mortgage Holders, as defined in Section 13.9 hereof, representing at least 67% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act. Except for any amendment to the Declaration made for the purpose of adding any of the Additional Real Estate to the Condominium in accordance with the provisions hereof, any amendment to the Declaration or By-Laws which changes any of the following shall require the prior written consent of Unit Owners holding at least 67% of the total votes in the Association and of Eligible Mortgage Holders representing at least 51% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interest in the Common Elements or Limited Common Elements or rights to their use;
- (f) boundaries of any Unit;
- (g) convertibility of Units into Common Elements or Common Elements into Units;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell, transfer or otherwise convey his Unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the By-Laws;
- (n) any action to terminate the legal status of the Condominium after substantial damage or destruction or condemnation; or
- (o) any provisions that expressly benefit First Mortgagees or insurers or guarantors of First Mortgages.

13.8 Consent of First Mortgagees or Unit Owners. This Section 13.8 shall be effective only if, at the time this Section would apply, at least one Unit is subject to FHLMC financing. Unless First Mortgagees holding at least 66 2/3% of the votes allocated to First Mortgagees (except First Mortgagees having one vote per Unit financed), or such higher percentage as is required by law, of the First Mortgagees (based upon one vote for each First Mortgage owned) and Unit Owners (other than a Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the Condominium;
- (b) except in the case of an addition of the Additional Real Estate pursuant to the provision hereof, change the pro rata interest or obligations of any Unit for the purpose of:
  - (i) levying assessment or charges or allocating distributions of hazard insurance proceeds or condemnation awards or
  - (ii) determining the pro rata share of ownership of each Unit in the Common Elements;
- (c) partition or subdivide any Unit;
- (d) except in the case of any addition of the Additional Real Estate pursuant to the provision hereof, by act or omission, seek to abandon, partition, subdivide, encumber sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any part of the Condominium (whether to Units or to Common Elements) for other than repair, replacement or reconstruction thereof.

13.9 Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, hold, insured or guarantee, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of First Mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing his First Mortgage; (iii) any 60 day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the By-Laws by said Unit Owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action that required the consent of a specified percentage of Eligible Mortgage Holders shall be considered an "Eligible Mortgage Holder." With respect only to non-material amendments (which excludes items (a) to (o) of Section 13.7), such as for the correction of technical errors or for clarification, any First Mortgagee who receives a written request by the Association, or any Unit Owner, to approve an addition or amendment to the Declaration or By-Laws who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have approved such request.

13.10 Rights of First Mortgagee; Insurance Proceeds of Condemnation Awards. With respect to First Mortgages held by or for the benefit of Federal Housing Administration or Veterans Administration, no provision of this Declaration or the By-Laws shall be deemed to give a Unit Owner, or any other party, priority over any right of a First Mortgagee pursuant to its First Mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

#### ARTICLE XIV.

##### General Provisions

14.1 Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provision of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event, the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provisions, paragraph or clause of this Declaration, or for any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of

any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.

14.2 Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

14.3 Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

14.4 Exhibits. Exhibits A, B, C and D attached hereto are hereby made a part hereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

DARE DEVELOPMENT CORPORATION

By: John M. Robbins, Jr.  
President

ATTEST:

Nettie Midgett  
Asst. Secretary



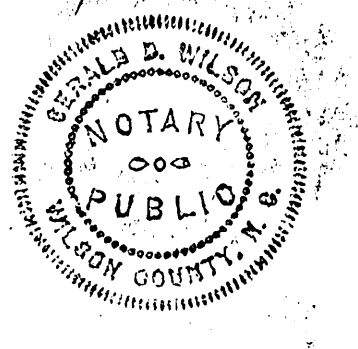
STATE OF North Carolina  
CITY/COUNTY OF Dare

I, a Notary Public of the County and State aforesaid, certify that Nettie Midgett personally came before me this day and acknowledged that she is Asst. Secretary of Dare Development Corporation, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Asst. Secretary.

Witness my hand and official stamp or seal, this 4th day of July, ~~1989~~ 1990.

Gerald D. Wilson  
Notary Public

My Commission Expires: 11-04-92



NORTH CAROLINA DARE COUNTY  
The foregoing certificate of Gerald D. Wilson a Notary Public of Wilson Co, NC is certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.  
Dorris A. Fry, Register of Deeds  
By Doris A. Fry Assistant Register of Deeds

EXHIBIT "A" TO

DECLARATION FOR LAKESIDE VILLAS CONDOMINIUM

Known as, designated and being Lots No. 8, 9, 27 and 28, of Block G, Section 2, of the subdivision known as Croatan Shores, as shown on map or plat thereof made by David Cox, Jr., Surveyor, August 1944, and September 1945, recorded in Map Book 1, Pages 161 and 164, Dare County Registry.



