

DECLARATION OF CONDOMINIUM  
FOR  
PAMLICO POINT CONDOMINIUM

Recorded on \_\_\_\_\_, 1987  
Recorded in Book \_\_\_\_\_, Page \_\_\_\_\_,  
Dare County Registry, North Carolina

Plats and Plans recorded in  
Unit Ownership File No. 3, Slides \_\_\_\_\_,  
Dare County Registry, North Carolina

DECLARATION OF CONDOMINIUM  
FOR  
PAMLICO POINT CONDOMINIUM

THIS DECLARATION is made as of \_\_\_\_\_, 1987 by ATLANTIC ESTATES, a North Carolina general partnership, Post Office Box 250, HATTERAS, North Carolina, 27943 (the "Declarant," as hereinafter defined).

Declarant is the owner of a tract of land and all improvements thereon in Dare County, North Carolina, and is creating a condominium under the provisions of Chapter 47C of the North Carolina General Statutes, entitled the Condominium Act. A maximum of thirty (30) residential dwelling units will be built on Phase I of the land herein called the Submitted Property, which is being submitted to the Condominium Act at this time by this Declaration. An additional one hundred (100) condominium units may be built on reserved property, as if more fully set forth herein.

NOW, THEREFORE, Declarant hereby makes this Declaration for the purposes and subject to all the terms and provisions hereinafter set forth.

**ARTICLE 1**

DEFINITIONS

1.1 Definitions. The terms defined in Section 47C-1-103 of the Condominium Act shall be deemed to have the meanings therein specified whenever they appear in the Condominium Instruments unless the context otherwise requires and except to the extent, if any, that such definitions are changed below. In addition, the other terms defined below shall be deemed to have the meanings specified whenever they appear in the Condominium Instruments unless the context otherwise requires. These definitions shall apply whether or not the defined terms are capitalized.

"Act" means the Condominium Act, which is Chapter 47C of the North Carolina General Statutes, as amended.

"Assessment" means the share of the common Expenses from time to time assessed against a Condominium Unit and its Owner by the Association in the manner herein provided.

"Association" means Pamlico Point Condominium Association, a North Carolina unincorporated association, formed for the purpose of exercising the powers of the Association under the Act and the Condominium Instruments (hereinafter sometimes referred to as the "P.P.C.A.").

"Board of Directors" or "Board" means the board of directors of the Association, which is the governing body of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time, a copy of the initial Bylaws being attached hereto as Exhibit C.

"Common Elements" mean all portions of the Condominium other than the Units.

"Common Expenses" means all sums lawfully assessed against the Unit Owners by the Association; expenses of administration, maintenance, repair or replacement of the Common Elements (including Limited Common Elements); expenses agreed upon as Common Expenses by the Association, expenses declared Common Expenses by the provisions of the Act, this Declaration or the Bylaws; and, insurance premiums.

"Condominium" means the Submitted Property submitted to the provisions of the Act by the Condominium Instruments.

"Condominium Instruments" means this Declaration, the Bylaws, the Plat and the Plans, including any and all exhibits, schedules, certifications and amendments thereof, as they may exist from time to time, made and recorded pursuant to the Act.

"Condominium Unit" means a Unit together with the undivided interest in the Common Elements appertaining to that Unit.

"Declarant" means initially Atlantic Estates, a North Carolina general partnership which is the fee simple owner of the Submitted Property and has executed this Declaration.

"Declaration" means this Declaration as amended from time to time.

"Director" means a member of the Board of Directors.

"First Mortgagee" means the holder of a first-in-priority Mortgage.

"Foreclosure" includes, without limitation, the judicial foreclosure of a mortgage or the exercise of a power of sale contained in any Mortgage.

"Unit Designation" means one or more numbers and/or letters that identify each Unit, as set forth in the Schedule of Unit Information, and as shown on the Plat and Plans.

"Institutional Mortgagee" means one or more commercial or savings bank, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Lease" means any lease, contract, tenancy, sublease, rental contract or other occupancy agreement whether oral or written.

"Limited Common Elements" means a portion of the Common Elements reserved for the exclusive use of one or more, but less than all, of the Units.

"Majority" means more than fifty (50%) percent in any context, unless a different percentage is expressly required.

"Mortgage" means a mortgage, deed to secure debt, deed of trust, security agreement or other instrument conveying a lien upon or security title to a Condominium Unit as security for a debt or for the performance of an obligation.

"Mortgagee" means the holder, guarantor, insurer of a Mortgage or a beneficiary under a Deed of Trust.

"Occupant" means any person, including, without limitation, any guest, invitee, tenant, lessee or family member of an Owner, occupying or otherwise using or visiting in a Unit.

"Officer" means an officer of the Association.

"Owner" has the same meaning as Unit Owner.

"Plans" mean the plans for the Condominium which are certified and filed for record as indicated on the cover page hereof, as amended and certified from time to time, with the initial Plans being attached hereto as Exhibit D.

"Plat" means the plat of survey for the Condominium which is certified and recorded as indicated on the cover page hereof, as amended and certified from time to time, with the initial Plat being attached hereto as Exhibit D.

"Record" or "file for record" means filing for record in the Office of the Register of Deeds, Dare County, North Carolina.

"Schedule of Unit Information" means the schedule attached hereto as Exhibit B, which schedule shows for each Condominium Unit its Identifying Number, model type, undivided interest in the Common Elements, number of Votes in the Association, and share of liability for Common Expenses.

"Size" means the number of square feet of heated, enclosed floor space in a Unit as computed by reference to the Plat and Plans and rounded off to a whole number. Exterior walkways and breezeways are not included. Enclosed and heated stairways are counted, but only on one level.

"Submitted Property" means the property lawfully submitted to the provisions of the Act and the Condominium Instruments from time to time by the recordation of Condominium Instruments in

accordance with the Act. The Submitted Property is the land described in Exhibit A and shown on the Plat, together with all improvements thereon and all rights and easements appurtenant thereto.

"Unit" means a portion of the Condominium intended for independent ownership and use, as more fully set forth and shown in the Condominium Instruments and the Act.

"Unit Owner" has the same meaning as Owner and means one or more persons, including the Declarant, who own a Condominium Unit. This term does not include a Mortgagee in his capacity as such, but shall include any person, firm, corporation or entity capable of holding title to real estate in North Carolina.

"Unsold" shall mean unconveyed.

"Vote" means the vote in the Association appertaining to each Condominium Unit.

## ARTICLE 2

### CREATION OF THE CONDOMINIUM

2.1 Submission to the Act. Declarant hereby submits the Submitted Property to the Act. The Submitted Property and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged and deeded in trust subject to the Act and the Condominium Instruments. Every person acquiring or having any interest in the Submitted Property, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed to in writing, shall take such interest subject to the Act and to the Condominium Instruments and shall be deemed to have agreed to the same.

2.2 Name and Location. The name of the Condominium is "Pamlico Point Condominium." The Condominium is located in the County of Dare, North Carolina, along N.C. 12, near the Village of Avon on Hatteras Island.

2.3 Governing Provisions. The Condominium, the Association and each Unit Owner shall be governed by the Act, the Condominium Instruments and any rules and regulations adopted by the Association pursuant to the Condominium Instruments, and by the Bylaws of the Pamlico Point Condominium Association.

## ARTICLE 3

### DESCRIPTION OF THE CONDOMINIUM

3.1 Submitted Property. The Submitted Property is described on Exhibit A and shown on the Plat, and it includes all improvements thereon and all rights and easements appurtenant

thereto. The improvements include one (1) building with twelve (12) units as of the date of filing of this Declaration. Eighteen (18) additional units may be built in Phase I.

3.2 Condominium Units. The Condominium will initially contain thirty (30) Condominium Units, the Identifying Numbers of which are set out on the Schedule of Unit Information and are shown in the Plats and Plans. Each Condominium Unit consists of the Unit together with its undivided interest in the Common Elements. The Schedule of Unit Information sets forth for each Condominium Unit its Identifying Number, model type, and undivided interest in the Common Elements, Votes in the Association, and share of liability for Common Expenses. All Units are situated on a piling foundation with wood flooring and the external covering consists of wood siding, while the roof finish is architectural grade asphalt shingles. Each Condominium Unit shall constitute for all purposes a separate parcel of real property which may be owned in fee simple and which, subject to the provisions of the Act and the Condominium Instruments, may be conveyed and encumbered like any other property. The undivided interest in the Common Elements for each Condominium Unit shall not be altered except as expressly provided by the Act and this Declaration. Such undivided interest shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner shall automatically be a member of the Association, which membership shall continue during the period of ownership of the Condominium Unit by such Unit Owner.

