

BYLAWS
OF
OYSTER POINTE ON KITTY HAWK BAY OWNERS ASSOCIATION, INC.
a North Carolina Nonprofit Corporation
under the Laws of the
State of North Carolina

ARTICLE I.

Identity

These are the Bylaws of OYSTER POINTE ON KITTY HAWK BAY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, (the "Association"), the Articles of Incorporation (the "Articles") of which have been filed in the office of the North Carolina Secretary of State.

For purposes of these Bylaws, terms specifically defined in the Uniform Condominium Act, Chapter 47C, North Carolina General Statutes (the "Uniform Condominium Act"), shall have the same meaning herein.

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 Meetings. The members shall meet at least once

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 five (5) persons elected by the members, whose names are set forth in the Articles, and successors to any thereof elected by the members.

4.2. Number and Qualifications of Directors. The Board shall consist of five (5) or seven (7) natural persons, as determined at any annual meeting by the members. Each Director shall be a 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.

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 provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.5. Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty (60%) percent of the total votes in the Association, at a special meeting called for such purpose, and a 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 Meetings. 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 notices 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 thereof.

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 of 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 provisions of applicable law, the Declaration or these Bylaws.

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 Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, 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 Five Thousand (\$5,000) Dollars, 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 fund 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 Elements.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations 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 powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, 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.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit 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 payments, 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

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 Presidents shall perform such duties of the President as shall be assigned to them 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 actions 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, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, 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, or other 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 the appropriate sections of the North Carolina General Statutes, 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 prepared and signed by two (2) officers of the Association, or any other

such notice. Provided, however, that the first budget after creation of the Condominium shall be prepared and adopted by the Board only for the balance of the then fiscal year of the Association, commencing on the date of substantial completion of all structural components and mechanical systems serving more than one Unit of the initial building to be constructed, shall be prepared and adopted as soon as practicable after said date of substantial completion, and notice of the amount of the assessment against each Unit for such balance of the fiscal year shall be given by the Board to each member as soon as practicable after adoption. Such assessment shall be deemed levied upon notice thereof given by the Board.

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. Except for special assessments, 1/12th of the assessment shall be paid on or before the first day of each month of the fiscal year of the Association. Payments shall be made to the Association, or as the Board may from time to time otherwise direct.

8.6. Lien As Against First Mortgagees. The lien of assessments shall be superior to the lien of a First Mortgage.

8.7. 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 replacements 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 period of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments 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 to 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.

established by the Board beginning with the fiscal year beginning January 1 or 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.

8.8. Special Assessments. In addition to the assessments levied pursuant to Section 8.2., 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 percent (51%) of the total votes in the Association at a regular or special meeting of the Association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 10.1. and 10.3. hereof.

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.

8.9. 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.

8.10. 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 followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.11. 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.

8.12. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for 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 Chapter 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 members 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.

8.13. 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 set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. 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.

8.14. Common Expenses. Common Expenses shall mean and

include all sums declared Common Expenses by the Act, or by any specific provision of these Bylaws 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 pursuant to Section 4.13(h) hereof; deficits remaining from any interests, 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

Relocation and Alteration of Units

9.1. Procedure. If any Unit Owner desires to (i) relocate the boundaries of his Unit pursuant to Chapter 47C-2-114 of the Act, (ii) remove partitions or create apertures pursuant to Chapter 47C-2-113 of the Act, or (iii) make any improvements or alterations to his Unit which impair the structural integrity or mechanical systems 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 10% 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 provisions 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 that the provisions of the Act, Declaration and these Bylaws 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 costs thereof paid.

9.7. Controlling Procedure. The procedure set out in this Article shall control over any contrary provisions 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 Bylaws, 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 Bylaws, 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 if required under 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 member's 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 lower of (i) 4% over the prime rate announced by the Wachovia Bank and Trust Company at the time the costs are incurred and (ii) the highest rate allowed by law at the time the costs are incurred, 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 Bylaws, 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. Assessment liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article X.

ARTICLE XI.

Amendment

An amendment to these Bylaws 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 Unit 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 Bylaws with respect to leases of tenants.

(b) By the Association. Any such rules or regulations 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 rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit Owners of Units in the floor levels above the second floor level, as shown on the Floor Plans. Except as provided in the previous sentence, 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 or 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 amendments 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 or regulations shall not affect in any way their validity or enforceability.

(e) Rules Hereby Established. The house rules and regulations attached to the public offering statement are referenced and adopted as if fully set forth herein.

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 Bylaws, 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 Bylaws are established in compliance with the Act, as amended. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, 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 Bylaws, or the application thereof to any other person or circumstance.