EXHIBIT "B" TO  
DECLARATION OF LAKESIDE VILLAS CONDOMINIUM  
LIMITED COMMON ELEMENTS

1. PARKING AREAS:

(a) The gravel parking area for Units 1820A and 1820B is a Limited Common Element for these two Units and is located between these two Units and is more particularly shown on the plat of Lakeside Villas Condominium. The wooden fence immediately adjacent to this parking area is also a Limited Common Element which is associated with Units 1820A and 1820B.

(b) There is a gravel parking area for Unit 1820C as shown on the aforementioned map or plat. The gravel portion of this area is the Limited Common Element associated with Unit 1820C.

(c) The gravel parking area for Units 1822A and 1822B is a Limited Common Element and is located between these two Units and is more particularly shown on the plat of Lakeside Villas Condominium.

(d) There is a gravel parking area for Unit 1822C as shown on the aforementioned map or plat. The gravel portion of this area is the Limited Common Element associated with Unit 1822C.

2. DECKS:

(a) There is a wooden deck immediately to the East of Unit 1820A as shown on the aforementioned plat. This wooden deck is a Limited Common Element associated with Unit 1820A.

(b) There is a wooden deck immediately to the East of Unit 1820B along with stairs and a wooden walk immediately to the South of Unit 1820B all as shown on the aforementioned plat. These are Limited Common Elements associated with Unit 1820B.

(c) There is a wooden deck immediately to the East of Unit 1822A as shown on the aforementioned map or plat. This is Limited Common Element associated with Unit 1822A.

(d) There is a wooden deck immediately to the West of Unit 1822B as shown on the aforementioned map or plat. This is a Limited Common Area associated with Unit 1822B.

(e) The deck and stairs which is immediately to the West of the gravel drive, the same overlooking the pond, are not Limited Common Elements but are, in fact, Common Elements.

3. FENCES:

(a) The wooden fence which partially encircles the deck described in Item 2.(a) above as shown on the aforementioned map or plat, is a Limited Common Element associated with Unit 1820A.

(b) The wooden fence which partially encircles the deck as described in Item 2.(c) above, as shown on the aforementioned map or plat is a Limited Common Element associated with Unit 1822A.

(c) The wooden fence which partially encircles the deck described in Item 2.(d) above is a Limited Common Element associated with Unit 1822B.

4. CONCRETE WALKS:

(a) The concrete walk as it extends from the concrete drive, said concrete walk being located immediately to the East of Unit 1820A as shown on the aforementioned map or plat is a Limited Common Element associated with Unit 1820A.

(b) The concrete walk as it extends from the concrete drive, said concrete walk being located immediately to the East of Unit 1822A as shown on the aforereferenced map or plat is a Limited Common Element associated with Unit 1822A.

(c) The concrete walk as it extends from the concrete drive, said concrete walk being located immediately to the East of Unit 1822B as shown on the aforereferenced map or plat is a Limited Common Element associated with Unit 1822B.

5. SEPTIC SYSTEMS:

(a) The existing septic tank and septic drain fields which are located on the South side of the gravel drive are Limited Common Elements associated with Units 1820A, 1820B and 1820C.

(a) The existing septic tank and septic drain fields which are located on the North side of the gravel drive are Limited Common Elements associated with Units 1822A, 1822B and 1822C.

EXHIBIT "C" TO  
DECLARATION OF LAKESIDE VILLAS CONDOMINIUMS

<u>UNIT NUMBER</u>	<u>PERCENT OF COMMON INTEREST</u>	<u>TOTAL VOTES</u>
1820A	12%	12
1820B	13%	13
1820C	25%	25
1822A	13%	13
1822B	12%	12
1822C	<u>25%</u>	<u>25</u>
	100%	100

EXHIBIT "D" TO

DECLARATION FOR LAKESIDE VILLAS CONDOMINIUM

Exceptions to title are as follows:

1. Taxes subsequent to the year 1989, not yet due and payable.
2. Restrictive Covenants recorded in Book 29, Page 135, Dare County Registry. (As to Lots 8 and 9)
3. Restrictive Covenants recorded in Book 29, Page 135, Dare County Registry. (As to Lots 27 and 28)
4. That certain Declaration of Easements and Covenants recorded in Book 628, Page 478.
5. That certain Declaration of Condominium for Lakeside Villas Condominium recorded in Book \_\_\_\_\_, Page \_\_\_\_\_.

