

## HERON COVE CONDOMINIUM

DARRELL A. FRY

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 15th day of March, 1988, by DARE COAST PROPERTIES, LTD., a North Carolina Corporation, (hereinafter referred to as "the Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

## ARTICLE I

## STATEMENT OF SUBMISSION

Section 1.1 Submission of Property

The Declarant, is the owner in fee simple of certain real property situated in the Town of Nags Head, Dare County, North Carolina, and more particularly described in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference. It is the intention of the Declarant to submit by this declaration that property described in Exhibit A, (hereinafter referred to as "property"), together with all improvements, easements, rights and appurtenances thereunto belonging in accordance with Chapter 47C of the General Statutes of North Carolina, entitled North Carolina Condominium Act (hereinafter referred to as the "Act"), thereby creating a condominium known as HERON COVE CONDOMINIUM, (hereinafter referred to as "HCC"). The Declarant pursuant to the Act will establish a plan of condominium unit ownership for HCC and will divide the property into twelve (12) units and does hereby designate all such units for separate unit ownership subject, to the provisions of Section 1.2 herein. The Declarant shall sell and convey condominium units to purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved with the maximum land that may be included in this declaration being that described in Exhibit B with the minimum land being subject to this declaration being that described in Exhibit A. The property described in Exhibit A shall also be referred to herein as Phase I of HCC.

NOW, THEREFORE, the Declarant does hereby publish and declare that all the property described in Exhibit A subject to this declaration is held, and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following restrictions, covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of the improvement of such property and the division thereof into condominium units, and shall be deemed to run with the land, and shall be a burden and benefit to the Declarant, its successors and assigns and any person acquiring

and owning an interest in the real property and improvements, their grantees, successors, heirs, administrators, devisees and assigns. Every grantee of any interest in such property by the acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in writing, shall be subject to provisions of the Act, and shall be deemed to have assented to the same.

#### Section 1.2 Notice of Intention for Future Submission

The Declarant is the owner of that property described in Exhibit B and it is the intention of the Declarant to submit said property at a later date as Phase II to this declaration and the Act by an amended declaration. The total combined property shall continue being known as HCC. At such time as Phase II is submitted to this declaration, all unit owners in both Phases subject to the declaration shall have the rights and privileges in all the common elements located within all Phases subject to this declaration. Applicable percentages of interest of each unit that is or may become subject to this declaration are determined in accordance with Article VI. For a more particular description of HCC, setting forth Phase I and Phase II, see Page 25 of those plans filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, entitled "Exhibit B/Phase II, Need Not Be Built".

#### Section 1.3 Name

The Property shall be known as the HERON COVE CONDOMINIUM.

#### Section 1.4 Condominium Ordinances

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

#### Section 1.5 Alterations of Units

Subject to Article IX of the by-laws, a unit may be altered pursuant to the provisions of Section 47C-2-113(a) and (b) of the Act.

Section 1.6 Limited Common Elements

The limited common elements serving or designed to serve each unit are hereby allocated solely and exclusively to each such unit. The limited common elements are defined in Section 2.1 (15) further described in Section 4.3.

Section 1.7 Unit Allocations

The allocations to each unit of a percentage of undivided interest in the common elements, of votes in the Association, and of a percentage of the common expenses, are as stated in Section 6.1.

Section 1.8 Encumbrances

The liens, defects and encumbrances on the property to which the rights of unit owners and occupants are hereby made subject are set out in Exhibit E.

Section 1.9 Reservation of Special Declarant Rights/The Declarants' Right to Add Real Estate

The Declarant hereby reserves all special rights including the right to add real estate described in Exhibit B to be added to HCC as Phase II. The Declarant expressly reserves the right until the third anniversary of the recordation of this declaration to expand HCC to include Phase II as set forth in Exhibit B and also as set forth in "Exhibit B/Phase II, Need Not Be Built" within those plans filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina.

## ARTICLE II

## DEFINITIONS

Section 2.1 Defined Terms

As provided in Section 47C-1-103 of the Act, terms that are not otherwise defined herein shall have the meaning provided therein. The following words, when used in this declaration, shall have the following meanings:

1. "Act" means the North Carolina Condominium Act, Chapter 47C, of the North Carolina General Statutes.

2. "Additional Land" means that land shown in Exhibit B other than Phase I which additional land is also referred to as Phase II for which Phase the Declarant has given notice herein of his intention to add said land to HCC, in the manner hereinafter provided.

3. "Allocated Interests" means the undivided interests in the common elements, the common expense liability, and votes in the Association allocated to each unit.

4. "Assessment" means a unit owner's share of the common expenses assessed against such unit owner and his unit from time to time by the HCC, in the manner hereinafter provided.

5. "Association" means HERON COVE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.

6. "Board" or Board of Directors" means the Board of Directors of the HERON COVE HOMEOWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of North Carolina, created hereunder. The "Director" or "Directors" means a member or members of the Board.

7. "By-laws" means the by-laws for the administration of the HCC, contained in Exhibit D; attached hereto and made a part hereof by this reference.

8. "Common Elements" means all portions of a condominium other than the units.

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

10. "Common Expense Liability" means the liability for common expenses allocated to each unit pursuant to Section 47C-2-107.

11. "Condominium" means the condominium created by this declaration.

12. "The Declarant" means DARE COAST PROPERTIES, LTD., a North Carolina Corporation or its successors in interest.

13. "The Declarant Control Period" means the period commencing on the date hereof and continuing until the earlier of (i) the date three years after the date of the first conveyance of a unit to a unit owner other than the Declarant, or (ii) the date upon which the Declarant surrenders control of the condominium, or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the units to unit owners other than the Declarant.

14. "Declaration" means this declaration creating unit ownership and establishing by-laws with covenants, conditions and restrictions for HERON COVE HOMEOWNERS ASSOCIATION, INC.

15. "Limited Common Elements" means a portion of the common elements allocated by the declaration or by operation of Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

16. "Limited Common Expenses" means expenses separately assessed against more than one but less than all the condominium units generally in accordance with use and said services.

17. "Member" means a unit owner.

18. "Mortgage" means any deed of trust, mortgage, security agreement, and financing statement of any and all other similar instruments given to secure the payment of a debt, by granting a security interest in a unit, its fixtures or contents.

19. "Mortgagee" means any secured party under a security agreement or mortgage, and the beneficiary under or a holder of a deed of trust.

20. "Percentage Interest" means the percentage of undivided interest each unit owner owns in the common areas and facilities as set forth in Section 6.1 of Article VI of this declaration.

21. "Person" means any individual, corporation, partnership, association, trustee, fiduciary, or other legal entity, and shall mean the plural or combination of the same where applicable.

22. "Phase I" means all that land described in Exhibit A of which has been submitted to this declaration.

23. "Phase II" means that portion of land described in Exhibit B which the Declarant has expressed intentions to add at a future date to HCC and which represents the maximum amount of land together with Phase I which will be subjected to this declaration.

24. "Plans" means the plans of the building, and units as set forth by John Simko & Associates and plans further include the site plan as prepared by Quible & Associates, dated March 15, 1988, consisting of six (6) pages and filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina.

25. "Property" means the real estate described in Exhibit A, and the real estate described in Exhibit B, if added by the Declarant pursuant hereto, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

26. "Special Declarant Rights" means those rights reserved for the benefit of the Declarant to complete improvements indicated on the plats and plans filed with the declaration and to exercise developmental rights of maintaining sales offices, management offices, and signs advertising HCC; to operate a model unit if necessary, to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium as referred to herein as Phase II, to make HCC, a part of a larger condominium by adding Phase II; and to appoint or remove any officer of the Association or any Board member during any period of the declarant control period.

27. "Supplementary Declaration" or "Amended Declaration" means the document filed by the Declarant to include Phase II within the condominium property, in the manner provided hereinafter.

28. "Unit" means a physical portion of the condominium designated for separate unit ownership or occupancy, the boundaries of which are described pursuant to Section 47C-2-105(a)(5) of the Act.

29. "Unit Boundaries" means the boundaries of each unit, both vertical and horizontal planes, as shown on the floor plans, including the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the unit, the undecorated surfaces of the ceiling facing the interior of the unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior panelling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

30. "Unit Owner" means the Declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

31. "Unit Owners Association" means HERON COVE HOMEOWNERS ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.

ARTICLE III

BUILDINGS ON THE LAND AND UNIT BOUNDARIES OF PHASE I  
ADDITIONAL LAND-PHASE II

Section 3.1 Location and Dimensions of the Building

The location and dimensions of the building on the land for Phase I are depicted on the site plat prepared by Quible & Associates, P.C., Consulting Engineers and Land Surveyors dated March 15, 1988, said plat being the first page of 7 pages filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, which site plan is hereby incorporated herein by reference thereto.

Section 3.2 Brief Description of Building and Improvements for Phase I

HCC shall contain one 3-story structure of 12 condominium units.

Phase One of HCC shall contain one, multi-unit structure containing twelve condominium units. The twelve units are arranged with two different basic floor plans, one being an exterior unit and the other being an interior unit. The units are arranged with four on each floor, three stories high on pilings with covered parking underneath as well as twelve individual storage rooms. The building has two exterior stairways, a walkway on each floor, as well as an elevator. The exterior wall construction is made of 3 1/2 inch steel studs with 3 1/2 inch insulation, a 5/8 inch drywall on the interior, a 3/8 inch rockboard on the exterior to which is attached one inch of styrofoam and STO (a product which is a stucco-like, water resistant product). On both the north and the south end there is a cedar shake accent panel. Structurally, the building is of reinforced concrete with a 7 1/2 inch slab making up the floor and ceiling of each unit which is supported by twelve inch columns.