STATE OF NORTH CAROLINA
DARE COUNTY

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT is made this 19th day of February, 1993, by and between Kitty Hawk Bay Development Corporation, a North Carolina corporation (the "Developer"), and Oyster Pointe on Kitty Hawk Bay Owners Association, Inc., a non-profit North Carolina corporation (the "Association"); W I T N E S S E T H :

WHEREAS, the Developer is the owner of those certain parcels of land (the "Property") situated in the Town of Kill Devil Hills, Atlantic Township, Dare County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the Association's members are the condominium unit owners for Oyster Pointe Condominium ("Oyster Pointe"), and as such collectively own and operate the common elements of Oyster Pointe, which include in part and without limitation, pool, tennis courts, sewage disposal system, and improved asphalt parking areas and right-of-ways (collectively, the Oyster Pointe common elements shall hereinafter be referred to as the "Oyster Pointe Common Elements"); and

WHEREAS, the development plan for Oyster Pointe originally provided for a three phase development; and

WHEREAS, the first two phases of Oyster Pointe have been completed; and

WHEREAS, the Property consists of the land intended for the

without limitation, the members of the condominium association for the Planned Condominium, which members shall be the unit owners of the condominiums intended to be constructed on the Property, and their family members, agents, tenants, invitees and licensees, shall be entitled to full access, use and enjoyment of the Oyster Pointe Common Elements, subject only to the rules and regulations of the Association governing the use and operation of the Oyster Pointe Common Elements.

3. The unit owners association for the Planned Condominium shall be responsible for its pro rata share of the operating, maintenance, repair, improvement, and liability insurance costs of the jointly used Oyster Pointe Common Elements, which share shall be a fraction of these costs, said fraction having a numerator equal to the area of all of the condominium units completed in the Planned Condominium and a denominator equal to the total area of all of the condominium units completed in both the Planned Condominium and in Oyster Pointe. The Planned Condominium's share of these costs shall be paid to the Association as set forth below. The costs to be shared would not include the costs of insurance premiums related only to the common elements of the Planned Condominium (if any) which costs would include property, liability, flood, directors and officers' insurance and any umbrella insurance associated with same, which costs shall be the sole responsibility of the Planned Condominium via whatever procedures may be established for it.

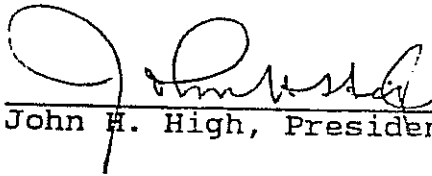
4. The Association shall prepare a separate proposed budget which allocates the costs due from the unit owners association for

Developer, the Association, the unit owners association of the Planned Condominium, and all of their respective successors and assigns, and shall constitute a covenant which shall run with the land.

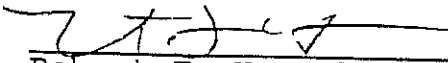
IN WITNESS WHEREOF, the Developer and the Association have caused this Joint Use Agreement to be executed in the manner set forth below the day and year first above written.

KITTY HAWK BAY DEVELOPMENT CORPORATION

(CORPORATE SEAL)

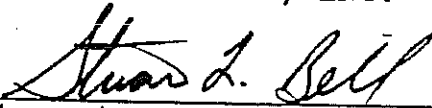
By: 
John H. High, President

ATTEST:


Robert F. Harrell,
Secretary

OYSTER POINTE ON KITTY HAWK BAY OWNERS ASSOCIATION, INC.

(CORPORATE SEAL)

By: 
~~Stewart R. Bell~~, President
STUART L. Bell

ATTEST:


~~(Asst.)~~ Secretary

STATE OF NORTH CAROLINA
COUNTY OF DARE

I, a Notary Public of the County and State aforesaid, certify that Robert F. Harrell personally came before me this day and acknowledged that he is Secretary of Kitty Hawk Bay 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 him as its Secretary.

EXHIBIT A TO JOINT USE AGREEMENT

Being a portion of those certain parcels of land located in the Town of Kill Devil Hills in the vicinity of First Flight Village, Atlantic Township, Dare County, North Carolina and designated as "EXHIBIT A-1 ADDITIONAL REAL ESTATE 4.59 AC." as shown on that certain plat (the "Plat") entitled "PLAT SHOWING OYSTER POINTE CONDOMINIUM PHASE III, BUILDING F", surveyed 9/23/87, revised as built 11/30/88, by C. P. Lewis, Jr., R.L.S., and recorded in the Office of the Register of Deeds in Dare County, North Carolina, in Unit Ownership File 4, at Pages 184-185, which property is more particularly described therein as follows:

The point of beginning for this description is located by certain bearings and distances from a point of reference. The point of reference is identified as the Northeastern corner of Lot No. 118 of the subdivision of First Flight Village, Section 3, Phase B as shown on the plat recorded in Plat Cabinet B at Slide 50 of the Dare County Registry. The point of beginning is located by the following courses and distances from the point of reference: beginning at the point of reference and running North 00 deg. 29 min. 56 sec. East a distance of 119.54 feet to a point in the northern right-of-way boundary of Bay Drive; thence continuing along the northern right-of-way boundary of Bay Drive along a curve to the right when proceeding in a Northerly direction an arc distance of 96.31 feet to a point, said curve having a radius of 462.13 feet; thence turning and running North 44 deg. 06 min. 57 sec. West a distance of 243.91 feet to a point; thence turning and running North 73 deg. 06 min. 57 sec. West a distance of 258.00 feet to a point; thence South 26 deg. 53 min. 03 sec. West a distance of 50 feet to a point; thence South 69 deg. 23 min. 03 sec. West a distance of 97 feet to a point; thence North 39 deg. 36 min. 57 sec. West a distance of 64 feet to a point marking the point or place of beginning. Running thence from the point of beginning as established by the preceding courses and distances from the point of reference the following description of the property: running South 68 deg. 27 min. 15 sec. West a distance of 67.78 feet to a point; thence South 55 deg. 53 min. 03 sec. West a distance of 198.0 feet to a point; thence North 11 deg. 06 min. 57 sec. West a distance of 68.76 feet to a point; thence North 04 deg. 13 min. 31 sec. West a distance of 190.02 feet to a point; thence North 04 deg. 02 min. 57 sec. East a distance of 394.21 feet to a point; thence South 84 deg. 16 min. 05 sec. East a distance of 317.31 feet to a point; thence South 60 deg. 45 min. 55 sec. East a distance of 150.53 feet to a point; thence South 29 deg. 14 min. 05 sec. West a distance of 63 feet to a point; thence South 77 deg. 06 min. 45 sec. West a distance of 48.88 feet to a point; thence South 29 deg. 52 min. 29 sec. West a distance of 50.0 feet to a point; thence South 60 deg. 07 min. 31 sec. East a distance of 133.0 feet to a point; thence South 16 deg. 20 min. 00 sec. West a distance of 63.12 feet to a point; thence South 22 deg. 56 min. 03 sec. West a distance of 144.86 feet to a point; thence North 60 deg. 06 min. 02 sec. West a

point; thence running along the arc of a curve to the right having a radius of 36.38 feet, a distance of 40.46 feet to a point; thence North 29 deg. 53 min. 57 sec. East a distance of 217.79 feet to a point; thence turning and running North 55 deg. 06 min. 03 sec. West a distance of 59.55 feet to a point; thence North 30 deg. 03 min. 51 sec. East a distance of 95.96 feet to a point; thence running along the arc of a curve to the right having a radius of 23.00 feet, a distance of 36.05 feet to a point; thence South 60 deg. 07 min. 31 sec. East a distance of 53.37 feet to a point; thence South 29 deg. 52 min. 29 sec. West a distance of 4.00 feet; thence South 60 deg. 07 min. 31 sec. East a distance of 133.00 feet to a point; thence South 16 deg. 20 min. 00 sec. West a distance of 63.12 feet to a point; thence North 59 deg. 17 min. 18 sec. West a distance of 100.35 feet to a point; thence South 29 deg. 56 min. 20 sec. West a distance of 257.39 feet to a point; thence South 67 deg. 34 min. 36 sec. West a distance of 68.43 feet to the point and place of Beginning.

RECORDING DIVISION
DATE RECORDED FILED
TAX & FEE
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF INCORPORATION

OF

OYSTER POINTE ON KITTY HAWK BAY OWNERS ASSOCIATION, INC.

The undersigned, being of the age of eighteen years or more, does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a non-profit corporation under and by virtue of the laws of the State of North Carolina.

1. The name of the corporation is Oyster Pointe On Kitty Hawk Bay Owners Association, Inc.

2. The period of duration of the corporation is perpetual.

3. The purposes for which the corporation is organized are:

a. To maintain and administer the common properties and facilities of the Oyster Pointe Condominium project, Kill Devil Hills, Atlantic Township, Dare County, North Carolina.

b. To administer and enforce the covenants and restrictions and to collect and disburse the assessments and charges of said project as same relates to the common properties of the project.

c. To conduct such services, duties and functions strictly on a non-profit basis for the mutual benefit of all unit owners of the Oyster Pointe Condominium project.

4. The members of the corporation shall be the record owners of the condominium units, and common properties within the Oyster Pointe Condominium project. The corporation shall have only one class of voting members, the rights of which members shall be designated in the By-Laws of this corporation.