## BY-LAWS

OF

LAKESIDE VILLAS CONDOMINIUM ASSOCIATION, INC.  
a North Carolina Non-Profit Corporation  
under the Laws of the State of North Carolina

## ARTICLE I.

Identity

These are the By-Laws of Lakeside Villas Condominium Association, Inc., a North Carolina Non-Profit Corporation, (the "Association"), the Articles of Incorporation (the "Articles") of which have been filed in the Office of the North Carolina Secretary of State.

## ARTICLE II.

Qualifications and Responsibilities of Members

2.1 Members. Each Unit Owner shall be a member of the Association, and shall remain a member until he ceases to be a Unit Owner.

2.2 More Than One Owner. When there is more than one Unit Owner of a Unit, all such persons shall be members of the Association.

2.3 Registration. It shall be the duty of each Unit Owner to register his name and the number of his Unit with the Secretary of the Association. If a Unit Owner does not so register, the Association shall be under no obligation to recognize his membership.

2.4 Prohibition of Assignment. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Unit.

## ARTICLE III.

Members' Meetings and Voting

3.1 Place. Meetings of the members shall be held at the registered office of the Association, or such other place within Dare County, North Carolina as may be designated from time to time by the Board.

3.2 Annual Meeting. The members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members shall elect members of the Board ("Directors") and may transact any other business properly coming before them.

3.3 Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within thirty (30) days after written request therefor signed by members of the Association entitled to cast at least twenty (20%) percent of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4 Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes and any proposal to remove a Director or officer, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent by United States mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary, at least twenty-one (21) days in advance of any annual or regularly scheduled meeting and at least seven (7) days in advance of any other meeting nor more than fifty (50) days in advance of any meeting.

3.5 Quorum; Adjournment if no Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least fifty (50) percent of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

3.6 Votes; Association Shall Not Vote. The total votes in the Association are allocated to Units by the Declaration. The votes allocated to a Unit may be cast by the Unit Owner of that Unit. When there is more than one Unit Owner of a Unit, the votes for that Unit shall be cast as they shall determine. The votes allocated to a Unit shall not be split but shall be voted as a single whole. When there is more than one Unit Owner of a Unit and said Unit Owners cannot agree on how the vote for that Unit shall be cast, then those holding a majority interest in the Unit shall be entitled to cast the vote. If those holding a majority interest in the Unit cannot agree on how the vote for the Unit shall be cast, then the Unit shall not be entitled to vote. The Association shall not be entitled to cast the votes allocated to any Unit owned by it.

3.7 Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all Unit Owners of the Unit the votes of which are subject to the proxy, be given only to another member or to a Security Holder in that Unit, and be filed with the Secretary before the meeting. A proxy shall be valid until revoked in writing by all Unit Owners of such Unit.

3.8 Required Votes. All questions shall be decided by a majority of the Votes cast on the question, unless the provisions of applicable law, the Declaration or these By-Laws require a greater vote.

3.9 Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.10 Prohibition of Cumulative Voting. There shall be no cumulative voting.

ARTICLE IV.

Directors

4.1 First Board. The first Board shall consist of the three (3) persons elected by the Developer and successors to any thereof elected by the Developer. The Developer shall have the right to appoint Directors. However, Declarant's control shall terminate no later than the earlier of (i) one hundred and twenty (120) days after conveyance of seventy-five (75%) percent of the Units to Unit Owners other than a Declarant; (ii) two (2) years after all Declarant have ceased to offer Units for sale in the ordinary course of business; or (iii) within three (3) years. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Not later than sixty (60) days after conveyance of twenty-five (25%) percent of the Units to Unit Owners other than a Declarant, at least one (1) member and not less than twenty-five (25%) percent of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Units to Unit Owners other than Declarant, not less than thirty-three (33%) percent of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant.

4.2 Number and Qualifications of Directors. The Board shall consist of ~~three~~ (5) natural persons, as determined at any annual meeting by the members. Each Director shall be Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

4.3 Election of Directors. At the first annual meeting of the members, and at each subsequent annual meeting, the members shall elect the Directors by a majority of the votes cast in the election, subject to the Declarant Rights as set forth in Section 4.1 above.