Section 3.3 Units for Phase I

The location of units within the building and their dimensions are shown on the "plans," as prepared by John Simko & Associates and that site plan prepared by Quible & Associates,

dated March 15, 1988, consisting of six (6) pages and filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, which plans are hereby incorporated herein by reference. All units, their identifying numbers, location, and type are fully depicted on the plats and plans of the aforereferenced. The "size" of each unit is the total number of square feet contained therein determined by reference to the dimensions shown on the plats and plans to which reference should be made for a more particular description. A brief description of the units, their location and size is as follows:

Unit 104 is the first floor, north end unit containing approximately 2,000 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two baths, a private exterior balcony of approximately 10 x 30 as well as a private balcony off of the master bedroom on the northeast corner of the unit, which is approximately 10 x 10.

Unit 103 is the interior unit immediately south of Unit 104, also on the first living level. It is approximately 1,900 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 102 is essentially the same floor plan as Unit 103 and lays immediately south of Unit 103 on the first living level and contains approximately 1,900 square feet including living and dining area, kitchen, utility area, entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 101 is the unit on the south end of the first floor living level which has a typical exterior, end unit floor plan; the reverse of Unit 104. It contains approximately 2,000 square feet of living area which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two baths, a private balcony on the southwest corner approximately 10 x 10 and a private ocean front balcony of approximately 10 x 30.



Unit 204 is on the second living level immediately above Unit 104 and of the same dimensions and floor plan as Unit 104.

Unit 203 is on the second living level immediately above Unit 103 and of the same dimensions and floor plan as Unit 103.

Unit 202 is on the second living level immediately above Unit 102 and of the same dimensions and floor plan as Unit 102.

Unit 201 is on the second living level immediately above Unit 101 and of the same dimensions and floor plan as Unit 101.

Unit 304 is on the third living level immediately above Unit 204 and of the same dimensions and floor plan as Units 104 and 204.

Unit 303 is on the third living level immediately above Unit 203 and of the same dimensions and floor plan as Units 103 and 203.

Unit 302 is on the third living level immediately above Unit 202 and of the same dimensions and floor plan as Units 202 and 102.

Unit 301 is on the south end on the third living level. It is an exterior unit immediately above Unit 201 and of the same dimensions and floor plan as Units 101 and 201.

#### Section 3.4 Unit Boundaries for Phase I

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

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

(1) Upper Boundary: The horizontal plane of the exposed under side of the concrete floor plank above or the roof

rafters where there is not another unit above to include the loft and vaulted ceiling area.

(2) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab.

(b) Vertical (parametric) Boundaries: The vertical boundaries of the unit shall be the vertical plane which includes the back surface of the plasterboard of all walls bounding the unit extended to intersections with each other and with the upper and lower boundaries.

(c) The unit shall include the room containing the heating and air-conditioning apparatus, which apparatus shall be part of the unit. Any portion of a utility system or other apparatus serving more than one unit (e.g., pipes, conduits, ducts) which is partially within and partially without the unit, is part of the common elements. Any portion of a utility system serving only one unit which is located outside the unit is a limited common element appurtenant to that unit.

(d) Private balconies are bound horizontally from the core floor slab to the face of the core slab above. Private balconies are bound vertically from the inside face of the rail to the glass wall or structural walls in the East/West axis and from the inside of the rail to the inside of the rail in the North/South direction.

(e) Consistent with the intent of Section 47C-2-102 of the Act, it is the intent hereof that a unit will include all interior drywall, panelling and molding, any surface finish, or wallpaper, and all finished flooring, such as vinyl or ceramic tile floor covering, matting and carpeting, and ceiling joists. Each unit shall be deemed to include all doors, windows and other closures.

### Section 3.5 Units as Built for Phase I

For a more particular description of the units as built, see that filing of the Unit Ownership Act, Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, which description is controlling over any discrepancies with the units as described herein.

### Section 3.6 Maintenance Responsibilities for Phase I

Notwithstanding the ownership of the various portions of the common elements and the units by virtue of the foregoing boundary description, the provisions of the by-laws shall govern the division of maintenance and repair responsibilities between the unit owner and the Association.

Section 3.7 Relocation of Unit Boundaries and Subdivision of Units

Relocation of boundaries between units and subdivision of units is permitted subject to compliance with the provisions of Article IX of the by-laws and Section 47C-2-113(a) & (b) of the Act.

Section 3.8 Additional Real Estate, Phase II

The Declarant has reserved the right to add that property described in Exhibit B as Phase II HCC, which would include an additional twelve units. The twelve condominium units of Phase II will be substantially similar in style and design as those twelve condominium units of Phase I. Therefore, the brief description of building and improvements set forth in Section 3.2 and of the units set forth in Section 3.3. will be similar to the twelve additional units for Phase II.

The unit boundaries for the units in Phase II will be similar to the unit boundaries as described in Section 3.4 for Phase I.

Sections 3.6 "Maintenance Responsibilities" and 3.7 "Relocation of Unit Boundaries and Subdivision of Units" will also be applicable to the units of Phase II.

ARTICLE IV

COMMON ELEMENTS

Section 4.1 Location of Common Elements

Locations of the common elements to which each unit has direct access are shown on the plat and plans; pursuant to Section 47C-2-109(b) of the Act and include swimming pool and deck, walkway to the ocean, elevator, elevator room, parking, dumpster, signage and all other stairs, walkways and outdoor showers.

Section 4.2 Use of Common Elements

Each unit owner shall have the right to the common elements in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other unit owners. The Board shall, if any question arises, determine the use of the common elements. The Board shall have the right to promulgate rules and regulations limiting the use of common elements to unit owners and their guests as well as to provide for the exclusive use of a part of the common elements by a unit owner and his guests for special occasions, which exclusive use may be conditioned upon, among other things,

payment of a fee. In accordance with the provisions of this declaration and by-laws and reasonable rules and regulations of the Board, any unit owner may delegate the right to use common elements to immediate family living in the unit, to a limited number of guests or to tenants who reside in the condominium unit.

#### Section 4.3 Limited Common Elements

A unit owner shall be entitled to the exclusive use or use with others necessarily served thereby, of the limited common elements appurtenant to such unit and so designated in the plans. Limited common elements shall not be construed or interpreted to be separate and apart from the common elements in general, being limited only with respect to the reserved use thereof by the unit or units served. Limited common elements shall include, if appropriate, all balconies, patios (concrete slabs), entrance areas, any lighting facilities, equipment and wiring installed to illuminate the general common elements exclusive of any individual unit electric meter, all masonry walls, storage units, storage lockers on ground area east of parking space # 14, and any area designated on the plans as a limited element, or set out by the Board of Directors as a limited element for a unit.

Exclusive use of the limited common elements may be delegated by a unit owner to immediate family members, guests, or tenants who reside in the unit. Unit owners may place plants, furniture, or other similar items within the limited common elements adjacent or appurtenant to the unit, subject to reasonable rules and regulations duly adopted by the Board with respect thereto. No unit owner shall build or construct any type of storage or workshop facility or similar structure within the limited common elements unless prior approval is obtained from the Board of Directors.

#### Section 4.4 Additional Limited Common Elements

The Board shall have the right to approve, from time to time, changes in existing limited common elements, and to approve additional or new limited common elements, provided, that such additional limited common elements shall be immediately adjacent to the unit to which it shall appertain.

### ARTICLE V

#### EASEMENTS

#### Section 5.1 Use and Enjoyment

Every unit owner, the unit owner's family living in the unit, tenants, and permitted guests, shall have a right and easement of use and enjoyment in and to the common elements,

(including the right of access, ingress, and egress to and from his unit over those portions of the property designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions;

(a) The right of the Board of Directors to control the use and enjoyment thereof as provided in this declaration, and in the duly adopted rules and regulations of the Association, which shall include, but not be limited to, the right of the Board to limit use and enjoyment thereof to the unit owners, and their respective families living in the unit, tenants, and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a unit owner, his family, tenants, and guests; and

(b) The right of the Board of Directors to limit the number of guests of unit owners; and

(c) The right of the Board to suspend the voting rights and rights to use of the recreational facilities by a unit owner, his tenants and guests, for any period of time during which an assessment against his unit remains unpaid or any separate charge incurred by such unit owner for use of the recreational facilities remains unpaid, or for infraction of its published rules and regulations.

Section 5.2 Maintenance and Repair

There shall be an easement through the units and the common elements for the installation, maintenance, repair and replacement of units and the common elements. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

Section 5.3 Structural Support

Every portion of a unit or the common elements which contributes to the structural support of another unit shall be burdened with an easement of structural support.

Section 5.4 Encroachments

An easement for encroachment shall be granted pursuant to the provisions of Section 47C-2-114 of the Act.

Section 5.5 Utilities

There shall be a general easement upon, across, above and under all the property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, the construction, operation and maintenance

of all utility lines, pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines, and facilities related thereto, water, telephone, electricity, cable television, which said shall inure to the benefit of all unit owners. Should any party furnishing any service covered by this general easement require a specific easement by separate, recordable document, the Declarant, or the Board of Directors of the Association, as the case may be, shall have the right to grant such easement under the terms hereof.