3.3 Unit Boundaries. Each Unit shall include all the space within the boundaries thereof. The perimetrical or vertical boundaries of each Unit are the vertical planes of the interior surfaces of the wood framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the Common Elements, and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors, if any. The perimetrical unit boundaries include the sheet rock on the unit side of the walls, with the framing being a part of the Common Elements, and they are extended to their intersection with each other and the upper and lower horizontal boundaries of the Unit. The lower horizontal boundary of each Unit is the plane of the upper surface of the sub-floor of that Unit, and the upper horizontal boundary of each Unit is the lower surface of the ceiling joints of the Unit, with such sub-floor and framing being a part of the Common Elements. The upper and lower boundaries of each Unit include the wood, dry-wall, plaster or other material forming the ceiling or floor, as may be applicable, on the Unit side of such sub-floor or framing as the case may be and extend to their intersection with the perimetrical boundaries of the Units. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit, including without limitation, portions of the heating and air-conditioning system and the hot water

heater are deemed to be a part of each unit. If any chutes, flues, ducts, conduits, wires, pipes or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof which serve only that Unit shall be deemed a Limited Common Element of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Further, any fan coil unit mounted above the ceiling of a Unit and the air-conditioning/heating unit located outside the Unit but serving that Unit only shall be deemed to be a part of that Unit. In interpreting the Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any Plat or Plans, regardless of settling or lateral movement of the building and regardless of minor variance between the boundaries shown on the Plans or in a deed and those variances between the boundaries shown on the Plans or in a deed and those of the Unit. If an Owner acquires an adjoining Unit, thereby becoming the common Owner of adjoining Units, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or in part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium, is damaged, destroyed, or endangered. The alterations permitted by the preceding sentence shall not be deemed an alteration or relocation of boundaries between adjoining units, nor an alteration of the allocated interest in the common elements, vote

assigned to each unit, share of liability for common expense assessments or other appurtenant rights or interests as such appears on the Schedule of Unit Information attached hereto as Exhibit "B".

3.4 Common Elements. The Common Elements consist of all portions of the Condominium other than Units. Certain portions of the Common Elements are Limited Common Elements, as set out in Section 3.5. The Unit Owners Association and the owners agree that said Common Elements shall not be subject to partition or division except as set out as follows:

3.4.1 Notwithstanding any provisions herein to the contrary, it is expressly provided that the Association may convey to the Declarant any portion of the Common Elements theretofore conveyed to the Association in exchange for other portions of the properties conveyed by the Declarant to the

Association provided that all conveyances are approved by appropriate governmental authority or in their failure to act timely, by the Board of Directors of the Association. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be Common Element and shall cease to be subject to the provisions of these covenants relating to the Common Elements, but the area thus conveyed to the Association shall become Common Elements and subject to the provisions of this Declaration relating to Common Elements.

3.5 Limited Common Elements. The Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of those persons who are entitled to the use of one or more (but less than all) of the Units. Limited Elements are not separate and apart from the Common Elements in general, but are limited only with respect to the exclusive use thereof by the Unit or Units to which they are assigned. Limited Common Elements are assigned as follows and not otherwise:

3.5.1 The exterior stairways, steps, breezeways, walkways, parking areas underneath buildings, landings, railings and beams associated therewith which serve a building and the canvas doorway awnings, which are appurtenant to each Unit having any of the foregoing, shall be Limited Common Elements assigned to the Unit or Units having direct access thereto or direct use thereof. If a walkway, steps or other means of access to the door of a Unit is assigned to serve one or more (but less than all) of the Units, then it shall be a Limited Common Element appurtenant to the Unit or Units so served.

3.5.2 All portions of the Common Elements on which there is located any portion of the heating and air-conditioning system exclusively serving a particular Unit or Units shall be a Limited Common Elements assigned to that Unit or Units.

3.5.3 The Board of Directors of the Association shall have the ultimate power and responsibility for determining whether limited common areas in need of repair are to be the obligation of the entire Association or the obligation of the owners of the units which those limited common elements serve. The Board may, by majority vote, determine the amount and levy any special assessments for repairs of limited common elements consistent with its determination pursuant to this paragraph.

3.6 Development Rights. The Declarant has planned for a maximum of thirty (30) condominium units to be constructed on the initial phase of the property submitted herein to a condominium regime. In this regard, as of the date of filing for record of this Declaration of Condominium, the Declarant may not as of yet constructed all thirty (30) units and such improvements as should be considered a part of the common elements or limited common elements. Reference is hereby made to the plats and plans attached hereto as Exhibits and made a part hereof, which plats and plans will show the location, size, and dimensions of the initial phase of the condominium once completed. The Declarant



reserves the right to develop and construct the units and improvements shown on the plats and plans and to have such units deemed to be separate units and not a part of the common elements. Such units will be built, if at all, within four (4) years of the recordation of this Declaration of Condominium. The development rights herein reserved may be exercised with respect to different portions of the property submitted herein at different times. No assurances are made as to the boundaries of those portions or the order in which those portions may be subjected to the exercise of each development right. No assurances are given that if a development right is exercised with regard to one portion of the submitted property subject to development rights, that development rights will be exercised in all or in any other portion of the remainder of the submitted property.

With regard to those units and improvements shown on the plats and plans which have not been completed as of the date of filing for record of this Declaration of Condominium, they **NEED NOT BE BUILT**, and the Declarant hereby reserves the right to refrain from the development and construction of such units. In the event the Declarant chooses not to develop and construct any of the thirty (30) units or other improvements shown on the plats and plans, the area where such units or improvements were to be constructed shall be deemed part of the common elements of the condominium. Such election by the Declarant will increase each unit's pro-rata share of common expenses and assessments to one over the number of units actually constructed (1/# units built).

The Declarant further reserves the right to develop the remaining property shown on the plats and plans in the manner and at such times as Declarant shall, in its sole discretion, deem appropriate. These portions have been designated as "Reserved for Future Development" on the attached plat of the Condominium, is referred to herein as "reserved property" and should not, as of the date of recordation of this Declaration, be considered a part of the common elements of the Condominium. Declarant reserves the right to withdraw this reserved property, or any portions thereof, or to expand the condominium regime onto this property, or any portions thereof, at Declarant's sole option. In the event Declarant chooses to expand the condominium to this reserved property, or any portion thereof, Declarant will build and construct condominium units and buildings of a similar size as those built on the initial phase of the condominium, and will construct said units with approximately the same proportion of limited common elements appurtenant to each unit as is existing in the initial units constructed as of the date of recordation of this Declaration. Any such additional units built on reserved property will be subjected to the restrictions, uses, easements, and other provisions contained in this Declaration, and will be allocated a percentage interest in the common elements of the condominium and a percentage share of the common expenses of the Association. Declarant reserves the right to develop and construct a maximum of one hundred (100) additional

condominium units on the reserved property shown on the attached plat, and will do so, if at all, within ten (10) years of recordation of this Declaration.

The development rights herein reserved may be exercised with respect to different portions of the property reserved herein at different times. No assurances are made as to the boundaries of those portions or the order in which those portions may be subjected to the exercise of each development right. No assurances are given that if a development right is exercised with regard to one portion of the reserved property subject to development rights, that development rights will be exercised in all or in any other portion of the remainder of the reserved property.

In the event Declarant opts to construct and create additional condominium units on reserved property, such election by the Declarant will decrease each unit's pro-rata share of common expenses and assessments, and decrease the percentage share of ownership of the common elements to one over the number of units actually constructed (1/# units built).

The Declarant reserves hereby the right, license, privilege and easement to construct docks, piers, and boat slips adjoining the initial phase of the submitted property along the canal on the western edge of the initial phase of the submitted property. Such improvements shall be maintained by the Pamlico Point Condominium Association, and shall be assigned for the use and enjoyment of those members of the Pamlico Point Condominium Association, in good standing. The docks, piers, and boat slips so constructed shall be a part of the common elements of the condominium.

3.7 Pamlico Point Condominium Association. The Declarant has caused to be created a comprehensive property owners' association, known as the Pamlico Point Condominium Association, (hereinafter "PPCA") to which each condominium unit owner must belong and contribute. The duty of this comprehensive property owners' association is to insure and maintain the overall integrity of the development and to maintain, repair and replace the roads, streets, bridges, docks, piers, boat slips, utility facilities and recreational amenities and facilities owned by or entrusted to it by the Declarant and this Declaration. These facilities hereinbefore mentioned will be a part of the common elements of the condominium regime. All unit owners are members of said Association. Each unit is hereby allotted one (1) vote in the said Association. The By-Laws of the said Association are attached hereto as Exhibit "C" and incorporated by reference herein.

The PPCA shall have the right and duty to maintain and improve said streets, roads, and parking areas and to charge the unit owner for their pro-rata share of the costs of such maintenance and improvements.

The PPCA shall maintain, repair and replace the docks, piers, and boat slips which are on or immediately adjacent to the submitted property. The right and privilege for the use and enjoyment of said docks, piers, and boat slips shall be given to each member of good standing in the PPCA, of which each unit owner is automatically made a member. In accordance with the By-Laws of the PPCA, each unit owner will become a member of the PPCA upon conveyance to such unit owner of a deed of fee simple title to that unit.