4.4 Term. The terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provision of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.5 Removal. The Unit Owners, by at least sixty-seven (67%) percent vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board of Directors with or without cause, other than members appointed by the Declarant, at any special meeting called for such purpose. The successor may then be elected by the members to serve for the balance of the removed Director's term.

4.6 Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.7 Regular Meeting. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, at least seventy-two (72) hours prior to the meeting.

4.8 Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notice of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice hereof.

4.9 Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director so the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.10 Manner of Acting. Each Director shall be entitled to One (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provision of applicable law, the Declaration or these By-Laws.

4.11 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

4.12 Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these By-Laws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provision of applicable law, the Declaration, the Articles, and these By-Laws, and shall include, but not be limited to, the following:

- (a) To prepare and provide to members annually, a report containing at least the following:
- (i) A statement of any capital expenditures in excess of two (2%) percent of the current budget or Two Thousand Dollars (\$2,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
  - (ii) A statement of the status and amount of any reserve or replacement fund and any portion of the funds designated for any specified project by the Board.
  - (iii) A statement of the financial condition of the Association for the last fiscal year.
  - (iv) A statement of the status of any pending suits or judgments in which the Association is a party.
  - (v) A statement of the insurance coverage provided by the Association.
  - (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of the unpaid assessment.
- (b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.
- (c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Expenses.
- (d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.
- (e) To enforce the provision of the Declaration, the Articles, these By-Laws, the Act, and rules and regulation by all legal means, including injunction and recovery of monetary penalties.
- (f) To hire and terminate managing agents and to delegate to such agents such power and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these By-laws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the property, including each Unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a Unit without the approval of the Unit Owner. Notwithstanding the above, each Unit Owner shall have the right to obtain his own rental management agency.
- (g) To hire and terminate agents and independent contractors.
- (h) To institute, defend, intervene in, or settle any litigation or administrative proceeds in its own name on behalf of itself or two (2) or more Units Owners on matters affecting the Condominium, the Common Elements, or more than one Unit.
- (i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.
- (j) To borrow money for the maintenance, repair, replacement, modification or improvement of Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.
- (k) To buy Units, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Units from time to time owned by the Association.
- (l) To impose and receive payment, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common



Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the Units.

(m) To grant leases, licenses, concessions and easements through and over the Common Elements.

(n) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Section 47C-4-107 of the Act, or certificates of unpaid assessments.

(o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors liability insurance.

(p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these By-Laws, or the rules and regulations.

## ARTICLE V.

### Officers

*Amended 8/26/90*  
 5.1 Designation of Officers. The officers of this Association shall be a President, (one) Vice President, a Secretary, and a Treasurer. Each officer shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

5.2 Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect officers as soon as practicable after filing of the Declaration.

5.3 Term. Each officer shall serve until his successor has been duly elected and has qualified.

5.4 Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5 Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

### 5.6 Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and action of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, security, and evidences of indebtedness; shall keep the books of the Association in accordance with

good accounting practices and principals, and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7 Execution of Agreements, etc. All agreements, deeds, mortgages, and amendments to the Declaration or By-Laws, or other such instruments shall be executed by any two (2) officers, or by such other person or persons as may be designated by the Board.

5.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VI.

Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent as permitted by North Carolina General Statutes Section 55A-17.1, as now enacted or hereafter amended.

ARTICLE VII.

Fiscal Management

7.1 Depository. The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or any other persons authorized by the Board.

7.2 Fidelity Bonds. Fidelity bonds may be maintained by the Association, in an amount determined by the Board, covering each director and officer of the Association, any employee or agent of the Association and any other person, handling or responsible for handling funds of the Association.

7.3 Payment Vouchers. Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.

7.4 Annual Audit. An audit of the accounts of the Association may be made annually by a certified public accountant, and a copy of the report may be furnished to each member not later than April 1 of the year following the year for which the report is made.

7.5 Fiscal Year. The fiscal year of the Association shall be the ~~calendar~~ year provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

8/26/90

July 1 to June 30

ARTICLE VIII.

Assessments

8.1 Obligation of Members to Pay Assessments; Amount of Levy. Until the Association levies a Common Expense assessment, Declarant shall pay all accrued expenses of the condominium. Thereafter, each Unit Owner shall be personally and severally liable for the Common Expenses that are levied against his Unit while a Unit Owner. Each Unit shall be assessed in accordance with that Unit's percentage of Common Expenses as allocated by the Declaration, as amended.