#### Section 5.6 Easement to Facilitate Sales

The Declarant reserves the right to use any units owned by the Declarant as models, management offices or sales offices until such time as the Declarant conveys the title thereto to unit owners. The Declarant reserves the right to relocate the same from time to time within the property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the property and may be relocated or removed, all at the sole discretion of the Declarant.

#### Section 5.7 Declarants' Right to Grant Easements

The Declarant shall have the right, prior to the termination of the declarant control period, to grant and reserve easements and rights-of-way through, under, over and across the property shown in Exhibit A for construction purposes and for the installation, maintenance and inspection of the lines and appurtenances of public water, sewer, drainage, electricity, telephone, cable television, and other utilities. The Declarant also reserves the right, prior to the termination of the declarant control period to grant and reserve any other easements and rights-of-way required to facilitate sharing of services between the condominium and any portion of the property not then part of the condominium; provided, however, that the unit owners of such other portions bear a pro-rata share of the cost thereof in proportion to the relative number of dwelling units on such portion and on the condominium. The Declarant expressly reserves, the right-of-way and easement across all properties, roads, common areas, facilities, limited common areas and facilities necessary for the construction of Phase II of HCC.

ARTICLE VI

ALLOCATION OF COMMON ELEMENTS, COMMON INTERESTS,  
COMMON VOTES AND COMMON EXPENSE LIABILITIES

Section 6.1 Allocation of Common Elements, Common Interests,  
Common Votes and Common Expense Liabilities

The allocations to each unit of a percentage of undivided interest in the common elements, of a percentage of the common expenses, and of votes in the Association are as hereinafter set forth:

<u>Unit No.</u>	<u>Percentage of Undivided Interest In Common Elements</u>	<u>Percentage Of Common Expenses</u>	<u>Votes In Association</u>
101	1/12th	1/12th	1
102	1/12th	1/12th	1
103	1/12th	1/12th	1
104	1/12th	1/12th	1
201	1/12th	1/12th	1
202	1/12th	1/12th	1
203	1/12th	1/12th	1
204	1/12th	1/12th	1
301	1/12th	1/12th	1
302	1/12th	1/12th	1
303	1/12th	1/12th	1
304	1/12th	1/12th	1
			<u>Total = 12 Votes</u>

Section 6.2 Formula Used to Establish Allocations

The allocation of undivided interest in the common elements and of the common expenses is according to that percentage of votes given in the Association. The votes in the Association are equally allocated to all units and this applies to Phase I and also to Phase II in the event that Phase II is submitted.

Section 6.3 Allocation of Common Elements, Common Interests,  
Common Votes and Common Expense Liabilities in the  
Event of the Submission of Phase II

In the event that Phase II is hereafter developed as part of this declaration, the allocations to each unit of a percentage of undivided interest of the common elements, of a percentage of the common expenses, and of votes in the Association are as hereinafter set forth:

<u>Unit No.</u>	<u>Percentage of Undivided Interest In Common Elements</u>	<u>Percentage Of Common Expenses</u>	<u>Votes In Association</u>
101	1/24th	1/24th	1
102	1/24th	1/24th	1
103	1/24th	1/24th	1
104	1/24th	1/24th	1
201	1/24th	1/24th	1
202	1/24th	1/24th	1
203	1/24th	1/24th	1
204	1/24th	1/24th	1
301	1/24th	1/24th	1
302	1/24th	1/24th	1
303	1/24th	1/24th	1
304	1/24th	1/24th	1
101-B	1/24th	1/24th	1
102-B	1/24th	1/24th	1
103-B	1/24th	1/24th	1
104-B	1/24th	1/24th	1
201-B	1/24th	1/24th	1
202-B	1/24th	1/24th	1
203-B	1/24th	1/24th	1
204-B	1/24th	1/24th	1
301-B	1/24th	1/24th	1
302-B	1/24th	1/24th	1
303-B	1/24th	1/24th	1
304-B	1/24th	1/24th	1
			<u>Total = 24 Votes</u>

**Section 6.4 Consent to Allocations as Set Forth in Sections 6.1, 6.2 and 6.3**

By acceptance of a deed of a condominium in HCC, each unit owner for himself, his heirs, successors and assigns, agrees and consents that the Declarant, without need for further consent or joinder of any unit owner, may add Phase II as described in Exhibit B to HCC upon the recording by the Declarant of a supplementary declaration.

**Section 6.5 No Obligations**

Nothing contained in this declaration shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct, or provide any building except for those shown to be located in Phase I.



## ARTICLE VII

ADMINISTRATION OF THE CONDOMINIUM BY  
HERON COVE HOMEOWNERS ASSOCIATION, INC.

The Association shall administer the operation and management of HCC, and undertake and perform all acts and duties incident thereto in accordance with the terms of its articles of incorporation and by-laws. A true copy of these articles of incorporation and by-laws is annexed hereto and expressly made a part hereof as Exhibits C and D, respectively, which documents are incorporated herein by reference as if fully set out word for word. Including but not limited to all matters concerning the units, the Association, the Board of Directors, the Officers, the office of HCC, including the determination of common expenses and assessments against unit owners, payment of common expenses, collection of assessments, statement of common expenses, maintenance, repair, replacement, and other common expenses, additions, alteration or improvements by the Board of Directors and unit owners, restrictions on use of units; rules and regulations, rights of access, utility charges, parking spaces, all matters of insurance, all matters relating to repair and reconstruction after fire or other casualty, all mortgages, and rights of mortgagees; matters of compliance and default; and amendments to by-laws are all set forth within the by-laws and attached hereto in Exhibit D.

The unit owners of each condominium unit shall automatically become members of said Association upon his, their or its acquisition of an unit ownership interest in title to any condominium unit and its appurtenant undivided interest in common property, and the membership of unit owners shall terminate automatically upon unit owners being divested of such unit ownership interest and the title to such condominium unit, regardless of the means by which such unit ownership shall be divested. The person, firm or corporation holding the lien, mortgage or other encumbrance upon any condominium unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in said Association or to any of the rights or privileges of such membership. The Association, shall have and is hereby granted the authority and power to enforce provisions of this declaration and specifically to levy and to collect assessments in the manner and provisions as stated under "Operation of the Property" in Article VII of the by-laws as stated in Exhibit D, and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units and common property as Board of Directors of said Association may deem to be in the best interest of the Association.

## ARTICLE VIII

RIGHTS OF FIRST MORTGAGEES;  
VA, FNMA AND FHLMC PROVISIONS

The following provisions shall take precedence over all other provisions of this declaration and the by-laws:

Section 8.1 Amendments During The Declarant Control Period

Any amendments to this declaration or to the by-laws during the declarant control period excepting that supplementary declaration for the purpose of adding Phase II shall be subject to the prior approval of the elected representative of a majority of the holders of first mortgage position FNMA/FHLMC secured loans provided, however, that, if said representative or such lender(s) fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

Section 8.2 Availability of Condominium Documents, Books, Records and Financial Statements

The Association shall, upon request and during normal business hours, make available for inspection by unit owners and the first mortgagees and the insurers and guarantors of a first mortgage on any unit, current copies of the declaration, the by-laws, other rules and regulations governing the condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a first mortgagee or insurer or guarantor of a first mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of units, current copies of the declaration, by-laws, other rules and regulations governing the condominium, and the most recent annual audited financial statement (if one is prepared).

Section 8.3 Successors Personal Obligation for Delinquent Assessments

The personal obligation for assessments which are delinquent at the time of transfer of a unit shall not pass to the successors in title or interest to said unit unless said delinquent assessments are expressly assumed by them.

Section 8.4 Rights of Action

The Association and any aggrieved unit owner shall have a right of action against the Association for failure to comply with the regulations, and decisions of the Association made

pursuant to authority granted to the Association in this declaration and the by-laws.

Section 8.5 Management and Other Agreements

Any management agreement between the Declarant or the Association and a professional manager or any other agreement providing for services of the developer, sponsor, builder or the Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

Section 8.6 Right of First Refusal

The right of a unit owner to sell, transfer, mortgage or otherwise convey his interest in his unit shall not be subject to any right of first refusal.

Section 8.7 Consent of First Mortgagees

This Section 8.7 shall be effective only if, at the time this Section would apply, at least one unit is subject to financing. Any decision to terminate the condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of eligible mortgage holders, as defined in Section 8.9 hereof, representing at least 67% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act. Except for any amendment to the declaration made for the purpose of adding real estate to the condominium in accordance with the provisions hereof, any amendment to the declaration or by-laws which changes any of the following shall require the prior written consent of unit owners holding at least 67% of the total votes in the Association and of eligible mortgage holders representing at least 51% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of common elements;
- (d) responsibility for maintenance and repairs;

- (e) reallocation of interests in the common elements or limited common elements or rights to their use;
- (f) boundaries of any unit;
- (g) convertibility of units into common elements or common elements into units;
- (h) expansion or contraction of the condominium or the addition, annexation or withdrawal of property to or from the condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of units;
- (k) imposition of any restrictions on a unit owner's right to sell, transfer or otherwise convey his unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by any eligible mortgage holder;
- (m) restoration or repair of the condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this declaration or the by-laws;
- (n) any action to terminate the legal status of the condominium after substantial damage or destruction or condemnation; or
- (o) any provisions that expressly benefit first mortgagees or insurers or guarantors of first mortgages.