Sewerage services will be provided by underground sewage systems on-site, which shall receive the highest priority among the expenses of the PPCA. In the event the Declarant shall at any time provide sewage services to the condominium units, the Declarant is hereby given and granted the right, at its own option, to assign and transfer its duties and obligations of providing such sewage services to the PPCA or to a separate utility company, along with all right, title, or interest to any sewage utility facilities the Declarant may have.

The condominium shall be supplied water by the Cape Hatteras Water Association or a local municipal authority, which may be billed separately to each unit or, at the option of the Declarant, its successors and assigns, may be billed to the P.P.C.A., in which event, it shall become a common expense of the Association. Each unit owner will be obligated to pay any impact fees for water or sewage hookup, in the event such fees are required by the entity or governmental authority providing such utility services.

Electrical services will be provided to each unit by the Cape Hatteras Electric Membership Corporation and will be billed separately to each unit. Portions of the condominium and Pamlico Point will be supplied water and electrical services for the purposes of the PPCA, and the PPCA shall have the right and duty to charge the unit owners for such water and electrical services, in which case it shall become a common expense of the Unit Owners' Association.

The PPCA shall own, maintain, repair and replace all such other improvements, amenities, recreational facilities, and incidents of Pamlico Point as shall be constructed by the Declarant and transferred and conveyed to the PPCA, or as shall be constructed and maintained by the PPCA on its own initiative.

The Pamlico Point Condominium Association, is hereby granted the absolute and exclusive right to maintain, control and assign the docks, piers and boat slips throughout Pamlico Point. To the extent feasible, the docks, piers and boat slips adjacent to a condominium building are to be used by and assigned to solely the unit owners in that condominium building. The Pamlico Point Condominium Association, is hereby granted the right and option, in its sole discretion, to charge and assess the unit owners in that condominium building alone for the costs of maintenance, repair and upkeep of the docks, piers and boat

slips adjacent to that condominium building. This shall include the right to charge a recurring fee for water, electricity and other services provided to unit owners who, in fact, have been assigned an area of dockage.

No boat or other vessel or craft shall be docked or moored in the waterways and canals in Pamlico Point so as to block or hinder the reasonable access, ingress and egress of others. The Board of Directors of the P.P.C.A. may, by appropriate resolution, make such other and further rules and regulations concerning the use and enjoyment of the docks, piers, boatslips, canals and waterways in Pamlico Point as it shall deem necessary.

The Pamlico Point Association, is hereby given the right to enforce the terms and provisions of this Declaration and to suspend the rights and privileges of members of said Association. The terms and provisions concerning the suspension of rights and privileges are contained in the By-Laws of the P.P.C.A., which are incorporated by reference herein.

#### ARTICLE 4

##### EASEMENTS

In addition to the easements created by the Act, the easements described in this Article 4 from each Owner to each other Owner, to the Association, and to the Declarant are hereby granted, reserved and established, subject to and in accordance with the following terms and conditions:

4.1 Use and Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements (including the right to access, ingress and egress to and from his Unit over those portions of the Common Elements designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every Condominium Unit, subject to the following provisions and limitations:

4.1.1 The right of the Association to control the use and enjoyment thereof as provided by the terms of this Declaration, which shall include, but not be limited to, the right of the Association to limit the use and enjoyment thereof to the Owners and their respective Occupants, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner and his Occupants.

4.1.2 The right of the Association to limit the number of guests of Owners.

4.1.3 The right of Owners to the exclusive use of the Limited Common Elements appurtenant to their respective Units.

4.1.4 The right of the Association to suspend the Vote and rights and the right to use any recreation facilities of the Condominium by the Owner and his Occupants and common area appurtenant thereto for any period of time during which an Assessment against his Condominium Unit remains unpaid or for a reasonable time for infractions of any provisions of the Condominium Instruments or rules and regulations.

4.2 Structural Support. Every portion of a Unit or the Common Elements which contributes to the structural support of another Unit or the Common Elements shall be burdened with an easement of structural support. No Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.

4.3 Utilities. To the extent that any utility line, pipe, wire or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units or the Common Elements shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit, Units or Common Elements served by the same and the Association.

4.3.1 Declarant reserves the right to subject the real property described hereinabove to a contract with the Cape Hatteras Electric Membership Corporation for the installation of underground electric cables and the installation of street lighting, either or both of which may require continuous monthly charges to the owner of each condominium. Upon acceptance of a deed to a condominium, each owner agrees to pay to the Cape Hatteras Electric Membership Corporation the continuing monthly payment therefore as approved by the North Carolina Utilities Commission, or other appropriate governmental authorities. Declarant reserves the right to contract on behalf of each condominium with the Cape Hatteras Electric Membership Corporation, or its successors and assigns, for street lighting service. Upon acceptance of a deed to a condominium, each owner agrees to pay to the Cape Hatteras Electric Membership Corporation the continuing monthly payment therefore as approved by the North Carolina Utilities Commission, or its successor or other appropriate governmental authority.

4.3.2 Declarant, for itself and for any successors or assignees, further reserves the right to connect to each condominium necessary water and sewer service which may require a continuous monthly charge to the owner of the condominium. Upon acceptance of a deed to the condominium each owner agrees to pay said continuing monthly charge, if any. In the alternative, such water and sewer utilities may become the obligation of the Association, which may charge the unit owners for their pro rata share.

4.3.3 An easement is hereby established for the benefit of the County of Dare and any local municipality or other entity which may provide utility services over all common area and over an area five (5) feet behind the curb line of any street or roadway within this property hereby or hereafter established for the settling, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

4.4 Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, an easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event that any building, any Unit, any adjoining Unit, or any adjoining portion of the Common Elements shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then be repaired or reconstructed, encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such repair or reconstruction, shall be permitted, and easements for such encroachments and the maintenance, repair and replacement thereof shall exist. This easement is intended to apply to only the extent necessary and do not deprive another of a substantial property right of use.

4.5 Encroachment Easements. Whenever building lines, patio lines, private walkways or plantings encroach upon the common area, the owner of the affected lot is hereby granted a perpetual easement for the use of that portion of the common area which is burdened with the encroachment.

4.6 Maintenance and Repair. There shall be an easement in favor of the Declarant, the Association and the Unit Owners through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement of Units and the Common Elements. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

4.7 Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agency and employees (including, but not limited to any manager employed by the Association) to enter upon the Submitted Property or any portion thereof and to enter or take access through the Units and the Common Elements as may reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and operation of the

Condominium and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representatives and employees, such access through such Owner's Unit as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon advance notice to and with the permission of the Owner or Occupant of a Unit directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Elements for the installation, maintenance, repair and replacement of utilities, roads and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

4.8 Rights of Declarant. So long as Declarant owns any Condominium Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents, and employees shall have a transferable easement for the maintenance of signs, a sales office, a business office, promotional facilities and model Units on the Submitted Property, together with such other facilities as in the opinion of the Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development or sale of the Condominium Units on the Submitted Property. The Declarant may use five (5) Units for models and/or sales offices, which Units may be changed from time to time. The Size and location of the Units are shown on the Plat and Plans. During the period that Declarant owns any Condominium Unit, Declarant, its duly authorized contractors, representatives, agents and employees, shall have a transferrable easement, on, over, through, under and across the Common Elements for the purpose of making improvements on the Submitted Property and for the purpose of doing all things reasonably necessary and proper in connection therewith.

4.9 Easements. There is hereby created a blanket easement upon, across, over and under all of said property, subject to this declaration, for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, drainage, telephones, cablevision and electricity. This blanket easement is expressly in favor of, but not limited to, the Declarant and the Association, its directors, officers, or agents. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary underground equipment and other necessary equipment on said property, and to affix and maintain electrical and/or telephone wires, circuits, and conduits or, above, across and under the roofs and exterior walls of said condominiums. An easement is further granted to all police, fire protection, garbage collectors, ambulance, and all similar persons to enter upon the streets and common area in the performance of their

duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company elected by the Association to enter in or to cross over the common area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable documents, Declarant or the Association, in the event the easement crosses property covered by the Unit Owners Association, will have the right and authority to grant such easement on said property without conflicting with the terms hereof. The easement provided for in this Section shall in no way affect other recorded easements on said premises.

Easements are hereby reserved over and through the submitted property for the use, benefit and enjoyment of the Declarant, its agents, employees, successors and assigns for the installation and maintenance of docks, piers, boat slips, roads, streets and parking areas and for cable television services, sewage utility services, and such other reasonable services that the Declarant may, in its sole discretion, provide to the condominium. Easements are hereby granted over and through the submitted property for the use, benefit and enjoyment of the Association, its agents, employees, successors and assigns for the installation and maintenance of any docks, piers, boat slips, roads, streets, parking areas and such other properties or improvements in and adjacent to the submitted property owned by or entrusted to the Association. Said easement in favor of the Association, shall include the rights of access, ingress and egress to fulfill its obligations under the By-Laws of said Association and all applicable Declarations and to enforce said By-Laws and Declarations against all unit owners in the condominium. Easements of access, ingress and egress are hereby granted to Dare County and any other annexing municipal authority over and through the submitted property as are reasonably necessary for the fulfilling of its obligations and purposes as a governmental body and for the providing of its services and utilities to the condominium. Any easements and accesses herein granted or reserved by this preceding paragraph shall not obligate the person, corporation, municipality or other entity in whose favor the easement has been granted or reserved to provide the services or improvements for which the easements have been created, unless, in each instance, they are otherwise obligated to provide such service or improvement.