5. The directors of the corporation shall be elected by the members in the manner provided by the By-Laws.

6. The address of the initial registered office of the corporation in the State of North Carolina is at the office of Professional Property Managers, Inc., Milepost 2.5, Croatan Highway, U.S. 158 Bypass, Kitty Hawk, N.C.; and the name of its initial registered agent at such address is Robert Harrell. *Dare County*

7. The number of directors constituting the initial board of directors shall be three; and the names and addresses of the persons who are to serve as the initial directors are:

<u>NAME</u>	<u>ADDRESS</u>
1. R. V. Owens III	Milepost 2.5 Croatan Highway Kitty Hawk, N.C. 27949
2. Robert F. Harrell	Rt. 1, Box 1290 Manteo, N.C. 27954
3. John H. High	203 Forest Hill Avenue Rocky Mount, N.C. 27801

8. The name and address of the incorporator is Robert F. Harrell, Rt. 1, Box 1290, Manteo, North Carolina 27949.

BOOK 492 PAGE 454

Condominium

FILED

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DECLARATION

DAVID A. FRY
REGISTER OF DEEDS

THIS DECLARATION, made this 7th day of January, 1987, by Kitty Hawk Bay Development Corporation, a North Carolina Corporation and First Service Corporation of North Carolina, ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

W I T N E S S E T H:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the City of Kill Devil Hills, County of Dare, and 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, North Carolina General Statutes.

1.2. Additional Real Estate. The real estate described in Exhibit A-1 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.

1.3. Association. Oyster Pointe On Kitty Hawk Bay Owners Association, Inc., a nonprofit corporation organized under Chapter 55A, North Carolina General Statutes.

1.4. Board. The Board of Directors of the Association.

1.5. Bylaws. The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference.

1.6. Common Elements. All portions of the Condominium except the Units. Limited Common Elements are Common Elements.

1.7. Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.8. Condominium. The condominium created by this Declaration.

1.9. 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 interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights pursuant to Section 47C-3-104 of the Act.

1.10. Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date five (5) years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant, or (ii) the date of the termination of the Condominium, or (iii) the date sixty (60)

surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

1.22. 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 Oyster Pointe Condominiums.

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 36 Units and does hereby designate all such Units for separate ownership, subject, however, to the provisions of Section 2.4 hereof. The reference to the number of units is specifically limited to the first phase of the project, in that additional units included within the condominium project will or may be added as additional phases, and this declaration is subject to such additional developers rights as set forth in the other sections hereof.

2.4. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions 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 1.13, 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 interests in the Common Elements and of the Common Expenses is according to the area of each Unit to the area of all Units. The votes in the Association are equally allocated to all Units.

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 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.

ARTICLE III.

Additional Real Estate

3.1. Declarant's Right to Add Additional Real Estate. Declarant expressly reserves the right to add the Additional Real Estate to the Condominium. All or part of the Additional Real Estate identified and described on Exhibit A-1 may be added to the Condominium at different times, but no assurances are made in regard

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.

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

5.4. 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.

5.5. 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.

5.6. Renting of Units. Any Unit Owner who enters into a lease of his Unit for a lease term longer than 30 days shall promptly notify the Association of the name and address of each lessee, the Unit rented, and the term of the lease. Other than the foregoing restrictions, each Unit Owner shall have the full right to lease his Unit.

5.7. 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 Bylaws.

5.8. 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 Bylaws.

5.9. 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.

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.

7.2. Common Expenses Associated with Limited Common Elements or Benefitting 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 Common Expense benefitting less than all of the Units against the Units benefitted in proportion to their Common Expense liability.

7.3. 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 reason 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.

7.4. Waiver of Claims. Except only as provided in Section 7.5(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.

7.5. 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 Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 7.4, 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.

standards for FNMA/FHLMC approved loans shall require from time to time.

8.5. Insurance Trustee. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

8.6. Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers pursuant to Section 7.3 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

ARTICLE IX.

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 provisions of Section 47C-3-113(d) and (g) of the Act.

ARTICLE X.

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 XI.

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-2-108 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 Bylaws:

13.1. Amendments during Declarant Control Period. Any amendments to this Declaration or to the Bylaws during the Declarant Control Period shall be subject to the prior approval of the elected

- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests 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 any 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 Bylaws;
- (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 FNMA/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 any addition of the Additional Real Estate pursuant to the provisions hereof, change the pro rata interest or obligations of any Unit for the purpose of:
 - (i) levying assessments 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;

to the addition of said portion of the Additional Real Estate.

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 provisions 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, provision, paragraph or clause of this Declaration, or of 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. The exhibits referenced in this declaration are incorporated herein by reference, whether or not they are attached hereto and recorded herewith.

In Witness Whereof, the Declarant has executed this Declaration as of the day and year first above written.