**Section 8.8 Consent of First Mortgagees or Unit Owners**

This Section 8.8 shall be effective only if, at the time this Section would apply, at least one unit is subject to FNMA/FHLMC financing. Unless first mortgagees holding at least 66 2/3% of the votes allocated to first mortgagees (except first mortgagees having one vote per unit financed), or such higher percentage as is required by law, of the first mortgagees (based upon one vote for each first mortgage owned) and unit owners (other than the Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the condominium;

- (b) except in the case of adding the real estate of Exhibit B, change the pro-rata interest or obligations of any unit for the purpose of:
  - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
  - (ii) determining the pro-rata share of unit ownership of each unit in the common elements;
- (c) partition or subdivide any unit;
- (d) except in the case of adding the real estate of Exhibit B, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any part of the condominium (whether to units or to common elements) for other than repair, replacement or reconstruction thereof.

#### Section 8.9 Notice

Each first mortgagee and each insurer or guarantor of a first mortgage, upon written request stating its name and address and describing the unit encumbered by the first mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of first mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the condominium or the unit securing its first mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the unit owner of the unit on which the first mortgagee held its first mortgage or in the performance of any obligation under this declaration or the by-laws by said unit owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each first mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders shall be considered an "eligible mortgage holder." With respect only to non-material amendments (which excludes items (a) to (c) of Section 8.7), such as for the correction of technical errors or for clarification, any first mortgagee who receives a written request by the Association, or any unit owner, to approve an addition or amendment to the declaration or by-laws who does not deliver or post to the

requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 8.10 Assessments

Assessments shall be due and payable in monthly installments. As provided in Article VIII of the by-laws and as legally required by Section 47C-3-115 of the Act, the Declarant shall pay all accrued expenses of the condominium until assessments are levied against the units. An assessment shall be deemed levied against a unit upon the giving of notice by the Board to a member of the Association who is a unit owner of that unit. Unit owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

Section 8.11 Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards

With respect to first mortgages held by or for the benefit of FNMA/FHLMC, no provision of this declaration or the by-laws shall be deemed to give a unit owner, or any other party, priority over any rights of a first mortgagee pursuant to its first mortgage on said unit owner's unit, in the case of a distribution to said unit owner of insurance proceeds or condemnation awards for losses to or a taking of units and/or common elements.

Section 8.12 Phase II: Common Element Interests; Reallocation

If Phase II is added, the unit ownership interest in the common elements and the liability for common expenses for each unit shall be reallocated in proportion to the area of each unit to the area of all units and the voting rights in the Association shall be reallocated on the basis of equality. The effective date for the assignment of assessments to the units added to the condominium shall be the date the Board levies an assessment against said units. All improvements intended to be located within Phase II and added to the condominium shall be substantially completed prior to the addition of Phase II and submission of Phase II to HCC.

ARTICLE IX

CONDEMNATION

If all or any part of the property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with provisions of Section 47C-3-113(d) and (g) of the Act.

## ARTICLE X

## AMENDMENT

This declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-108 and 47C-2-117 of the Act, except that no amendment altering or impairing special declarant rights may be made without the written consent of the Declarant. The Declarant has the right to file a supplementary declaration for the purposes set forth in Section 1.9 which amendment may be filed within the time allowed therein without any necessary joinder.

## ARTICLE XI

## TERMINATION

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

## ARTICLE XII

## GENERAL PROVISIONS

Section 12.1 Covenants Running with the Land

All provisions of this declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein including, but not limited to, every unit and the appurtenances thereto; and each and every provision of this declaration shall bind and inure to the benefit of all unit owners and claimants of the land or any part thereof or interest therein and their heirs, executors, administrators, successors and assigns, including the Declarant herein.

Section 12.2 Duration

So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it shall be the duty of the Board of Directors of the Association to enforce the covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signature of a majority of the unit owners reaffirming and newly adopting the declaration and covenants running with the land. Such adoption by a majority shall be binding on all, and each unit owner, by acceptance of a deed therefore, is deemed to agree that the declaration and covenants may be extended as provided in this Section 12.2.

Section 12.3 Articles of Incorporation and By-Laws of Heron Cove Homeowners Association, Inc.

A true copy of the articles of incorporation and by-laws of the Association, which together with this declaration shall govern the administration of the condominium, is attached hereto as Exhibits C and D, and by reference, is made a part hereof as if fully set out word for word.

Section 12.4 Interpretation

The provisions of this declaration and by-laws shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of the condominium property.

Section 12.5 Law Controlling

This declaration and the by-laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina, provided, however, that if there are conflicts or inconsistencies between the Act, and this declaration (in that order) the Act shall prevail and the unit owners covenant to vote in favor of such amendments as will remove such conflict or inconsistencies, except that where the Act, the declaration, or the by-laws conflict and the provisions of the Act are merely enabling and not mandatory, the provisions of the declaration or the by-laws shall control.

Section 12.6 Gender and Grammar

The singular, whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereto apply to corporations or individuals, men or women, shall in all cases be assumed as through in each case fully expressed.

Section 12.7 Captions

Captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the declaration or the intent of any provision hereof.

Section 12.8 Non-Waiver

The failure of the Declarant, Board of Directors, or any unit owner, or their respective legal representatives, heirs, successors and assigns, to enforce any restriction contained in this declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.



Section 12.9 Severability

All of the covenants, conditions, and by-laws, restrictions and reservations contained in this declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations or clause or phrase thereof.

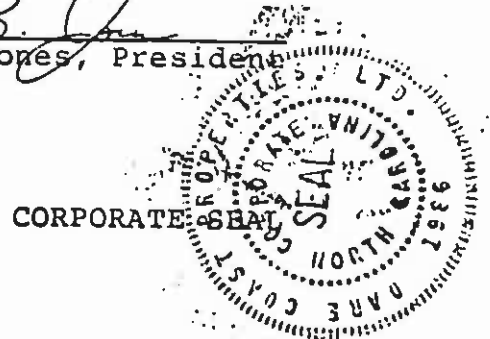
IN WITNESS WHEREOF, the Declarant has caused this declaration to be signed and sealed by its duly authorized officers, as its act and deed, the day and year hereinafter set out.

DARE COAST PROPERTIES, LTD.

By: Gordon B. Jones  
Gordon B. Jones, President

ATTEST

By: Helen M. Jones  
Helen M. Jones, Secretary

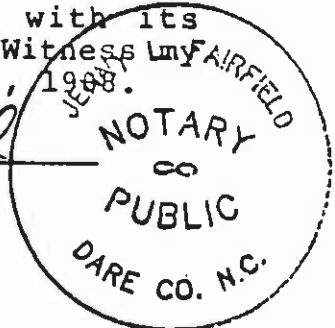


NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Helen M. Jones personally came before me this day and acknowledged that she is Secretary of DARE COAST PROPERTIES, LTD. a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary. Witness my hand and official stamp or seal, this 15th day of March, 1988.

11-22-92  
My Commission Expires

James J. Fairfield  
Notary Public



SEAL/STAMP

The undersigned Trustee pursuant go to those release provisions of Article II of that Construction Loan Agreement dated May 1, 1986 by and between DARE COAST PROPERTIES, LTD., a North Carolina Corporation and GREAT ATLANTIC SAVINGS BANK, F.S.B. the same being the beneficiary of that Deed of Trust recorded in Deed Book 507 at Page 338 in the office of the Register of Deeds of Dare County, North Carolina hereby joins in the execution of this declaration of unit ownership for the

purpose of consenting to the terms, conditions and covenants in the foregoing declaration and the by-laws which are referred to therein and hereby agrees that the lien of the Deed of Trust, any of the individual covenants contained therein and any and all interest of GREAT ATLANTIC SAVINGS BANK, F.S.B. as mortgagee or holder of that Deed of Trust are subject to the terms, conditions and covenants contained in said declaration.

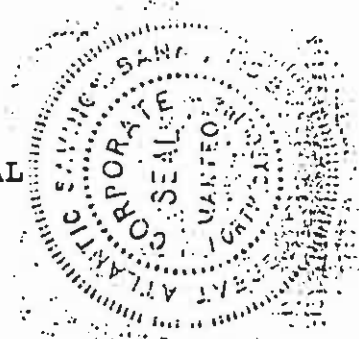
IN WITNESS WHEREOF, this consent has been executed in the name of the said mortgage holder, the 15th day of March, 1988.

GREAT ATLANTIC SAVINGS BANK, F.S.B.

BY: Willie Horne (SEAL)  
Willie Horne, President

ATTEST:  
By: Laura Crashead  
Secretary

CORPORATE SEAL

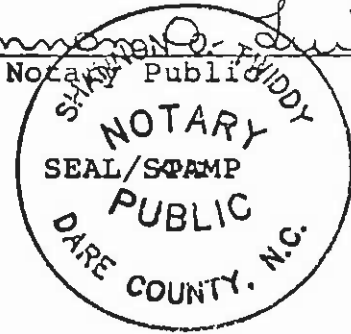


NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Mr. Willie Horne personally came before me this day and acknowledged that (s)he is Secretary of GREAT ATLANTIC SAVINGS BANK, F.S.B., a North Carolina Corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary. Witness my hand and official stamp or seal, this 15th day of March, 1988.