4.9.1 An easement has been granted to the North Carolina Department of Transportation and is recorded in Book 285, page 779, Dare County Registry. Easements have been granted to Cape Hatteras Electric Membership Corporation and are recorded in Book 255, pages 446 and 447, Dare County Registry.



4.9.2 In no case shall the County be responsible for failing to provide any emergency or regular fire, police or other public service to the Condominium Units or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, Unit Owners Association, or occupants.

## ARTICLE 5

### MAINTENANCE AND REPAIR

5.1 Association. The Association shall maintain, repair and replace all portions of the Common Elements, except as may be herein otherwise specifically provided. This responsibility shall include all Limited Common Elements appurtenant to Units including, without limitation, exterior stairways, steps, breezeways, walkways, landings, railings and beams associated therewith which serve a building and the canvas doorway awnings, if applicable. The Association shall also be responsible for the maintenance of the exterior finished surface of entry doors to Units, notwithstanding the fact that such doors are a part of the Units. Each Unit Owner shall be responsible for all heating and air-conditioning equipment serving his Unit only as a Limited Common Element. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under the Act or this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

5.2 Unit Owner. Each Unit Owner shall maintain, repair and replace all portions of his Unit, except those portions, if any, which are to be maintained, repaired or replaced by the Association. The Unit Owner shall maintain, repair and replace the hot water and heating and air-conditioning system which is a part of or a Limited Common Element serving his Unit, together with all fixtures, equipment and appliances installed in his Unit or located within the boundaries thereof, and all chutes, flues, ducts, conduits, wires, pipes or other apparatus located within the boundaries of such Owner's Unit or deemed to be a part thereof as provided herein. The Unit Owner shall also maintain, repair and replace the windows, screens and doors (including the sliding glass doors, if any) which are a part of the Unit, except for the exterior finished surface of the entry doors of the Units, which shall be maintained by the Association. Each Unit Owner shall perform his responsibilities in such a manner so as not to unreasonably disturb other persons in other Units and shall keep the exterior entrance area adjoining his Unit in a neat and clean condition and free of standing water. Each Unit Owner shall promptly report to the Association or its agent any defect or need for repairs for which the Association is

responsible. The Association shall have the right but not the obligation to make any repair or replacement or to do any cleaning or maintenance which is the responsibility of the Unit Owner if the Unit Owner fails or refuses to do so, and in such event the Unit Owner shall be obligated to pay for the cost incurred by the Association for such work. The Board of Directors shall have the sole right by majority vote to determine when any such repairs or replacements are made. The sums spent by the Association pursuant to this authority shall be conclusive upon the unit owner(s) to be assessed. Each Unit Owner shall also be obligated to pay for the cost of repairing, replacing, or cleaning any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of such Unit Owner or any of his Occupants. The cost of any such repair, replacement, maintenance or cleaning shall be added to and become part of the Assessment or portion thereof next coming due to which the Unit Owner is subject and shall constitute a lien against the unit in like manner as other assessments.

## ARTICLE 6

### ASSESSMENTS

6.1 Lien. Each Unit Owner covenants and agrees to pay to the Association all Assessments (general and special, limited common area assessments, or any other assessments properly levied by the Association) provided by the Act and by this Declaration which shall be fixed, established and collected from time to time as hereinafter provided. All Assessments and other charges provided by this Declaration, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge against and continuing lien on his Unit while he is the Owner. Any unit shall be conveyed subject to a lien for any unpaid Assessments subject to the provisions of Section 47C-3-116 of the Act and Section 6.7 hereof. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Elements or abandonment of his Unit. Notwithstanding any other provision contained in this Declaration, the Declarant may choose to be responsible for all common expenses until the end of the period of Declarant control or until the Unit Owners' Association makes a common expense assessment, at which time the Declarant will be bound to contribute to common expenses according to the allocations assigned to the Declarant which remain unsold.

6.2 General Annual Assessments. The amount of all Common Expenses not specially assessed against one or more but less than all of the Condominium Units pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved Common Profits, shall be assessed against the Condominium Units in accordance with the Schedule of Unit Information. The general annual Assessment shall be established by the Board of Directors

in the manner set forth in this Section. During that portion of the Association's fiscal year, the annual Assessment applicable to each Condominium Unit shall be as set forth in the estimated budget for the Condominium delivered to each purchaser of a Condominium Unit. At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and submit in writing to the Owners an estimated budget of the Common Expenses for the next succeeding fiscal year to be paid by Assessments collected from the Owners, together with the amount of the annual Assessment payable by each Owner during such fiscal year. If the estimated budget proves inadequate for any reason at any time during the year, then the Board of Directors may levy at any time a further Assessment against the Owners and notify the Owners accordingly. If for any reason an annual budget is not made by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new Assessment. Common Expenses of the Association to be paid through annual Assessments shall include, but shall not necessarily be limited to, the following Sections 6.2.1 through 6.2.8, inclusive, and the due date(s) of any such special Assessments shall be specified by the Board of Directors.

6.2.1 Management fees and expenses of administration, including management, legal and accounting fees.

6.2.2 Utility charges for utilities serving the Common Elements and charges for other common services.

6.2.3 The cost of any master or blanket policies of insurance purchased for the benefit of all Owners and the Association as required by this Declaration, including fire and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and the Owners.

6.2.4 The expense of maintenance, operation and repair of the Common Elements as well as any maintenance upon the Units which is the responsibility of the Association under the provisions of Article 5, if such expense is not covered by a special Assessment.

6.2.5 Charges for any utilities provided to the Units and not separately metered, which shall be a Common Expense of the Association.

6.2.6 Such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against each Condominium Unit, other than ad valorem real property taxes.

6.2.7 The establishment and maintenance of an adequate reserve fund or funds for the periodic maintenance, repair and replacement of those Common Elements (including Limited Common Elements) which the Association may be obligated to maintain and of a reserve to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures and other matters, as may be authorized from time to time by the Board of Directors. A working capital fund shall be established for the initial months of the operation of the Condominium which shall be collected with respect to each Unit at the time of conveyance of such Unit by Declarant to a purchaser and shall be deposited in and maintained in a separate account of the Association for the use and benefit of the Association. The purpose of such fund is to insure that funds will be available for the Association to meet unforeseen expenditures, to pay one-time expenses at the beginning of the Association such as legal, accounting and other services and advice, and to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. Amounts paid into such fund shall not be considered as advance payment of the annual assessment.

6.2.8 Expenses declared Common Expenses by the provisions of the Act.

The general annual Assessment for Common Expenses described above shall be paid by and collected from the Owners in accordance with their respective liabilities for Assessments. Each Owner shall be obligated to pay such Assessments to the Association in monthly installments on or before the first day of every month, beginning with January 1 of each year. In any year in which there is an excess of Assessments and other income over expenditures, the Board of Directors, by resolution and without the necessity of a Vote of the Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments or to allocate the same to one or more reserve accounts of the Association described above. Any of the foregoing provisions of this paragraph which may be construed to the contrary notwithstanding, no Assessment shall be payable under this paragraph by any Owner until this Declaration is filed for record. Therefore, the first annual Assessment payable under this paragraph shall be prorated according to the number of days remaining in the Association's fiscal year after the date on which this Declaration is filed for record.

6.3 Special Assessments of Association. Any Common Expenses occasioned by the conduct of less than all Unit owners or their Occupants may be specially assessed by the Board against the Condominium Unit or Units, the conduct of any Owner or occupant of which occasioned any such Common Expenses. Notwithstanding anything to the contrary set forth herein, except as provided in Section 5.2, there shall be no special Assessments against any particular Condominium Unit for any Common Expenses associated with the maintenance, repair, restoration, renovation or replacement of any Limited Common Elements; rather, such

expenses shall be Common Expenses. The special allocation of assessments provided for in this paragraph shall be levied by the Board of Directors in its reasonable judgment, and the amount and due date(s) of such Assessments so specially allocated by the Board shall be as specified by the Board. In no event shall the Association or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph

6.4 Special Assessments for Capital Improvements. In addition to the special and general Assessments authorized above, and in addition to the special Assessments for reconstruction or repair of casualty damage, the Board of Directors may levy special Assessments for the purpose of defraying, in whole or in part, the cost of any capital addition to or capital improvement of the Common Elements (including the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the Common Elements (including the necessary fixtures and personal property related thereto), which is for the benefit of all Owners; provided, however, the total amount of the special Assessment levied by the Board of Directors under and pursuant to the provisions of this Section shall not exceed the sum of \$500.00 per Condominium Unit in any one calendar year unless approved by a Majority of the Owners at a meeting duly called and held for such purpose. Owners shall be assessed for special Assessments under this Section in accordance with the liability for Assessments of their respective Condominium Units, and the due date(s) of any such special Assessments shall be specified by the Board of Directors.