KITTY HAWK BAY DEVELOPMENT CORPORATION -

BY: [Signature]
Robert F. Harrell, Vice President

ATTEST: -

BY: R.V.O. [Signature]
R. V. Owens, III, Assistant Secretary

FIRST SERVICE CORPORATION OF NORTH CAROLINA

BY: R.V.O. [Signature]
R. V. Owens, III

BY: [Signature]
Robert F. Harrell

Attorneys in Fact

NORTH CAROLINA

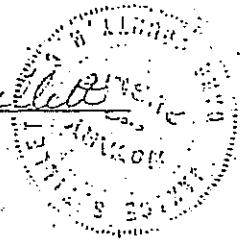
DARE COUNTY

I, Janice S. Tillett, a Notary Public for
said County and State, do hereby certify that R. V. Owens, III and
Robert F. Harrell, Attorneys in Fact for First Service Corporation of
North Carolina, personally appeared before me this day, and being by me
duly sworn, say that they executed the foregoing and annexed instrument
for and in behalf of the said corporation, and that their authority to
execute and acknowledge said instrument is contained in an instrument duly
executed, acknowledged, and recorded in the office of the Register of Deeds
in the County of Dare, State of North Carolina, on the 7th day of
January, 1987, and that this instrument was executed under and by
virtue of the authority given by said instrument granting them power of attorney.

I do further certify that the said R. V. Owens, III and Robert F. Harrell
acknowledged the due execution of the foregoing and annexed instrument for the
purposes therein expressed for and in behalf of the said First Service Corporation
of North Carolina.

Witness my hand and official seal, this the 7th day of
January, 1987.

Janice S. Tillett
Notary Public



My Commission Expires: 3-31-87

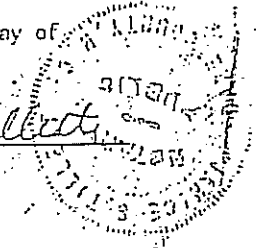
NORTH CAROLINA

DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that
R. V. Owens III personally came before me this day and
acknowledged that he/she is Assistant Secretary of Kitty Hawk Bay
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 Vice President, sealed with its
corporate seal and attested by him as its Assistant Secretary.

Witness my hand and official stamp or seal, this the 7th day of
January, 1987.

Janice S. Tillett
Notary Public



My Commission Expires: 3-31-87

DARE COUNTY NORTH CAROLINA

The foregoing certificate of Michael Ferraira of Dare Co., NC
& Janice S. Tillett of Dare Co., NC
both being Notaries Public

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 for Dare County

By Norma Jean Wood Ass't Register of Deeds

Recorded 1/10/87

EXHIBIT A

DESCRIPTION

A certain parcel of land located in the Town of Kill Devil Hills in the vicinity of First Flight Village Subdivision and adjoining Bay Drive, all being in the Town of Kill Devil Hills, Dare County, North Carolina and more particularly described as follows.

Beginning at a point located in the Western right of way of Bay Drive, said road having a fifty foot right of way at this point, and said point marking the Northeastern corner of Lot Number 118 of the Subdivision of First Flight Village, Section 3, Phase B, as shown on a plat recorded in Plat Cabinet B at Slide 50 of the Dare County Registry and marking the Northeastern corner of said Lot 118 as it adjoins the right of way of Bay Drive; thence running from the point of beginning a course of South 85° 56' 51" West a distance of 225.20 feet, following the Northern boundary lines of Lots 118, 117 and 116 to a point; thence turning and running North 60° 45' 55" West a distance of 262.83 feet following the Northern boundary lines of Lots 116, 115 and 114 to a point; thence turning and running North 84° 16' 05" West a distance of 320.00 feet to a point in the Northwestern corner of Lot Number 111, said call following the boundary lines of Lots 113, 112 and 111; thence turning and running North 03° 11' 21" East a distance of 52.55 feet to a point; thence running North 11° 06' 57" West a distance of 173.76 feet to a point; thence running North 04° 13' 31" West a distance of 190.02 feet to a point; thence running North 04° 02' 57" East a distance of 394.21 feet to a point, said point marking the Southern boundary of a one hundred foot canal right of way owned by the North Carolina Highway Commission and containing within such right of way a canal or drainage ditch; thence turning and running South 84° 16' 05" East, following the edge of the right of way a distance of 317.31 feet to a point; thence continuing and following the right of way South 60° 45' 55" East a distance of 272.53 feet to a point; thence continuing and following the said right of way boundary a course of North 85° 56' 51" East a distance of 368.04 feet to a point; thence continuing and following the right of way a course of South 67° 15' 22" East a distance of 113.66 feet to a point where the Southern right of way of the North Carolina Highway Commission intersects the Western and Northwestern right of way of Bay Drive; thence turning and running South 63° 24' 11" West a distance of 49.35 feet along the Western right of way of Bay Drive; thence continuing and following the right of way of Bay Drive along the curvature thereof an arc distance of 296.11 feet along a curve having a radius of 265.50 feet to a point; thence continuing South 00° 29' 56" East a distance of 94.19 feet; thence following another curve along the right of way of Bay Drive which curve has an arc distance of 140.05 feet and a radius of 412.13 feet to a point; thence following another curve along the right of way of Bay Drive, said curve having an arc distance of 253.35 feet to a point; thence running South 00° 29' 56" East a distance of 119.54 feet along the right of way of Bay Drive to the point or place of beginning.