November 24, 1992  
My Commission Expires

Shannon O. Juddy  
Notary Public



DARE COUNTY NORTH CAROLINA

The foregoing Certificate(s) of Jenny L. Fairfield and Shannon O. Juddy  
both Notaries Public of Dare County, N.C.

It is certified to be correct. This instrument and this certificate are duly registered the date and time and in the Book and Page shown on the first page hereof.

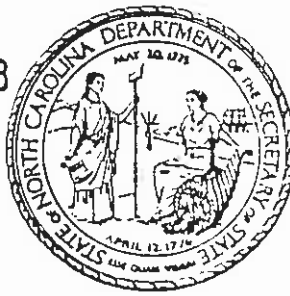
By Dorris A. Fry Register of Deeds for Dare County  
Mary B. Scarborough Assistant Register of Deeds





BK 562 PG 0418

# State of North Carolina



Department  
of the  
Secretary of State

To all to whom these presents shall come, Greeting:

I, Thad Eure, *Secretary of State of the State of North Carolina*, do hereby certify the following and hereto attached ( 3 sheets) to be a true copy of

ARTICLES OF INCORPORATION

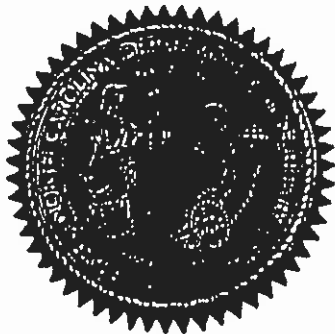
OF

HERON COVE HOMEOWNERS ASSOCIATION, INC.

and the probates thereon, the original of which was filed in this office on the 9th day of March 19 88, after having been found to conform to law.

In Witness Whereof, I have hereunto set my hand and affixed my official seal.

Done in Office, at Raleigh, this 9th day of March in the year of our Lord 1988.



*Thad Eure*  
Secretary of State

ARTICLES OF INCORPORATION

OF

HERON COVE HOMEOWNERS ASSOCIATION, INC.

I, the undersigned, a natural person of the age of eighteen years or more do hereby make and acknowledge these Articles of Incorporation for the purpose of forming a non-profit corporation under and by virtue of the Laws of the State of North Carolina, and as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act" and the several amendments thereto, and to that end hereby set forth:

ARTICLE I

The name of the corporation is HERON COVE HOMEOWNERS ASSOCIATION, INC.

RECORDED  
FILED  
SECRETARY OF STATE  
NORTH CAROLINA

ARTICLE II

The period of duration of the corporation is perpetual.

ARTICLE III

The purposes for which the corporation is organized are:

A. The operation and management of condominium townhouse building known as HERON COVE CONDOMINIUM which shall be established in accordance with Chapter 47C of the General Statutes of North Carolina Unit Ownership Act and to that end shall have power and authority;

(i) To undertake the performance of, and carry out the acts and duties incident to the administration of HERON COVE CONDOMINIUM in accordance with the terms, provisions, conditions and authorization contained in these Articles and in the Declaration which shall be recorded in the Public Records of Dare County, North Carolina;

(ii) To make, establish and enforce reasonable rules and regulations governing the use of condominium units, common elements, limited common elements, condominium property and real and personal property which may be owned by the Association itself;

(iii) To make, levy and collect assessments against condominium unit owners; to provide the funds to pay for common expenses of the condominium as provided in the condominium documents and the Unit Ownership Act, and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Association;

(iv) To maintain, repair, replace and operate the condominium property, specifically including all portions of the condominium property to which the Association has the right and power to maintain, repair, replace and operate in accordance with the condominium documents and the Unit Ownership Act;

(v) To reconstruct improvements within the condominium property in the event of casualty or other loss;

(vi) To enforce by any legal means, the provisions of the condominium documents, including the Declaration, these Articles, the By-Laws of the Association, and the rules and regulations for use of the condominium property;

ALDRIDGE,  
SEAWELL  
& KHOURY  
ATTORNEYS AT LAW  
P. O. BOX 1144  
IDA BEVE HALLS  
NORTH CAROLINA 27964

(vii) To contract for the management of the Condominium and to delegate to such manager or managers all powers and duties of the Association except those powers and duties which are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.

B. The Association shall have all the common law and statutory powers of the non-profit corporation which are not in conflict with the terms of the Declaration and the Condominium Association under and pursuant to the Unit Ownership Act, including all of the powers reasonably necessary to implement the purposes of the Association.

#### ARTICLE IV

##### MEMBERSHIP

A. The membership of HERON COVE HOMEOWNERS ASSOCIATION, INC., shall consist of all of the owners of the condominium units in HERON COVE CONDOMINIUM. Membership shall be established by acquisition of fee title to a condominium unit in HERON COVE CONDOMINIUM, whether by conveyance, devise, or judicial decree. A new owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to the condominium unit designated shall be terminated. Each new owner shall deliver to the Association a true copy of such deed or instrument of acquisition of title.

B. The share of a member in the funds and assets of the Corporation, and membership in the Corporation cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to a condominium unit.

C. There shall be one class of membership in HERON COVE HOMEOWNERS ASSOCIATION, INC., which shall consist of members owning the condominium units in HERON COVE CONDOMINIUM.

#### ARTICLE V

##### DIRECTORS

A. The number of Directors and the method of election of the Directors shall be fixed by the By-Laws; however, the number of Directors shall not be less than three.

B. The number of Directors constituting the initial Board of Directors shall be three (3), and the names and addresses of the persons who are to serve as the first Board of Directors are:

NAME	ADDRESS
Gordon B. Jones	4417 North Croatan Highway P.O. Box 949 Kitty Hawk, NC 27949
Helen M. Jones	4417 North Croatan Highway P.O. Box 949 Kitty Hawk, NC 27949
Gordon R. Jones	4417 North Croatan Highway P.O. Box 949 Kitty Hawk, NC 27949

ARTICLE VI

REGISTERED OFFICE AND REGISTERED AGENT

The address of the initial registered office of the corporation is 2400 North Croatan Highway, Kill Devil Hills, Dare County, NC 27949. The name of the initial registered agent at such address is: Daniel D. Khoury.

ARTICLE VII

TAX AGENT

The corporation shall have all the powers granted non-profit corporations under the laws of the State of North Carolina. Notwithstanding any other provisions of these Articles, this corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code. It is further provided that no distributions of income of the corporation are to be made to members, directors or officers of the corporation provided, however, that members of the corporation may receive a rebate of any excess dues and assessments.

ARTICLE VIII

INCORPORATOR

The name and address of the incorporator is: Daniel D. Khoury, Post Office Box 1584, Kill Devil Hills, N.C. 27948.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this the 7th day of March, 1988.

  
\_\_\_\_\_  
Daniel D. Khoury (SEAL)

NORTH CAROLINA  
DARE COUNTY

This is to certify that on the 7th day of March, 1988, before me, the undersigned Notary Public, personally appeared DANIEL D. KHOURY, who I am satisfied is the person named in and who executed the foregoing Articles of Incorporation, and I have first made known to him the contents thereof, he did acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal this the 7th day of March, 1988.

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

August 8, 1990  
My Commission Expires

SEAL/STAMP



EXHIBIT D TO DECLARATION  
FOR HERON COVE CONDOMINIUMS  
CREATING UNIT OWNERSHIP  
AND ESTABLISHING RESTRICTIONS,  
COVENANTS AND CONDITIONS

BY-LAWS OF

HERON COVE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, PURPOSE AND APPLICABILITY

1.1 Name. The name of this non-profit, non-stock membership corporation shall be HERON COVE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "Association".

1.2 Purpose. The purpose of the Association shall be to administer, manage, and operate the condominium property, in accordance with the Unit Ownership Act, the Non-profit Corporation Act of North Carolina, this Declaration, and the Articles of Incorporation and these By-Laws, as may be amended from time to time. The Association shall not engage in any activities other than those directly related to administration of the condominium property and the Unit Owners' responsibility with respect to the same.

1.3 Applicability. These By-Laws are applicable to the property known as HERON COVE CONDOMINIUMS, as such property is described on EXHIBIT A attached to that certain Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for HERON COVE CONDOMINIUMS. These By-Laws are binding on all present or future Owners, tenants, guests, residents, or other persons occupying or using the facilities of such condominium property. The mere acquisition, rental, or act of occupancy of any part of the condominium property will signify that these By-Laws are accepted, ratified, and will be complied with. The provisions of the Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for HERON COVE CONDOMINIUMS regarding the governing and administration of the Association are incorporated herein by reference.

ARTICLE II

DEFINITIONS

The definition of words contained in the DECLARATION, Article II shall apply to those words and terms as used in these By-Laws.

## ARTICLE III

## OFFICES, REGISTERED AGENT, SEAL, FISCAL YEAR

3.1 Principal Office, Registered Office. The principal office of the Association shall be located at 4417 North Croatan Highway, Kitty Hawk, NC 27949, or such other places as the Board of Directors may designate from time to time.