6.5 Non-Payment of Assessments: Remedies of Association. Any Assessment, or portion thereof, not paid when due shall be delinquent, and the Board of Directors shall have the duty to enforce the collection of all delinquent Assessments. Any Assessment, or portion thereof, not paid within thirty (30) days after the due date shall constitute a lien on such Owner's Condominium Unit when filed of record in the Office of the Clerk of Superior Court, Dare County, in the manner provided for filing statutory liens against real property. If the same is not paid within thirty (30) days after the due date, then a late charge, not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each Assessment or installment thereof not paid when due, shall also be due and payable to the Association. If any Assessment or portion thereof is delinquent for a period of more than thirty (30) days, and then is not paid within ten (10) days after written notice is given to the Owner to make such payment, the entire unpaid balance of the Assessment for the year in question may be accelerated at the option of the Board of Directors and be declared due and payable in full; and proceedings may be instituted to enforce such obligation and/or lien. Such notice shall be sent by U.S. Mail, postage prepaid, to the Owner to the address of the Unit or to the address the Owner may have designated to the Association in writing, specifying the amount of the Assessments then due and payable, together with authorized late charges and interest accrued

thereon. Any Assessment or portion thereof, together with authorized late charges, not paid when due shall bear interest from the date of delinquency until paid at twelve percent (12%) per annum. The Board of Directors may suspend the Vote of the Owner or the rights of the Owner and his Occupants, invitees and guests, to use the recreational facilities of the Condominium during the period in which any Assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Owner as aforesaid and the Association may bring an action at law against the Owner obligated to pay the same or foreclose its lien against such Owner's Condominium Unit, in which event late charges, interest and costs of collection shall be added to and included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Condominium Unit, and reasonable attorneys' fees. For the purposes of this Article, the amount of delinquent Assessments, late charges, accrued interest and the amount of accelerated Assessments, if any, shall be considered an indebtedness and shall be evidenced by this Section 6.5 and therefor evidence of indebtedness shall exist hereby. All payments on account shall be applied first to the aforesaid costs of collection, then to late charges, then to interest, and then to the Assessment lien first due. All late charges and interest collected shall be part of the Common Profits. Each Owner vests in the Board of Directors the right and power to bring all actions against him personally for the collection of such Assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting through the Board, shall have the power to bid in the Condominium Unit at any Foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Condominium Unit. The rights and remedies conferred herein shall be in addition to, and not in lieu of, those set forth in Section 47C-3-116 of the Act.

In order to perfect the lien given by the foregoing provision, the Association shall file in the Clerk's office of the Dare County Superior Court, North Carolina, a claim of lien, which contains a description of the condominium unit in accordance with the provisions of Section 47C-2-104 of the North Carolina Condominium Act, the names of the record owners of that condominium unit, the amount of unpaid assessments due or past due, together with the date when each fell due pursuant to the provisions of N.C.G.S. Section 47C-3-116 and Article 8 of Chapter 44 of the General Statutes of North Carolina. When payment or satisfaction is made of a debt secured by the foregoing lien, said lien shall be released by the duly authorized agent of the lien creditor.

6.6 Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except only (a) the lien for real estate taxes on that Condominium Unit, and (b) the lien of a Mortgage securing sums unpaid to a Mortgagee or other lien or encumbrance recorded prior to the perfection of said lien for Assessments. Except as provided in Section 6.7 hereof and Section 47C-3-116 of the Act, the sale or transfer of any Condominium Unit shall not affect the Assessment lien.

6.7 Deed in Lieu of Foreclosure. Notwithstanding anything contained in this Declaration or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Condominium Unit by virtue of any deed in lieu of Foreclosure of a First Mortgage, such a First Mortgagee shall not be liable for, nor shall such Condominium Unit be subject to a lien for, any Assessment chargeable to such Condominium Unit on account of any period prior to the time such First Mortgagee shall so acquire title to such Condominium Unit; provided, however, that Common Expenses collectible thereafter from all Owners, including such First Mortgagee shall be paid as set forth in this Declaration. The provisions of this Section 6.7 are in addition to, and not in lieu of, the provisions of Section 47C-3-116(f) of the Act.

## ARTICLE 7

### ADMINISTRATION

7.1 Administration by the Association. The Association shall administer the Condominium, and have the rights and duties with respect thereto, as set out in and subject to the Act and the Condominium Instruments.

7.2 Control by Declarant. The Declarant shall have the right to appoint or remove all Directors and Officers or to exercise powers and responsibilities otherwise assigned to the Association Board or Officers by the Act or the Condominium Instruments until the first to occur of: (i) the expiration of two (2) years after the date of the last construction of units or last exercise of Developmental rights, (ii) the date as of which Units to which three-fourths (3/4) of the undivided interests in the Common Elements appertain shall have been conveyed by Declarant to Unit Owners or (iii) the surrender by Declarant of such rights by an express amendment to this Declaration executed and recorded by Declarant, without the need for consent or joinder by any person. Upon the expiration of the period of Declarant's rights, such rights shall automatically pass to the Owners (including Declarant if Declarant then owns one or more Condominium Units) and a special meeting (which may be the next annual meeting) of the Association shall be called as set forth in the Bylaws. At such special meeting the Owners shall elect a Board of Directors. Further, any management or other agreement or any lease entered into during the period of

Declarant control shall be subject to cancellation without cause and without penalty or termination fee upon not more than ninety (90) days prior written notice.

7.3 Duties and Powers. The duties and powers of the Association shall be those set forth in the Act, this Declaration and the other Condominium Instruments, together with those reasonably implied to effect the purposes of the Association. Except to the extent otherwise required by the Act, this Declaration or the other Condominium instruments, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, by action through the Officers, without any further consent or action on the part of the Owners. Subject to and in accordance with the provisions or limitations set forth in the Bylaws, each Director and each Officer shall be entitled to be indemnified by the Association in connection with any threatened, pending or completed action, suit or proceeding with respect to which such person was or is a party by reason of the fact that such person is or was a Director or Officer.

7.4 Property. All funds received and title of all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Owners as herein provided and for the purposes herein stated. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Condominium Unit. In any year in which there is an excess of Assessments over expenditures, such surplus shall be applied in accordance with the provisions of Article 6.

7.5 Rules and Regulations. Without limiting the generality of this Article, the Board of Directors shall have the power and authority to make, amend and revoke reasonable rules and regulations concerning the use of the Units and the Common Elements as set forth in the Bylaws.

7.6 Professional Management. The Board of Directors may employ a professional management firm to manage the operation and affairs of the Condominium and the Association. Any management firm employed shall be employed pursuant to a written agreement executed on behalf of the Association by its President and Secretary. All such management agreements shall be terminable by the Association for cause upon thirty (30) days' written notice and without termination fee and upon ninety (90) days prior written notice and without termination fee without cause, and the term thereof may not exceed one year. To the extent permitted by law, the Board of Directors shall be authorized to delegate to such management firm such of the duties and powers of the Association and of its Board of Directors and Officers as the Board of Directors shall determine. The



Declarant or any person affiliated with Declarant may be employed as the professional management firm pursuant to this Section; provided, however, that notwithstanding the foregoing, any contract or agreement of any kind with the Declarant or any person affiliated with the Declarant whether for professional management or for another purpose shall be terminable by either party thereto without cause and without payment of a termination fee upon no more than ninety (90) days' prior written notice.

7.7 Enforcement of Directors Duties. In the event that the Board of Directors shall fail to perform any duty or duties which, under the terms and provisions of the Act, this Declaration, or the other Condominium instruments, are to be performed by it, any Owner or First Mortgagee who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, shall any Director have any liability to any Owner or First Mortgagee for any failure by the Board of Directors to perform any such duty or duties, except to the extent provided by the laws of North Carolina.

## ARTICLE 8

### INSURANCE

8.1 General Obligation and Authority. The Association shall obtain and maintain at all times (a) insurance for all of the insurable improvements on the Submitted Property (except improvements, and betterments made by the respective owners or Occupants) against loss or damage by fire or other hazards, pursuant to Section 47C-3-113 of the Act, and including extended coverage, vandalism, malicious mischief, debris removal, cost of demolition, windstorm and water damage, in an amount consonant with full replacement value of such insurable improvements, (b) if there is a boiler on the Submitted Property, boiler explosion insurance evidenced by the broad form of boiler and machinery insurance policy and providing as a minimum, \$50,000.00 per accident per location, (c) any such fidelity coverage against dishonest acts on the part of its Directors, Officers, employees, agents and volunteers responsible for handling funds belonging to or administered by the Association in any amounts as the Board may determine in its sole discretion, (d) comprehensive public liability insurance, in amounts established by the Board of Directors from time to time, pursuant to Section 47C-3-113 of the Act, but in no event shall such amount be less than \$1,000,000.00 for single limit coverage, and (e) such other types of insurance either required by the Federal National Mortgage Association, Federal Home Loan Mortgage Association, Veterans Administration, Federal Housing Administration or any other applicable governmental authority or law or authorized by the Board of Directors from time to time. Such casualty, liability and fidelity coverage shall be maintained in accordance with and satisfy all of the applicable provisions of the Federal National Mortgage Association Conventional Home Mortgage Selling Supplement or in accordance with any other requirements of the

Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal Housing Administration or any other applicable governmental authority. When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be furnished to each Unit Owner by the Officer required to send notices of meetings of the Association.