8.2 Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Unit in accordance with its percentage of Common Expenses, and, if allocated, shall be owned by the Unit Owner of that Unit, and, if allocated, may be paid to the Unit Owner or credited against that Unit's share of Common Expenses subsequently assessed.

8.3 Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning January 1, 1990, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all of the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is deemed ratified unless at that meeting a majority of all the Unit Owners rejects the budget. In the event the proposed budget is rejected, the period budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

The assessment shall be deemed levied upon the ratification of the budget.

8.4 Assessment A Lien. Every assessment shall constitute a lien upon each Unit assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.5 Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Initially, Assessments shall be collected annually. However, the Board of Directors may change when Assessments shall be due and payable. Payment shall be made to the Association, or as the Board may from time to time otherwise direct.

8.6 Funds and Reserves. All sums collected by the Association from assessments shall be accounted for as follows:

(a) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacement of structural elements and mechanical equipment, and other Common Elements, of the Condominium.

(b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during periods of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payment of assessments and other contingencies.

(c) Maintenance Fund. To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not be credited to either of the above reserve funds.

(d) Working Capital Fund. All funds, if any, received by the Association for the initial working capital fund of the Association, to defray unforeseen expenses and/or the cost of additional equipment or services deemed necessary or desirable by the Board, shall be maintained in and segregated in this fund for the use and benefit of the Association.

The reserve fund for repairs and replacement shall be established by the Board beginning with the fiscal year beginning January 1 of the year two years after the year in which the first assessment was levied and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

8.7 Special Assessments. In addition to the assessments levied pursuant to Section 8.3, the Board, in its discretion, may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Maintenance, repair, restoration and reconstruction of the Common Elements, and operation of the Condominium.
- (b) Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment involving an expenditure in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) shall be first approved by the members entitled to cast at least fifty-one (51%) percent of the total votes in the Association at a regular or special meeting of the Association.
- (c) Payment of cost and expenses incurred in curing defaults pursuant to Sections 10.1 and 10.3 hereof.
- (d) Reimbursement for obtaining a physical damage insurance on a Unit upon a Unit Owner's failure to obtain such insurance.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.8 Common Expenses Associated with Limited Common Elements or Benefiting Less Than All Units.

- (a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.
- (b) In addition, the Association may assess any item of Common Expenses benefiting less than all of the Units against the Units benefited in proportion to their Common Expense Liability.

8.9 Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members; obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3 each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure following by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessments.

8.10 Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Unit. The certificate shall be furnished within 7 business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board.

8.11 Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Section 47C-3-115 of the Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

If any action is taken by the Association to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rent for the use of the Unit during the period of redemption from

such foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the member so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the date incurred until paid.

8.12 Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate of eighteen (18%) percent per annum. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

8.13 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these By-Laws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Property until the Units are separately assessed; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(h) hereof; deficits remain from any prior assessment period; the cost, including fees and interest, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

## ARTICLE IX

### Alteration of Interior or Exterior of Units

9.1 Procedure. If any Unit Owner desires to (i) alter the exterior of his Unit, (ii) remove partitions or create aperture pursuant to Section 47C-2-113 of the Act, or (iii) make any improvement or alterations to his Unit which impair the structural integrity or mechanical system of, or lessen the support of any portion of, the Condominium, the procedure set out in this Article shall be followed.

9.2 Notice To and Consent of Board. Prior to doing any work of the kind set out in Section 9.1, the Unit Owner shall give notice to the Board of his intent to do such work and request and receive the written consent thereto of the Board or, on appeal, the Association. With such notice shall be given (i) a statement of the work to be done, (ii) a copy of the plans and specifications for the work, and (iii) such additional information relative to the proposed work as the Board may reasonably request. Upon receiving all such information and any fees and charges requested by the Board, the Board shall set a date for a meeting on the proposed work which shall be within fifteen (15) days after such information and fees and charges are received. Notice of such meeting shall be given to all members of the Association in the same manner as a notice of a special Board meeting. At the meeting, the Board shall receive such testimony and evidence as it deems appropriate. The meeting may be continued from time to time by the Board. At the meeting or at such later time but, in any event, not later than sixty (60) days after such meeting, the Board shall decide whether to consent or not to consent to such work. Written notice of such decision shall be given to said Unit Owner and all members.

9.3 Appeal to Association. The Unit Owner proposing to do the work, or members representing thirty (30%) percent or more of the total votes in the Association, may appeal the decision of the Board to the Association by filing a signed written request for an Association meeting on the work proposal. The

written request must be filed with the Secretary within ten (10) days of the date of the notice of the Board's decision.