3.2 Registered Agent. The initial Registered Agent for the Unit Owners for matters incident to the condominium property and the initial Registered Agent for the Association is Daniel D. Khoury, whose address is Post Office Box 1584, Kill Devil Hills, NC 27948. The Registered Agent for the Association shall also be the Registered Agent for the Unit Owners. The individual serving as Registered Agent may be removed from office and replaced at any time by vote of the Board of Directors of the Association.

3.3 Seal. The seal of the Association shall contain the name of the Association, the word "Seal", and such other words and figures as desired by the Board of Directors. When obtained, the seal shall be impressed in the margin of the minutes of the initial meeting of the Board of Directors.

3.4 Fiscal Year. The fiscal year of the Association shall be January 1 through December 31.

## ARTICLE IV

## MEMBERSHIP

4.1 Qualification. Membership in the Association shall be confined to and consist of the Unit Owners. Membership shall be appurtenant to and inseparable from unit ownership. No Unit Owner shall be required to pay any consideration whatsoever for his membership. Membership in the Association shall inure automatically to Unit Owners upon acquisition of the fee simple title, whether encumbered or not, to any one or more units. The date of registration of the conveyance in the Dare County Registry of the unit in question shall govern the date of ownership of each particular unit. However, in the case of death, the transfer of ownership shall occur on the date of death in the case of intestacy, or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

4.2 Annual Meetings. The annual meetings of the Unit Owners Association shall be held at least seventy-five days before the beginning of each fiscal year on such date other than Sunday or legal holiday as may be established by the Board of Directors. At such annual meetings, members of the Board of Directors shall be elected by the Unit Owners in accordance with the requirements of Section 5.4 of these By-Laws. During the Declarant Control Period, the Declarant shall be entitled to designate members of the Board of Directors not elected pursuant to Section 4.4. If the special meeting held pursuant to Section 4.4 is held within six months of a scheduled annual meeting, the annual meeting shall not be held until the following year.

4.3 Place of Meetings. Meetings of the Unit Owners Association shall be held at the principal office of the Unit Owners Association or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

4.4 Special Meetings.

(A) The President shall call a special meeting of the Unit Owners Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by at least Owners of two units. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

(B) Not later than October 1, 1987, a special meeting of the Unit Owners Association shall be held at which a majority of the members of the Board of Directors shall be elected by the Unit Owners.

4.5 Notice of Meetings. The Secretary shall give to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners at least twenty-one but not more than thirty days, and of each special meeting of the Unit Owners at least seven but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The giving of notice in the manner provided in this Section and Section 11.2 of the By-Laws shall be considered service of notice.

4.6 Quorum; Adjournment if No Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least Sixty-Six and Two Thirds Percent (66 2/3%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until quorum is present.

4.7 Voting.

(A) The total votes in the Association are allocated to units by the Declaration. The votes allocated to the unit may be cast by the Unit Owner of that unit. When there is more than one Unit Owner of a unit, the vote for that unit shall be cast as they shall determine. The vote allocated to a unit shall not be split but shall be voted as a single whole. If there is more than one Unit Owner of a unit and said Unit Owners cannot agree on how to vote for that unit, such vote shall be cast, and the dispute shall be resolved by arbitration. The Association shall not be entitled to cast the votes allocated to the unit owned by it.

(B) Except where a greater number is required by the Condominium Act, the Declaration or these By-Laws, a Majority of the Unit Owners is required to adopt decisions at any meeting of the Association.

(C) No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors if payment of the assessment on his unit is delinquent more than thirty days and the amount necessary to bring his account current has not been paid at the time of such meeting or election. There shall be no cumulative voting.

4.8 Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor of only another Unit Owner, the Secretary of the Association, the Declarant or his Mortgagee, or in the case of a non-resident Unit Owner, the lessee of such Unit Owner's unit, his attorney or management agent. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such unit. Except with respect to proxies in favor of a Mortgagee, no proxy shall in any event be valid for a period in excess of one hundred eighty days after the execution thereof.

4.9 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereto. The President may appoint a person to serve as parliamentarian at the meeting of the Association. The then current

edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws or the Condominium Act. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.

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

## ARTICLE V

### DIRECTORS

5.1 Initial Board. The first Board shall consist of the three (3) persons elected by the members, whose names are set forth in the Articles, and successors to any thereof elected by the members.

5.2 Number and Qualifications of Directors. The Board shall consist of not less than three (3) nor more than five (5) natural persons, as determined at any annual meeting by the members. Each Director shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

5.3 Election of Directors. At the first annual meeting of the members, and at each subsequent annual meeting, the members shall elect the Directors by a majority of the votes cast in the election.

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

5.5 Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty-six percent (66%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term.

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

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

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

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

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

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

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

5.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law,

applicable statutes, the Act, the Declaration, the Articles, and these By-Laws, as any thereof may from time to time be amended. such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these By-Laws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually, a report containing at least the following:

(i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) A statement of the financial condition of the Association for the last fiscal year.

(iv) A statement of the status of any pending suits or judgments in which the Association is a party.

(v) A statement of the insurance coverage provided by the Association in accord with the requirements of Article XII of these By-Laws.

(vi) A statement of any unpaid assessments payable to the Association, identifying the unit and the amount of the unpaid assessment.

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.

(c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Elements.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof for the general welfare and safety of HERON COVE CONDOMINIUMS.

(e) To enforce the provisions of the Declaration, the Articles, these By-Laws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these By-Laws, or the

Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a unit without the approval of the Unit Owner.

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

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium, the Common Elements, or more than one unit.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement, modification or improvement of common elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(k) To buy units, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in units from time to time owned by the Association.

(l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the units.

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

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

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

(p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy



reasonable fines for violations of the Declaration, these By-Laws, or the rules and regulations.

ARTICLE VI

OFFICERS

6.1 Designation of Officer. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association.

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

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

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

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

6.6 Powers and Duties of Officers.

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

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

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors

and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7 Execution of Agreements, etc. All agreements, deeds, mortgages, or other instruments shall be executed by any two (2) officers, or by such other person or persons as may be designated by the Board.

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

#### ARTICLE VII

##### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the appropriate sections of the North Carolina General Statutes, as now enacted or hereafter amended.

#### ARTICLE VIII

##### COMMON EXPENSES, ASSESSMENTS AND LIENS

8.1 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these By-Laws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Property until the units are separately assessed; premiums including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees;

costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 5.13(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result or the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VIII hereof.

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

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

8.4 Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning January 1, 1987, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after creation of the Condominium shall be prepared and adopted by the Board only for the balance of the then fiscal year of the Association, commencing on the date of substantial completion of all structural components and mechanical systems serving more than one unit of the initial building to be constructed, shall be prepared and adopted as soon as

practicable after said date of substantial completion, and notice of the amount of the assessment against each unit for such balance of the fiscal year shall be given by the Board to each member as soon as practicable after adoption. Such assessment shall be deemed levied upon notice thereof given by the Board.

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

8.6 Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Except for special assessments, one quarter (1/4) of the assessment shall be paid on or before the first (1st) day of each January, April, July and October of each calendar year. Payments shall be made to the Association, or as the Board may from time to time otherwise direct.

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

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

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

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

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

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

The reserve fund for repairs and replacements shall be established by the Board beginning with the fiscal year beginning January 1, 1988 and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

8.9 Special Assessments. In addition to the assessments levied pursuant to Section 8.4, the Board, in its discretion, may levy special assessments at such other and additional times as in its judgement are required for:

(a) Maintenance, repair, restoration and reconstruction of the Common Elements, and operation of the Condominium.

(b) Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment involving an expenditure in excess of Ten Thousand Zero Hundred and No/100 Dollars (\$10,000.00) shall be first approved by the members entitled to cast at least fifty percent (50%) of the total votes in the Association at a regular or special meeting of the Association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Section 14.1 and 14.5 hereof.

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

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

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the unit, or in equal

shares to the units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any item of Common Expenses benefiting less than all of the units against the units benefited in proportion to their Common Expense liability.

8.11 Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.4 each member shall continue to pay the assessment then previously levied pursuant to Section 8.4 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

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

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

encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien and the Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose.

The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any condominium unit from the date on which payment of any assessment or installment thereof became delinquent, and the Association shall be entitled to the appointment of a receiver to collect the same.

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

All persons, firms or corporations who shall acquire by whatever means, any interest in the ownership of any condominium unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice to the lien rights granted to the Association and shall acquire such interest in any condominium unit expressly subject to such lien rights.

8.14 Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. All payments upon account shall be the maximum allowed by the Act. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

## ARTICLE IX

## RELOCATION AND ALTERATION OF UNITS

9.1 Procedure. If any Unit Owner desires to (i) relocate the boundaries of his unit pursuant to Chapter 47C-2-114 of the Act, (ii) remove partitions or create apertures pursuant to Chapter 47C-2-113 of the Act, or (iii) make any improvements or alterations to his unit which impair the structural integrity or mechanical systems of, or lessen the support of any portion of, the Condominium, the procedure set out in this Article shall be followed. No Unit Owner shall paint or alter the exterior of his unit, including the doors and windows, nor shall any Unit Owner paint or latex the exterior of OCEANS NORTH CONDOMINIUM without the prior written consent of the Board of Directors as hereinafter set forth.

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

9.3 Appeal to Association. The Unit Owner proposing to do the work, or members representing ten percent (10%) or more of the total votes in the Association, may appeal the decision of the Board to the Association by filing a signed written request for an Association meeting on the work proposal. The written request must be filed with the Secretary within ten (10) days of the date of the notice of the Board's decision.