## ARTICLE 9

### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

In the event of damage by fire or other casualty to the Submitted Property or any part thereof, the provisions of this Article and Section 47C-3-113 of the Act shall govern the repair and reconstruction. The terms "repair" or "reconstruction" as used herein shall mean repairing or restoring the Submitted Property to substantially the same condition in which it existed prior to the fire or other casualty (excluding improvements and betterments made by an Owner or Occupant) with each Unit and the Common Elements having the same boundaries as before. Any repair or reconstruction may reasonably take into account changes in construction and design techniques and materials and the cost or availability thereof. The term "substantial loss" relative to Units and/or Common Elements serving exclusively a Unit shall mean a loss involving damage or destruction which renders more than two-thirds (2/3rds) of the Units and/or Common Elements serving exclusively a Unit in any one (1) building or which serves exclusively any one (1) building untenable. The term "substantial loss" relative to the Common Elements not serving exclusively a Unit shall mean a loss involving damage or destruction having a cost of restoration or repair of more than two-thirds (2/3rds) of the replacement cost of the improvements which are damaged or destroyed by casualty.

#### 9.1 Damage and Destruction.

9.1.1 Claims, Adjustments and Repair Estimates. Immediately after any damage or destruction to all or any part of the Submitted Property covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Owners and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damaged or destroyed property.

9.1.2 Common Elements. In the case of damage or destruction to Common Elements not serving exclusively a Unit, such damage or destruction shall be repaired or reconstructed unless both (i) there is a substantial loss of the Common Elements not serving exclusively a Unit resulting from such damage or destruction and (ii) within sixty (60) days of the date of such casualty, Owners having four-fifths (4/5ths) of the Votes in the Association Vote not to repair or reconstruct.

9.1.3 Units. In the case of a casualty causing damage or destruction to a Unit and/or Common Elements serving exclusively a Unit, such damage or destruction (including any damage or destruction to any Common Elements serving exclusively such Unit) shall be repaired or reconstructed unless each of the following occur: (i) there is a substantial loss of all the Units (including any damage or destruction to any Common Elements serving exclusively such Unit) contained in any one (1) building in the Condominium; and (ii) within sixty (60) days of such casualty, 100% of the Owners of damaged or destroyed Units and 80% of all Owners vote and agree in writing not to repair or reconstruct. Should the Owners so decide not to repair or reconstruct damaged or destroyed Units, then such damaged or destroyed Units shall not be repaired or reconstructed and the provisions of Section 47C-3-113(h) of the Act shall govern and control the ownership of such damaged or destroyed Units. The undivided interest in the Common Elements, votes in the Association and share of liability for Common Expenses appertaining to such Condominium Units shall thenceforth appertain to the remaining Condominium Units on the basis of an equal share per Unit.

9.1.4 Extension of Time. If for any reason the amount of insurance proceeds to be paid as a result of a casualty, or reliable and detailed estimates of the cost of repair or reconstruction of such casualty, are not made available within sixty (60) days after such casualty, then the sixty (60) day period specified above, shall be extended until such information is made available; provided, however, that such period of time shall in no event exceed One Hundred Twenty (120) days after such casualty.

9.1.5 Application of Proceeds: Common Elements and Units Not Repaired. If it is determined in accordance with the provisions hereof that any damaged Common Elements not serving exclusively a Unit shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be divided among the Owners in accordance with their percentage or fractional interests in the Common Elements. If it is determined in accordance with the provisions hereof that any damaged Unit shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be paid to the Owner of such damaged Unit in proportion to the total damage for which proceeds are received, and thereupon such Owner shall have no further right, title or interest in the Condominium. In all cases where there is a Mortgagee endorsement with respect to a Unit, any insurance proceeds shall be disbursed to the Owner and such Mortgagee jointly, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. The Association shall cause the debris to be removed from any area on which was located a damaged Unit or damaged Common Elements which are not to be repaired or restored and shall landscape and restore such area to a clean, safe and attractive condition, and the Board of

Directors shall have the right to levy a special Assessment against all of the Owners of the Condominium Units to raise the funds necessary to defray the costs of such work in excess of any amounts which may be available from any reserve funds of the Association maintained for such purpose.

9.2 Manner of Repair and Reconstruction. All repairs, reconstruction or rebuilding to be made as a consequence of a fire or other casualty shall be made in accordance with the following provisions:

9.2.1 Common Elements. If the damage to be repaired or reconstructed is to the Common Elements, and if the insurance proceeds payable as a result of such damage or destruction is less than (10%) of the total annual revenues anticipated to be received by the Association under the then current budget of the Association, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specification as may be approved for such purpose by the Board of Directors. If the damage to be repaired or reconstructed is to the Common Elements, and if the insurance proceeds available as a result of such damage or destruction is greater than ten percent (10%) of the total annual revenues anticipated to be received by the Association under the then current budget of the Association, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors; provided, however, that in the event the Board of Directors shall approve plans and specifications for the repair or reconstruction of such damaged property which differ materially from those of the damaged property prior to the occurrence of such damage, such plans and specifications shall be submitted for the approval of a majority of the Association, if a request to such effect is submitted in writing signed by Owners together possessing at least fifteen percent (15%) of the total Vote of the Association no later than 14 days after the meeting at which the Board of Directors approve such differing plans and specifications.

9.2.2 Units. If the damage to be repaired or reconstructed is to any Unit, such repair, reconstruction or rebuilding shall be substantially in accordance with the plans and specifications for such damaged Unit prior to the occurrence of such damage.

9.2.3 Responsibility for Repair or Reconstruction. All of the work of repairing or reconstructing any portion of the Submitted Property, the damage to or destruction of which resulted in the payment of any insurance proceeds under any insurance policy maintained by the Association, shall be the responsibility of the Association and shall be performed under the supervision of the Board of Directors. In discharging such

supervisory responsibility, the Board of Directors shall be authorized, but shall not be obligated, to employ as its agent or consultant such building supervisors or architects as the Board of Directors shall determine. Any fees which shall be payable to any such building supervisor or architect as shall be employed by the Board of Directors shall be a Common Expense of the Association.

### 9.3 Costs of Repair and Reconstruction.

9.3.1 Common Elements. The costs of repairing or reconstructing any portion of the Common Elements not exclusively serving any Unit which shall be damaged or destroyed shall be paid with any insurance proceeds which shall be paid to the Association on account of such damage or destruction. If such insurance proceeds, together with any amounts as may be available from any reserve funds maintained by the Association for such purposes, are not sufficient to defray such costs of repair or reconstruction, then the Board of Directors shall levy a special Assessment against all of the Owners of the Condominium Units to raise the excess funds necessary to defray such costs.

9.3.2 Units and Common Elements Exclusively Serving Units. The costs of repairing or reconstructing each Unit which shall be damaged or destroyed, together with any portion of the Common Elements exclusively serving such Unit which shall be damaged or destroyed, shall be paid with the insurance proceeds which shall be paid to the Association on account of such damage or destruction for such Unit. If any amounts shall remain after all of the costs and expenses of repairing and reconstructing the Unit are paid, such amounts shall be paid jointly to the owner and his mortgagee. If the amount held by the Association for such Unit is not sufficient to defray such cost of repair and reconstruction, the the Board of Directors shall levy a special Assessment against the Owners of the Condominium Units so involved to raise the excess funds necessary to defray such costs.

9.3.3 Common Elements Exclusively Serving a Unit. For purposes of this Article, Common Elements shall be deemed to serve exclusively a particular Unit only if they constitute all or a portion of the building in which such Unit is contained or a Limited Common Element assigned to such Unit. This concept is necessary because almost all structural parts of a building technically constitute Common Elements under the Unit boundaries established in Section 3.3 of this Declaration.

## ARTICLE 10

### ARCHITECTURAL CONTROL, USE RESTRICTIONS AND SALE OR LEASING OF UNITS

To assure a community of congenial Owners and thus protect the value of the Condominium Units, the Submitted Property shall be subject to the restrictions set forth in this

Article and in the rules and regulations of the Association.