Same being a parcel consisting of 15.7 acres with courses and distances being taken from a survey prepared by C. P. Lewis, Surveyor, and being labeled as "Site Plan for Oyster Pointe" and drawn August 1, 1985, with latest revision dated May 29, 1986.

BOOK 492 PAGE 472

EXHIBIT B

For the purpose of the First Phase of
the Oyster Pointe Condominium Project,
there are no Limited Common Elements.

EXHIBIT D

List of Liens, defects and encumbrances to which the rights of unit owners are subject:

1. Matters set forth in the attached "Schedule B, Section 2" of the title insurance policy; attached hereto.
2. General service and utility easements to supply utility service to the condominium property.
3. Rights of the Association and the unit owners and the Declarant set forth in the Declaration of unit ownership and the related documents; plats and plans, and Bylaws.
4. Construction loan and permanent financing, whether renewed or extended and whether represented by the existing financing for developer now in place; except that the individual units and the respective percentages of common ownership will be released prior to conveyance to the unit owners.
5. The provisions of Chapter 47C of the North Carolina General Statutes.

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

6. Title to all marshes and all portion of the property lying below the mean high water line of abutting waters or which would lie below the mean high water line of abutting waters except for man-made fills or jetties, groins and other artificial aids to accretion.
7. Rights of others, if any, in and to the canals affecting the insured land as shown on survey dated August 1, 1985 and revised May 23, 1986, by C. P. Lewis, Jr., Registered Land Surveyor.
8. Survey dated August 1, 1985 and revised May 23, 1986, by C. P. Lewis, Jr., Registered Land Surveyor reveals the following: (1) U.S.A.C.E. lines affecting the insured land (2) VEPCO easement fifty (50) feet in width affecting the northeastern corner of the insured land.
9. Such state of facts occurring subsequent to May 23, 1986 as would be disclosed by an accurate survey and inspection of the land.

Countersigned:



Authorized Representative

06/04/86 MS

Commitment No. BE036051-CT

Issued by LAWYERS TITLE OF NORTH CAROLINA, Raleigh NC (919) 828-3269

OYSTER POINTE ON KITTY HAWK BAY

Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc.
1410 South Virginia Dare Trail
Kill Devil Hills, NC 27948
(252) 480-2700
capemgmt@earthlink.net

BOOK OF RESOLUTIONS

**OYSTER POINTE ON KITTY HAWK BAY OWNER'S ASSOCIATION, INC.
POLICY RESOLUTIONS**

Resolution: **Parking of large vehicles and boats**
Adopted: **March 31, 1989 Board of Directors Meeting**

WHEREAS, the Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc. is empowered to govern the affairs of the Homeowner's Association pursuant to Article IV of the Bylaws...

WHEREAS, there is a need to adopt a rule with regard to parking pursuant to Article XII of the By-Laws...

WHEREAS, it is the intent that this rule shall be applicable to all owners and this resolution shall remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Directors...

NOW, THEREFORE BE IT RESOLVED THAT the following rules governing parking are hereby adopted by the Board of Directors:

Owners must park all boats and other two-axle vehicles in the lot to the right at the first entrance to Oyster Pointe.

Resolution: **Parking of large vehicles and boats**
Adopted: **August 3, 2002 Board of Directors Meeting**

WHEREAS, the Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc. is empowered to govern the affairs of the Homeowner's Association pursuant to Article IV of the Bylaws...

WHEREAS, there is a need to amend the rule with regard to parking pursuant to Article XII of the By-Laws...

WHEREAS, it is the intent that this rule shall be applicable to all owners and this resolution shall remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Directors...

NOW, THEREFORE BE IT RESOLVED THAT the following rules governing parking are hereby adopted by the Board of Directors:

Inoperable, unlicensed or uninspected vehicles may not be parked or left upon any portion of the common areas.
Owners must park all boats and other two-axle vehicles in the lot to the right at the first entrance to Oyster Pointe.
Vehicles over 25' in length may not be stored on the premises for more than one week.
Mobile homes are not permitted on the premises.
Parked vehicles may not block normal flow of traffic, sidewalks or other parking spaces.
No major or lengthy car repairs are permitted.
After a 10-day notice is posted on the vehicle, the Association will tow, at the owner's expense, any vehicle in violation of the above rules.



ON KITTY HAWK BAY OWNERS ASSOCIATION, INC.

RULES AND REGULATIONS

The following Rules and Regulations shall be in effect unless or until amended by the Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association and shall apply to and be binding upon all owners, occupants and guests (hereinafter referred to as owner).