9.4 Meeting and Decision of Association. Upon filing of an appeal, a special meeting of the members of the Association shall be called. The notice of meeting shall be sent out within ten (10) days after such filing, and the meeting shall be held within thirty (30) days after such filing. The meeting may be continued from time to time by the chairman. The provision of Article III hereof shall apply to such meeting. At such meeting the members shall decide to consent or not to consent to such work. The decision of the Association shall be final.

9.5 Fees. The Board may require the Unit Owner proposing to do the work to pay reasonable fees and charges to cover the costs to be incurred by the Association in giving notice of and holding meetings pursuant to this Article.

9.6 Conditions. The Board or, on appeal, the Association, may impose conditions on any consent to such work to protect the Common Elements, Units and the Condominium, and to insure the provision of the Act, Declaration and these By-Laws are complied with, including, without limitation, the furnishing to the Association of payment and performance bonds, or other security acceptable to the Board, to ensure that the proposed work is timely completed pursuant to the plans and specifications therefor and all cost thereof paid.

9.7 Controlling Procedure. The procedure set out in this Article shall control over any contrary provision in the Act.

## ARTICLE X

### Compliance, Enforcement, Fines and Penalties

10.1 Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these By-Laws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Unit Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Unit Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these By-Laws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Unit owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Unit Owner to vote as a member of the Association until the default is cured.

10.2 Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Unit when required under Section 13.2 of the Declaration, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable the Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to

the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee, which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

10.3 Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 10.2 hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the members' Unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 10.1 hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees and representatives shall not thereby be deemed guilty of any manner of trespass.

10.4 Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 10.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

10.5 Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the rate of eighteen (18%) percent per annum, from the dates such costs are incurred until paid.

10.6 Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these By-Laws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

10.7 Assessment Liens. Assessments liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article X.

## ARTICLE XI.

### Amendment

An amendment to this By-Laws shall be made and approved in the manner, and shall be subject to the same restrictions relative to requiring prior written consent of First Mortgagees, as set forth in Article XI of the Declaration, and once made, shall become effective when recorded in the same manner and place as an amendment to the Declaration.

## ARTICLE XII.

### General Provisions

#### 12.1 Rules and Regulations.

(a) By the Board. The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements so as to promote the common use and enjoyment thereof

by Unit Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Units Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these By-Laws with respect to leases or tenants.

(b) By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rules or regulations then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit Owners, Occupants and Units, but need not be equally and uniformly applicable if it is determined that such unequal and nonuniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendment thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules and regulations shall not affect in any way their validity or enforceability.

(e) Rules Hereby Established.

(i) The Condominiums are residence type condominiums and shall be used for single family residents, vacation or resort living units by the Unit Owner, his family, servants and guests, or tenants and lessees, their servants and guests, and for no other purposes. No Condominium Unit may be used for a commercial, professional, or home business enterprise or as a hotel or motel, provided, however, that this section does not prevent any Unit Owner from renting or leasing his Condominium Unit either himself or through his agent.

(ii) No Condominium Unit Owner shall show, nor authorize anyone else, to show any signs, advertisements, or notice on any of the Common Elements, windows, porches, or balconies, or upon his Condominium Unit and shall erect no exterior antenna or antenna upon any portion of any part of his Apartment or on any of the Common Elements, except "For Sale" or "For Rent" signs which must comply with the town zoning ordinance.

(iii) No Condominium Unit Owner shall make structural modifications or alterations in his Unit or the permanent fixtures therein unless he has previously obtained approval therefore, in writing, from the Board of Directors of the Association.

12.2 Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these By-Laws, the Articles, the Act, or any statutes of the State of North Carolina applicable thereto. The Chairman of the meeting shall have the authority to appoint a parliamentarian.

12.3 Compliance with the Act; Conflict; Severability. These By-Laws are established in compliance with the Act, as amended. Should any of the terms, conditions, provision, paragraphs, or clauses of these By-Laws conflict with any of the provisions of said Act, the provision of said Act shall control unless the Act permits these By-Laws to override the Act, in which event these By-Laws shall control. In the case of any conflict between the provision of these By-Laws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these By-Laws, or the



application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these By-Laws, or the application thereof to any other person or circumstance.

12.4 Compliance with Declaration. The Association shall be responsible and shall comply with all terms of the Declaration of Condominium Ownership filed for the Condominium including but not limiting thereto those provisions dealing with the maintenance of insurance, repairs and maintenance of the Common Elements, assessments and rights of entry.