10.1 Approval Required for Changes. To preserve the architectural appearance of the Condominium, no construction, painting or other changes of any nature whatsoever shall be commenced or maintained by any Unit Owner other than Declarant with respect to the exterior of any Unit or any other portion of the Condominium, including any Limited Common Elements appurtenant thereto, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or by an architectural committee appointed by the Board of Directors. An Owner may make improvements and alterations within his Unit; provided, however, that no Owner shall make any structural alterations in a Unit or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of that Unit or any other Unit or otherwise materially lessen the support of any portion of the Condominium. No Owner shall impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

10.2 Lighting. The design, type, location, size, intensity and color of all exterior lights (including both those mounted as part of the original design of the Submitted Property or otherwise in place at the time of the conveyance of a Unit to an Owner and those mounted with the consent of the Board of Directors) shall be subject to the prior written approval of the Board of Directors.

10.3 Residential Purposes. Except for Declarant's rights as set forth herein, all units shall be, and the same hereby are, restricted exclusively to single-family residential use, and the occupancy thereof shall be subject to such restrictions as the Board of Directors may establish pursuant to the rules and regulations of the Association. As used herein, the term "single-family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not so related who maintain a common household in a unit. This paragraph shall not, however, prevent a corporation, partnership, or other entity from owning a unit.

10.4 Business Activities and Signs. No business activities, other than the development and sales activities of Declarant as permitted hereunder, shall be conducted on any portion of the Submitted Property. Except as may be required by

legal proceedings and except as permitted in accordance with Section 4.8 hereof, no "For Sale" or "For Rent" signs or other signs or advertising posters of any kind shall be maintained or permitted on any portion of the Submitted Property. Notwithstanding the foregoing, the provisions of this Section shall not apply to any signs maintained on the Submitted property by Declarant, its agents, representatives or assigns, during the period that Declarant has any Condominium Unit for sale, or to the First Mortgagee of any unit pursuant to a Foreclosure Sale.

10.5 Pets. No animals or birds, other than two (2) generally recognized house pets (excluding pet fish in an aquarium) shall be kept or maintained on any portion of the Submitted Property and then only if they are kept or maintained solely as domestic pets and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Elements or Limited Common Elements. Pets shall be under leash when walked or exercised in any portion of the Common Elements. No pets shall be permitted to leave its droppings on any portion of the Common Elements and the Owner of such pet shall immediately remove the droppings. Upon the written request of any Owners, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular pet is permitted or such pet is a nuisance and shall have the right to require the Owner of a particular pet to remove such pet from the Condominium if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors may allow for a third pet in a particular instance and at its sole discretion, but such shall not be deemed a waiver of the 2-pet limit herein established. No pets may be kept and maintained outside of a unit. No horses, goats, or other livestock are allowed.

10.6 Use of Common Elements. The use and enjoyment of the Common Elements by the Owners and their Occupants shall be subject to such reasonable rules and regulations as may be made and amended from time to time in accordance with Section 7.5 of this Declaration. This Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

10.7 Antennas. No antenna or other device for the transmission or reception of television signals; radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Submitted Property, whether attached to a building or structure or otherwise.

10.8 Motor Vehicle, Trailers, Boats, Etc. Automobiles shall be operated and parked only upon those portions of the Common Elements designated for such purpose on the Plat, Plans or by the Board of Directors. Other motor vehicles, including, without limitation, mobile homes, motor homes, truck

campers, trailers of any kind and boats, shall be kept, placed, stored, parked, maintained or operated only upon those portions of the Submitted Property, if any, designated specifically for such purpose by the Board of Directors. Further, although not expressly prohibited hereby, the Board of Directors may prohibit mobile homes, motor homes, truck campers, trailers of any kind, motorcycles, motor scooters, motorized bicycles, mo-peds, motorized go-carts and other such contrivances, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Submitted Property if in the opinion of the Board of Directors such prohibition shall be in the best interest of the Condominium. No boats or trailers of any owner or member of his family, his tenants, guest or contract purchasers shall be parked within the right-of-way of any street in or adjacent to the property described herein.

Notwithstanding anything contained herein to the contrary, the Declarant, its agents, employees, successors and assigns shall be entitled to full use and benefits of the easements granted to or reserved by it over and through the Submitted Property and shall not be subject to the foregoing restrictions of this Paragraph 10.8.

10.9 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Submitted Property, except in containers specifically designated for such purpose, nor shall any odors, be permitted, so as to render any portion of the Submitted Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Submitted Property. No nuisance shall be permitted to exist or operate upon any portion of the Submitted Property so as to be offensive or detrimental to persons using or occupying other portions of the Submitted Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horn, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Submitted Property.

10.10 Prohibited Activities. Noxious or offensive activities shall not be carried on in any Unit or in any part of the Common Elements. Each Owner and Occupant shall refrain from any act or use of his Unit or the Common Elements which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants, or which could result in the cancellation of insurance on any Unit or any portion of the Common Elements, or which would be in violation of any law or governmental code or regulation. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Submitted Property.



10.11 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Submitted Property shall be observed and are hereby incorporated by reference herein as if set forth word for word. All unit owners shall acknowledge, adhere to, and comply with any and all such governmental regulations, including the provisions of the Coastal Area Management Act and the regulations of the Division of Environmental Management. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provisions of this Declaration, the more restrictive provisions shall apply.

10.12 Exterior Appearance. To provide a neat, attractive and harmonious appearance throughout the Condominium, no awnings, shades, screens or other item shall be attached to, hung or used on the exterior of any window of a Unit without the prior written consent of the Board of Directors or an architectural committee appointed by the Board of Directors. Further, no foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose. Unless otherwise approved or waived by the Board of Directors, all shades, drapery linings and other window treatments visible from the exterior of a Unit on any window or door shall be white or off-white. Outside clothes lines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Submitted Property, nor shall any clothing, rugs or any other item be hung on any exterior railing.

10.13. Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Condominium Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Submitted Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Condominium Units, including, but without limitation, business offices, signs, model Units, sales offices, decorator units and design studios. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Submitted Property for such purposes and to use any Units owned by Declarant as model Units and as offices for the sale of the Condominium Units and related activities, such Units being located and described as provided herein and in the other Condominium Instruments.

10.14 Sale or Leasing. The following provisions shall apply to sales or leases of Condominium Units.

10.14.1 The right of any owner, including Declarant, to sell, transfer, convey, mortgage, encumber or pledge the Condominium Unit owned by such Owner shall not be subject to any right of first refusal or any similar restriction in favor of the Association or any other Owner, except Declarant.

10.14.2 No owner other than the Declarant, its successors and assigns, may lease his condominium unit for transient or hotel purposes. Leases may be in writing on a standard lease form prescribed by the Board and may be leased through the lease management services recommended by the Declarant, its successors and assigns, or the individual or firm with whom the Declarant has contracted with in regards to its lease management services. The Declarant is not hereby obligated to provide any such lease management services. Any lease shall be subject in all respects to the provisions of the Condominium Instruments and the rules and regulations of the Association; any failure by the lessee to comply with the terms of such Condominium Instruments shall be a default under the lease, any any lease shall so provide. In the event of non-compliance by any tenant of a Condominium Unit with the terms of the Condominium Instruments, the Board of Directors shall have the right to require the Owner or lessee of such Condominium Unit to terminate such lease because of such default and to levy a charge or fine against the Owner of such Condominium Unit for such non-compliance.

10.14.3 Any of the foregoing provisions of this Section which may be construed to the contrary notwithstanding, the lease by Declarant of any Condominium Unit owned by Declarant or the Lease by a mortgagee who becomes the owner of a Condominium Unit at a Foreclosure sale conducted with respect to the mortgage on such Condominium Unit or as transferee pursuant to any proceeding in lieu thereof, so long as such Condominium Unit is owned by such person, shall not be subject to the provisions of this Section except that the occupancy of any Condominium Unit by any lessee of such person shall be otherwise subject to the provisions of the Condominium Instruments and the rules and regulations of the Association.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 Amendment. This Declaration may be amended at any time and from time to time by the affirmative Vote of Owners having at least two-thirds (2/3rds) of the total Vote of the Association; provided, however, that during such time as Declarant has the right to appoint and remove members of the Board of Directors and Officers pursuant to Section 7.2 such amendment shall require the agreement of both Declarant and Owners to which two-thirds (2/3rds) of the Votes in the Association appertain, exclusive of any Vote or Votes appertaining to any Condominium Unit or Units then owned by Declarant. So long as the same shall not (a) adversely affect the title to any Condominium Unit, (b) change the percentage of

undivided ownership interest in and to the Common Elements appurtenant to any Condominium unit, (c) materially alter or change any Owner's right to the use and enjoyment of his unit or the Common Elements as set forth in this Declaration, or (d) otherwise make any material change in this Declaration, each Owner agrees that, if requested to do so, such Owner will consent to the amendment of the Condominium Instruments, (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation the provisions of the Act, or judicial determination which shall be in conflict therewith, (ii) if such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration or Federal Housing Administration, to enable such lender or purchaser to make or purchase mortgage loans on any Condominium Unit, or (iii) if any such amendment is necessary to enable any governmental agency to insure mortgage loans on the Condominium Units based on the statutes, laws, rules or regulations applicable to or promulgated by such agency. Except as expressly permitted or required by the Act and this Declaration, any amendment to this Declaration which would change the boundaries of any Unit, the undivided interest in the Common Elements, the number of Votes in the Association or the liability for Common Expenses appertaining to any Condominium Unit shall be approved in writing by all Owners. Any provisions in this Declaration which may be construed to the contrary notwithstanding, any amendment to this Declaration, which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to any Mortgagee shall require the prior written approval of such Mortgagee. Amendments to this Declaration or the other Condominium Instruments may be proposed by Declarant, by the Board of Directors, or by petition signed by Owners having at least thirty percent (30%) of the total votes of the Association. Agreement of the required majority of Owners to any amendment of the Condominium instruments shall be evidenced by their execution of the amendment. Any such amendment of the Condominium Instruments, including this Declaration, shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any Mortgagee required with respect to such amendment shall also be recorded with such amendment.