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

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

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

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

## ARTICLE X

### MAINTENANCE, REPAIR AND REPLACEMENT

(a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than eighty percent (80%) of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements, the cost of which shall be charged to all Unit Owners as a Common Expense.

(b) By the Unit Owner. Every Owner shall perform promptly all maintenance and repair work within his condominium unit which, if omitted would affect the Condominium, either in its entirety or in part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each condominium unit shall be

liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his condominium unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of any and all walls, ceilings and floors within his unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his condominium unit. Whenever the maintenance, repair, and replacement of any item for which the Owner of a condominium unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such condominium unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The Owner of a condominium unit who has exclusive use of any Limited Common Area and Facility shall maintain such at his own expense, unless said Limited Common elements have been specifically designated by the board of Directors as maintenance responsibility of the Association. All glass doors, window frames, panes and screens are a part of the respective condominium units and shall be maintained by the respective unit owners.

(c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with compatible building materials and equipment. The method of approving payment vouchers for all repairs and replacements shall be determined by the Board of Directors.

ARTICLE XI

RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS;  
RULES AND REGULATIONS

(A) Restrictions. Each Unit and the Common Elements shall be occupied and used a follows:

- (1) Nothing shall be done or kept in any unit or in the Common Elements which will increase the rate of insurance for the Property or any part thereof applicable for residential use without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his unit or in the Common Elements which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste shall be committed on the Common Elements.
- (2) No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Board of Directors.
- (3) The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units.
- (4) No portion of any unit (other than the entire unit) shall be leased for any period. No Unit Owner shall lease a unit other than on a written form of lease: (i) requiring the lessee to comply with the Condominium Instruments and Rules and Regulations; (ii) providing that failure to comply constitutes a default under the lease, and (iii) providing that the Board of Directors has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the lessor thereunder after thirty days (30) prior written notice to the Unit Owner, in the event of a default by the tenant in the performance of the lease. The Board of Directors may provide a suggested standard form lease for use by Unit Owners. Each Unit Owner of a condominium unit shall, promptly following the execution of any lease of a condominium unit, forward a conformed copy thereof to the Board of Directors.
- (5) No trailers, campers, mobile-homes, recreational vehicles, and other large vehicles may be parked on the Property. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements. Vehicle repairs other than ordinary washing and waxing are not permitted on the Property.
- (6) The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within the unit or upon the Common Elements, except that the keeping

of small, orderly domestic pets (e.g., dogs, cats or caged birds not to exceed one animal per unit without the approval of the Board of Directors, is permitted, subject to the Rules and Regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board of Directors. Such pets shall not be permitted upon the Common Elements unless accompanied by an adult and unless carried or leashed. Any Unit Owner who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

(7) No person shall do any act to modify or change the landscaping of the Common Elements including the planting or removing of any shrubbery or trees, without the express written authority of the Board of Directors. The Board of Directors, at its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

(8) Each Owner shall be responsible for maintaining a minimum heat of fifty-five (55) degrees in their unit for the purpose of preventing the freezing of water pipes and resulting damage therefrom. If the Unit Owner is a non-resident during the winter months, then said Unit Owner shall be responsible for appointing someone to make periodic inspections for the purpose of insuring that the heating unit within said unit is properly working and maintaining a minimum degree temperature of fifty-five (55) degrees.

(9) No person shall obstruct, alter or in any way modify the established drainage from on, or over, any unit, Common Element, or Limited Common Element.

(10) Refuse and bagged garbage shall be deposited only in the area provided therefor.

(B) Use of Swimming Pool. The Board of Directors shall adopt rules and regulations pertaining to the use of the swimming pool which shall be binding upon all Owners and guests. These rules shall be observed by all Owners who shall also use their best efforts to see that they are observed by members of their family, guests, invitees,

servants, lessees and persons over whom they exercise control and/or supervision. These rules pertaining to the use of the swimming pool shall be mailed to each of the Unit Owners after the same have been adopted by the Board of Directors.

(C) Changes to Rules and Regulations. Each unit and the Common Elements shall be occupied and used in compliance with the Rules and Regulations which may be promulgated and changed by the Board of Directors. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner.

## ARTICLE XII

### INSURANCE

#### 12.1 Authority to Purchase; Notice.

(a) Except as otherwise provided in Section 12.5, all insurance policies relating to the Property shall be purchased by the Board of Directors prior to the conveyance of a condominium unit to any party other than Declarant. The Board of Directors shall not be liable for failure to obtain any coverages required by this Article XII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at a demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each Unit Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

(b) Each such policy shall provide that:

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

(2) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents or employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and neither shall have so cured such defect within sixty (60) days after such demand;

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

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

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

## 12.2 Physical Damage Insurance.

(a) The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, insuring the entire Property including fixtures and appliances initially installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by Unit Owners, and covering the interests of the Association, the Board of Directors and all Unit Owners and their Mortgagees, as their interests may appear, (subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors as Insurance Trustee contained in Section 12.6 and 12.7), in an amount not less than eighty percent (80%) of the replacement cost of the insured property (exclusive of the Land, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage). The liability insurance is to cover liability which might arise out of the use, ownership, or maintenance of the Common Elements.

(b) Such policy shall also provide:

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

(2) The following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be

prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction" or "condominium replacement cost"; and (iv) "agreed amount" or elimination of co-insurance clause; and

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

(c) A duplicate original of the policy of physical damage insurance and all renewals thereof, and any sub-policies or certificates and endorsements issued hereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board of Directors may determine, of the then current replacement cost of the Property (exclusive of the Land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 12.2. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to the Common Elements in excess of one percent (1%) of the then current replacement cost of the Property. The Mortgagee of a unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such unit.

12.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) and property damage insurance in such limits as the Board of Directors may from time to time determine,

insuring any member of the board of Directors, the Managing Agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owner (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and contain:

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

(b) hired and non-owner vehicle coverage;

(c) host liquor liability coverage with respect to events sponsored by the Association;

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

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

12.4 Other Insurance. The Board of Directors shall obtain and maintain:

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

(1) name the Association as an obligee;

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



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

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

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

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

12.5 Separate Insurance. Each Unit Owner shall have the right, at his own expense, to obtain insurance of his own unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his unit under coverage normally called "improvement and betterment coverage"; provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Board of Directors or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by a Unit Owner. All such policies shall contain waivers of subrogation. No Unit Owner shall obtain separate insurance policies on the Condominium except as provided in this Section 12.5.

#### 12.6 Insurance Trustee.

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

(b) The sole duty of the Board of Directors as Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these By-Laws, for the benefit of the insured and their beneficiaries thereunder.

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

ARTICLE XIII

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

13.1 When Repair and Reconstruction are Required. Except as otherwise provided in Section 13.4, in the event of damage to or destruction of all or any part of the building as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the building, including any damaged units, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Unit Owners in the units. Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the interior redecorating of his own unit.

13.2 Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged units and any floor coverings and kitchen and bathroom fixtures and appliances initially installed by Declarant, but not including any other furniture, furnishings, fixtures or equipment installed by the Unit Owner in the unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors as Insurance Trustee determines to be necessary.

(b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense and a special assessment therefore shall be levied.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any modifications required by changes in

applicable governmental regulations, and using compatible building materials and technology to the extent feasible.

### 13.3 Disbursements of Construction Funds.

(a) The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors as Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) If the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of twenty percent of the Mortgagees (based upon one vote for each Mortgage owned), such fund shall be disbursed pursuant to paragraph (2).

(2) If the estimated cost of reconstruction and repair is Fifty Thousand Dollars (\$50,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in North Carolina and employed by the Board of Directors as Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion to their Percentage Interests and shall be distributed in accordance with the provisions of Section 3-113 of the Act.

(c) Common Elements. When the damage is to both Common Elements and units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclosed and service the units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the units.

(d) Certificate. The Board of Directors as Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary certifying:

- (1) whether the damaged Property is required to be reconstructed and repaired;
- (2) the name of the payee and the amount to be paid with respect to disbursement from any construction fund whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; and
- (3) all other matters concerning the holding and disbursing of any construction fund.

Any such certificate shall be delivered to the Board of Directors as Insurance Trustee promptly after request.

13.4 When Reconstruction Is Not Required. In the event the Board of Directors elects not to repair insubstantial damage to the Common Elements, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Condominium and the balance of any insurance proceeds received on account of such damage shall be distributed among all Unit Owners in proportion to their respective Percentage Interest. If the Condominium shall be terminated pursuant to "Act", the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors as Insurance Trustee among all Unit Owners in proportion to their respective Percentage Interests, after first paying out of the share of each Unit Owner, to the extent sufficient therefore, the amount of any unpaid liens on his unit in the order of priority of such liens.

#### ARTICLE XIV

#### COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

14.1 Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these by-Laws, the

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

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

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

14.3 Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 14.2 hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 14.1 hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

14.4 Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 14.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

14.5 Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred until paid.