1. The sidewalks, walkways, entrances and common areas in general shall not be obstructed or encumbered for any purpose other than ingress and egress to and from the property.
2. Linens, cloths, clothing, curtains, rugs, mats or laundry of any kind or other articles shall not be exposed on any part of the common area. The common area shall be kept free and clear of refuse, debris and other unsightly material.
3. Owner shall not allow anything whatsoever to fall from the windows, decks, balconies, entryways or doors of his or her unit. Owners shall not sweep or throw from the unit, any dirt or other substance outside of the unit or onto the common area.
4. Pets shall not be allowed in or on the common areas, except those on a leash. Owners shall clean up after their pets.
5. Refuse and bagged garbage shall be deposited only in designated areas.
6. Recreational vehicles, trailers and boats may be parked or left (by North entrance) in the designated area. Mobile homes are not permitted on the premises.
7. Inoperable, unlicensed, or uninspected vehicles may not be parked or left upon any portion of the common area.
8. Owner shall not make or permit any disturbing noises, nor do or permit anything that would interfere with the rights, comforts or operate or suffer to be operated a phonograph, television, radio or sound amplifier in his unit in such a manner as to disturb or annoy other occupants. All owners, occupants and guests shall lower the volume as to the foregoing from 10:00 P.M. to 7:00 A.M. each day.
9. Owner shall not install wiring for electrical or telephone installation, television antennae or satellite discs, machines, air conditioning units, or the like on the exterior of the project or that protrude through the walls or the roof of the project except as authorized by the Association.
10. Owner shall not paint the exterior of this unit without the authority and written approval of the Association; it being intended to preserve and present a uniform appearance for the condominium. No owner, occupant or guest may otherwise alter the exterior appearance of his unit.
11. Owner shall not permit any advertisements or posters of any kind in or on the condominium except as authorized by the Association. "For Sale" or "For Rent" signs shall not be displayed without the prior approval of the Association.
12. The Association shall have sole control of all planting and landscaping. No owner shall alter the appearance of the common area.
13. Inflammable, combustible or explosive fluid, chemical or substance shall not be kept on decks or in the common area.
14. The Association may make such rules and regulations as it deems necessary for the storage and keeping of firewood, and the Association may limit said storage and keeping to certain areas only.
15. Rules and Regulations as to the use of Oyster Pointe facilities shall be posted and each owner, occupant and guest shall observe all Rules and Regulations relating thereto.
16. The Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association reserves the right to make, or to have its duly authorized agent make, additional Rules or Regulations as may be required from time to time without the consent of the individual owners.

Policy Resolutions Continued

Resolution: **Leak Repairs**
Adopted: **December 10, 1993 Board of Directors Meeting**

WHEREAS, the Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc. is empowered to govern the affairs of the Homeowner's Association pursuant to Article IV, Section 4.13 of the Bylaws...

WHEREAS, there is a need to clarify rules regarding leak repairs as referenced in Article VII, Section 7.3 of the Declaration of Condominium of Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc.....

WHEREAS, it is the intent that this rule shall be applicable to all unit owners and shall remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Directors...

NOW, THEREFORE, BE IT RESOLVED THAT the following policy regarding leak repairs is hereby adopted by the Board of Directors:

If a unit owner fails to perform normal maintenance (ie. repairing a leaking drain pipe or toilet seal, etc.) causing damage to another unit, the association will notify the unit owner and give them 10 days to complete the repair. If repair is not made, the Association will make and pay for the repair and attach the cost of the repair to the unit owner's account.

Policy Resolutions Continued

Resolution: Screen Porches and Porch Ceiling Rain Diverters
Adopted: January 5, 2000 Board of Directors Meeting

WHEREAS, the Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc. is empowered to govern the affairs of the Homeowner's Association pursuant to Article IV of the Bylaws...

WHEREAS, there is a need to adopt a specific architectural style for the screen porches and porch ceilings to maintain uniformity pursuant to Article V, Section 5.5 of the Declaration and to identify maintenance responsibilities...

WHEREAS, it is the intent that this rule shall be applicable to all owners and this resolution shall remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Directors...

NOW, THEREFORE BE IT RESOLVED THAT the following rules governing the installation of screen porches and ceilings are hereby adopted by the Board of Directors:

- Owners must complete an application to management to remain on file with the Association.
- Owner must receive approved application from the Association prior to the onset of work.
- Cost of installation and maintenance of the screen porch and/or porch ceiling shall be at the owner's expense.
- Owner agrees to maintain the screen panels, repairing any broken or torn screen panels in a timely fashion.
- The Board of Directors reserves the right to remove any screens which have not been maintained in an acceptable manner and place them in the owners unit. The cost for this service will be charged to the owner.
- The Specifications are as follows:
 - A. Porch Ceiling:
 - Green, corrugated, fiberglass panels
 - Panels shall be pitched away from the building in the direction of the floor joists
 - B. Screens:
 - Must be removable panels
 - White, aluminum framing
 - Gray, fiberglass screening
 - Upper screen panels shall have a center cross bar centered at mid-point height; no cross bars on lower panels
 - The size of the screen panels will be determined by the length of the particular section of the deck; panels shall be the same size within a particular span.
 - First floor units shall install screening to underside of deck above as well as the option of installing screening under their own deck; middle floor units shall have the option of installing screening to underside of deck above
 - C. Framing:
 - All framing materials shall be treated lumber
 - Install 2x4 board to bottom of double 2x8 deck band from deck above to facilitate ceiling pitch
 - Install mid-span blocking to insure ceiling panels can be properly fastened
 - Fasten corrugated fiberglass panels from bottom of deck nailer to bottom of new 2x4 pitch board. On two sides, there should be a 4" overhang past the double 2x8 deck band. One side of the ceiling panels will remain flush with the deck joist. Contractor shall install a triangular trim piece to cover the opening due to the pitch design.
 - Install new 2x4 top plate underneath corrugated panels, fastened through panels, into the double 2x8 deck band.
 - Install new 2x4 bottom plate.
 - Install new 2x4 vertical framing to accept screen panels from new top plate to top of existing 2x6 cap rail. On lower section, install 2 x 4 vertical framing from new 2x4 bottom plate to the underside of the cap rail. This vertical member must be notched to accept existing cap rail 2x4 support board.
 - Install treated 1x2 screen stops on a four sides of interior of all openings.
 - Screen panels shall be fastened from the inside of the porch.

**OYSTER POINTE ON KITTY HAWK BAY OWNER'S ASSOCIATION, INC.
ADMINISTRATIVE RESOLUTIONS**

Resolution: **Collection Policy Resolution**
Adopted: **August 17, 1989 Board of Directors Meeting**

WHEREAS, The Board of Directors of Oyster Pointe on Kitty Hawk Bay Owner's Association, Inc. is empowered to govern the affairs of the Owner's Association pursuant to Article IV of the Bylaws...

WHEREAS, there is a need to adopt a specific collection policy...

WHEREAS, it is the intent that this policy shall be applicable to all owners and this resolution shall remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Directors...

NOW, THEREFORE, BE IT RESOLVED THAT the following collection policy is hereby adopted by the Board of Directors:

Monthly payments are due on the 1st of each month. A late fee of \$10 is added for any payment received after 30 days and the owner receives a late letter from management.

If there is no response after 30 days, a second stronger late notice is sent.

If there is no response after 90 days a third late notice is sent certified return receipt requested, advising the owner that a lien has been placed on the property (in accordance with 47C-3-116 of The Act) and that their account has been turned over to the Association's attorney. All legal costs incurred are to be charged to the delinquent owner. Any overdue account will be charged an 18% per annum interest rate.

Resolution: **Revision to Collection Policy**
Adopted: **December 2, 1994 Board of Directors Meeting**

The collection policy is hereby revised as follows:

Once an account is \$500 in arrears, the account is to be turned over to the Association's attorney for foreclosure. All costs incurred by this action are to be charged to the delinquent owner.

Resolution: **Revision to Collection Policy**
Adopted: **August 4, 1995 Board of Directors Meeting**

The collection policy is hereby revised to as follows:

Once an account is \$500 in arrears on monthly assessments or 45 days in arrears on the insurance assessment, the account is to be turned over to the Association's attorney for foreclosure. All costs incurred by this action are to be charged to the delinquent owner.

Resolution: **Revision to Collection Policy**
Adopted: **January 17, 1997 Board of Directors Meeting**

The collection policy is hereby revised to as follows:

Once an account is \$300 in arrears on monthly assessments or 60 days in arrears on special/insurance assessments, the account is to be turned over to the Association's attorney for foreclosure. All costs incurred by this action are to be charged to the delinquent owner.

Resolution: **Revision to Collection Policy**

Administrative Resolutions Continued

Resolution: Annual Meeting Quorum
Adopted: January 5, 2000 Board of Directors Meeting

RE: Article III, Section 3.5 of the Bylaws of the Association

WHEREAS, Oyster Pointe on Kitty Hawk Bay Owners Association, Inc. is a North Carolina corporation duly organized and existing under the laws of the State of North Carolina; and

WHEREAS, the members of said corporation desire that the wording in Article III, Section 3.5 of the Bylaws of the Association be amended to allow the Association to announce a quorum present at any meeting of the Association when fifty-one percent (51%) of the votes are present.

NOW, THEREFORE, the members hereby adopt the following resolution on behalf of the Oyster Pointe on Kitty Hawk Bay Owners Association, Inc.

That Article III, Section 3.5 of the Bylaws of Oyster Pointe on Kitty Hawk Bay Owners Association, Inc. shall be amended to read as follows:

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-one percent (51%) 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.