11.2 Eminent Domain. In the event that all or part of the Submitted Property shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation and all related matters, such as the reallocation of undivided interests in the Common Elements, liabilities for Assessment and Votes, shall be handled as follows:

11.2.1 If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Condominium Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other Condominium Instrument establishing the Condominium will entitle the Owner or other person to priority over any Mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Condominium Unit.

11.2.2 In the event all or any part of the Submitted Property shall be taken in condemnation or by eminent domain, each Owner hereby grants an irrevocable power of attorney to the Association to represent such Owner in any and all condemnation proceedings, negotiations, settlements and agreements with the condemning authority. The award for such taking shall be payable to the Association for the use and benefit of the Owners and their respective Mortgagees as their interest may appear and shall be disbursed by the Board as hereinafter provided.

11.2.3 If the taking is confined to the Common Elements, the Board of Directors shall arrange for restoration of the remaining Common Elements and the Board of Directors shall disburse the proceeds of the condemnation award in the same manner as required for the disbursement of insurance proceeds where damage or destruction to the Common Elements is to be repaired or reconstructed, as provided in Article 9 hereof.

11.2.4 If the taking includes any part of a unit, whether or not there is included in the taking any part of the Common Elements, such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided in Article 9 hereof, whereupon:

(i) The Board of Directors, using the proceeds of such condemnation award, shall acquire, on behalf of the remaining Owners, the Condominium Unit or Units of the Owner or Owners whose Condominium Unit or Units have been taken in whole or in part, at a price equal to the fair market value of such Condominium Unit or Units as of the date immediately preceding the condemnation thereof. Such price shall be determined by Majority vote of three (3) appraisers, one of whom shall be selected by the Owner or Owners affected, one of whom shall be selected by the Board of Directors and the third of whom shall be selected by the two (2) appraisers so selected. All appraisers so selected shall be members of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such institute is not then in existence), disinterested, have at least ten (10) years experience in the appraisal of real estate, be familiar with property values in Dare County, North Carolina, and have reasonable experience in the appraisal of Condominium Units.

(ii) After acquisition of the Condominium Unit or Units as aforesaid, the undivided interest in the Common Elements, Votes of the Association and share of liability for Common Expenses appertaining to such Condominium Units shall thenceforth appertain to the remaining Condominium Units on the basis of an equal share per Unit. The method of distributing the remainder of the condemnation award, if any, shall be determined by the Board of Directors.

11.3 Rights of Third Parties. This Declaration shall be recorded pursuant to the provisions of the Act for the benefit of

Declarant, the Owners and their Mortgagees as herein provided, and by such recording, the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provision of this Declaration without the consent, permission or approval of any adjoining owner or third person.

11.4 Termination. The Common Elements shall remain undivided, and unless the Condominium form of ownership hereby established is terminated in accordance with Section 47C-2-118 of the Act, no Owner nor any other person shall bring any action for partition or division of the whole or any part of any Condominium Unit or of the whole or any part of the Common Elements. The Condominium may be terminated or abandoned only by the agreement of all Owners, provided that all holders of Mortgages encumbering the Condominium Units consent thereto and agree if required by Section 47C-2-118 of the Act.

11.5 Enforcement. Each owner shall comply strictly with the provisions of the Condominium Instruments and rules and regulations of the Association. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or, in a proper case, any aggrieved Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, the Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Common Elements including any Limited Common Elements, where a violation exists and, at the expense of the violating Owner, abate or remove any erection, thing or condition that may be or exist contrary to the intent and meaning of the Condominium instruments or rules and regulations, if after notice and hearing as set forth in the Bylaws, it shall not have been corrected by such Owner. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of the Association, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Condominium Instruments and rules and regulations is essential for the protection of present and future Owners, it is hereby declared

that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association or, in any proper case, any aggrieved Owner or Owners, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure or omission on the part of the Association or any aggrieved Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association or its Officers or Directors for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulation, however long continued, or for the imposing of provisions which may be unenforceable.

11.6 Exhibits. All exhibits referred to herein and attached to this Declaration or any other Condominium Instrument are hereby incorporated in this Declaration or such other Condominium instrument in full by this reference.

11.7 Duration. Unless the Condominium is terminated as herein otherwise provided, the provisions of this Declaration shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and Mortgagees, their heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect perpetually to the extent permitted by North Carolina law.

11.8 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of the Condominium. The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date it is filed for record. In the event of any conflicts or inconsistencies between the Act, this Declaration or the Bylaws, the terms and provisions of the Act and this Declaration, in that order, shall prevail.

11.9 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 Rights of Mortgagees and Unit Owners. In addition to the rights of Mortgagees elsewhere provided, each mortgagee shall:  
(a) be entitled to written notice from the Association of any

default by the Owner of the unit mortgaged in the performance of his obligations under the Condominium Instruments which is not cured within sixty (60) days specifically including any delinquency in payment of an Assessment; (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of Owners, but not meetings of the Board of Directors; (c) be entitled to receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which a Mortgagee holds a Mortgage; (d) be entitled to receive thirty (30) days prior written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (e) be entitled to receive written notice of any proposed action which would require the consent of a specified percentage of the Mortgagees; and (f) be furnished copies of annual financial reports within 120 days after the end of the Association's fiscal year; provided, however, that such Owner or Mortgagee shall first file with the Association a written request (setting forth the name of such Owner or Mortgagee and the Unit Designation of the Unit with respect to which such request is made) that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of the mortgagee or owner at an address stated in such notice. Further, each mortgagee and unit owner shall, upon request, be entitled to inspect the books, records, and financial statements of the Association (including the Condominium Instruments and other documents) during normal business hours. Any First Mortgagees shall, upon written request, be entitled to an audited financial statement of the Association for the immediately preceding fiscal year.

11.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of the Declaration are declared to be severable.

11.12 Captions. The captions of each Article and Section hereof refers to its contents and are inserted only for convenience and are in no way to be construed as defining, extending or otherwise modifying or adding to the particular Article or Section.

11.13 Restrictions on Other Actions. Notwithstanding anything to the contrary contained in the Condominium Instruments, except as provided by the Act in case of substantial loss to the Units or termination and as provided herein in the case of condemnation, termination, partition or in the case of substantial loss to the Common Elements, unless at least two-thirds (2/3rds) of the First Mortgagees (based upon one vote for

each first mortgage owned) and owners (other than the Declarant) of the Condominium Units have given their prior written approval, neither the Association nor the owners shall be entitled to:

11.13.1 Except for special assessments levied pursuant to Section 6.3 hereof, and except for the distribution of hazard insurance proceeds pursuant to paragraph 9.3.2 hereof, change the pro rata interest or obligations of any Condominium 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 condominium unit in the Common Elements.

11.13.2 By act or omission, seek to encumber, sell or transfer the Common Elements, except in the case of reassignment of Limited Common Elements pursuant to Section 3.5 hereof (neither the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium nor the transfer, sale or encumbrance of an undivided interest in the Common Elements, as an appurtenance to a Unit, shall be deemed a transfer within the meaning of this subparagraph).

11.13.3 Use hazard insurance proceeds for losses to any part of the Submitted Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Submitted Property. Notwithstanding anything to the contrary contained in the Condominium Instruments, the provisions of this Section may be amended only by the vote of owners having at least two-thirds (2/3rds) of the total vote of the Association provided, however, that during such time as Declarant owns any Condominium Unit, such amendment shall require the agreement of Declarant and Owners to which two-thirds (2/3rds) of the Votes in the Association appertain, exclusive of any Vote or Votes appertaining to any Condominium Unit or Units then owned by Declarant.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal as of the day and year first above written.

Atlantic Estates, A North Carolina  
General Partnership

By: \_\_\_\_\_ (SEAL)  
William M. Fulgham, Partner

By: \_\_\_\_\_ (SEAL)  
T. Stockton Midgett, Partner

By: \_\_\_\_\_ (SEAL)  
Anderson Midgett, Partner