14.6 Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these By-Laws, the Articles, the rules and regulations or the Act, as the same may from

time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

14.7 Assessment Liens. Assessment liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article.

ARTICLE XV

AMENDMENT

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

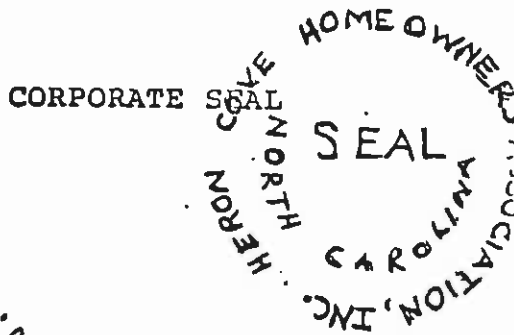
IN WITNESS WHEREOF, the Declarant has caused these By-Laws to be signed and sealed by its duly authorized officers, as its act and deed, on that date set forth within the acknowledgement hereof.

HERON COVE HOMEOWNERS ASSOCIATION, INC.

BY: *Gordon R. Jones* (SEAL)  
President

ATTEST:

*Jill M. Jones* (SEAL)  
Secretary



STATE OF NORTH CAROLINA  
COUNTY OF DARE

This the 19<sup>th</sup> day of April, 1988,  
Gordon R. Jones personally came before me,  
who being by me duly sworn  
says that he is the President of HERON COVE HOMEOWNERS  
ASSOCIATION, INC., that the seal affixed to the foregoing





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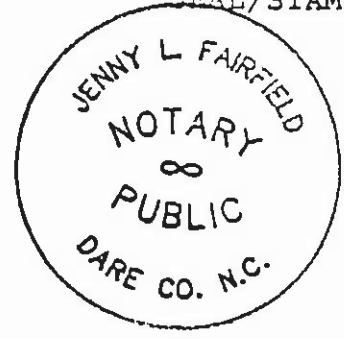
instrument in writing is the corporate seal of said corporation, said writing was signed and sealed by him in the office of said corporation by authority duly given him, and the said Secretary acknowledged the said writing to be the act and deed of said corporation.

*Jenny L. Fairfield*  
Notary Public

11-22-92

My Commission Expires

SEAL/STAMP





Prepared by & Return To:  
Daniel D. Khoury, Attorney  
P. O. Box 1584  
Kill Devil Hills, N. C. 27848

AMENDMENT TO DECLARATION

FILED

JUL 27 PM 4 48

OF

HERON COVE CONDOMINIUM

DARE COUNTY, N.C.

THIS AMENDMENT TO DECLARATION made this 17th day of July, 1990, by DARE COAST PROPERTIES, LTD., a North Carolina Corporation (hereinafter referred to as the "Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

W I T N E S S E T H:

WHEREAS, the Declaration of Unit Ownership for Heron Cove Condominium (said Declaration hereinafter being referred to as "Declaration" and Heron Cove Condominium hereinafter being referred to as "HCC") is recorded in Deed Book 562 at Page 390 in the Office of the Register of Deeds of Dare County, N.C. which Declaration submitted Phase I of HCC consisting of twelve condominium units to the Declaration of HCC. The location of said units and their dimensions are depicted on those plans prepared by John Simko & Associates and that site plan prepared by Quible & Associates, P.C., dated March 15, 1988 consisting of six pages and filed in Unit Ownership Book 4, Sheets 23 - 29 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, Declarant reserved developmental rights for the expansion of HCC by adding Additional Real Estate to HCC as further described in "Exhibit B" to the Declaration, said Exhibit being recorded in Deed Book 562 at Page 417 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, Declarant has now completed construction of Phase II of HCC consisting of an additional twelve condominium units and pursuant to that Notice of Intention set forth in Section 1.2 of the Declaration, Declarant by this Amendment to Declaration now wishes to submit Phase II to HCC; and

WHEREAS, by reservation of Special Declarant Rights, the Declarant has the right during the Declarant Control Period to make certain necessary amendments to the Declaration for the purpose of adding additional buildings in Phases as set forth in the condominium plan of unit ownership for HCC; and

WHEREAS, every Grantee of every interest in such property of HCC by the acceptance of a Deed or conveyance of any interest, whether or not such Deed or other conveyance of such interest shall be signed by the Grantee, shall be deemed by their acceptance of a Deed to a condominium unit in HCC to have consented to the powers of amendment therein reserved by Declarant and to any amendments previously or thereafter executed by Declarant pursuant thereto; and

WHEREAS, the Statement of Submission further provides that upon such amendment the undivided interest appurtenant to each condominium unit shall be determined in accordance with the provisions of Article VIII, Section 8.12 of the Declaration; and

WHEREAS, Declarant now desires to add Phase II to the Declaration consisting of twelve additional condominium units further described herein, and pursuant to the provisions of HCC to amend the Declaration as provided for therein to accomplish such incorporation and addition;

NOW, THEREFORE, Declarant hereby certifies as follows:

(1) Declarant is the owner of the land described in "Exhibit A" to this Amendment to Declaration, and said land is that land previously referred to as "Additional Land" in the Declaration of HCC and Section 1.1 of the Declaration is hereby amended to add that property in "Exhibit A" referred to as Phase II to the Declaration of HCC.



(2) That Section 3.1 "Location and Dimensions of the Building" is hereby amended as the same relates to Phase II as follows:

Section 3.1 Location and Dimensions of the Building of Building B of Phase II

Location and Dimensions of the Building on the land for Phase II are depicted on the site plan prepared by Quible & Associates, P.C., Consulting Engineers and Land Surveyors dated July 17, 1990, said plat being the first page of 11 pages filed in Unit Ownership File 4, Page 351, in the Office of the Register of Deeds of Dare County, North Carolina which site plan is incorporated herein by reference and is controlling over any discrepancies of the units as may be described herein.

(3) That Section 3.2 "Brief Description of Building and Improvements for Phase I" is hereby amended as the same applies to Phase II as follows:

Section 3.2 Brief Description of Building and Improvements for Phase II

Phase II of HCC contains one, multi-unit structure containing twelve condominium units. The twelve units are arranged with two different basic floor plans, one being an exterior unit and the other being an interior unit. The units are arranged with four on each floor, three stories high on pilings with covered parking underneath as well as twelve individual storage rooms. The building has two exterior stairways, a walkway on each floor, as well as an elevator. The exterior wall construction is made of 3 1/2 inch steel studs with 3 1/2 inch insulation, a 5/8 inch drywall on the interior, a 3/8 inch rockboard on the exterior to which is attached ICC one inch of styrofoam and STO (a product which is a stucco-like, water resistant product). On both the North and the South end there is a cedar shake accent panel. Structurally, the building is reinforced concrete with a 7 1/2 inch slab making up the floor and ceiling of each unit which is supported by twelve inch columns.

(4) Section 3.3 "Units for Phase I" is hereby amended as the same applies to Phase II as follows:

The location of units within the Building B and their dimensions are shown on that site plan prepared by Quible & Associates, P.C. filed in Unit Ownership File 4, Page 351 in the Office of the Register of Deeds of Dare County, North Carolina which site plan depicts all twelve units, their identifying numbers, and their location. A brief description of the units, their location and sizes are as follows:

Unit 104B is the first floor, North end unit containing approximately 2,000 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, three baths, a private exterior balcony of approximately 10 x 30 as well as a private balcony off of the master bedroom on the Northeast corner of the unit, which is approximately 10 x 10.

Unit 103B is the interior unit immediately South of Unit 104B, also on the first living level. It is approximately 1,900 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 102B is essentially the same floor plan as Unit 103B and lays immediately South of Unit 103B on the first living level and contains approximately 1,900 square feet including living and dining area, kitchen, utility area,

entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 101B is the unit on the South end of the first floor living level which has a typical exterior, end unit floor plan; the reverse of Unit 104B. It contains approximately 2,000 square feet of living area which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, three baths, a private balcony on the Southwest corner approximately 10 x 10 and a private ocean front balcony of approximately 10 x 30.

Unit 204B is on the second living level immediately above Unit 104B and of the same dimensions and floor plan as Unit 104B.

Unit 203B is on the second living level immediately above Unit 103B and of the same dimensions and floor plan as Unit 103B.

Unit 202B is on the second living level immediately above Unit 102B and of the same dimensions and floor plan as Unit 101B.

Unit 201B is on the second living level immediately above Unit 101B and of the same dimensions and floor plan as Unit 101B.

Unit 304B is on the third living level immediately above Unit 204B and of the same dimensions and floor plan as Units 104B and 204B.

Unit 303B is on the third living level immediately above Unit 203B and of the same dimensions and floor plan as Units 103B and 203B.

Unit 302B is on the third living level immediately above Unit 202B and of the same dimensions and floor plan as Units 202B and 102B.

Unit 301B is on the South end on the third living level. It is an exterior unit immediately above Unit 201B and of the same dimensions and floor plan as Units 101B and 201B.

For a more particular description of the Units As Built, see those plats depicting the same dated August 17, 1990 and certified by Mark S. Bissell, P.E. which plats are filed in Unit Ownership File 4 at Pages 357 - 367 in the Office of the Register of Deeds of Dare County, North Carolina.

(5) That Section 3.4 "Unit Boundaries for Phase I" is hereby amended as the same applies to Phase II as follows:

The unit boundaries for Phase II are as set forth in Article III, Section 3.4 of the Declaration for HCC.

(6) The Limited Common Elements in Phase II of HCC are as set forth in Article IV, Section 4.3 of the Declaration for HCC.

(7) That in accordance with Article VI, Section 6.3 of the Declaration, the allocations to each unit of percentage of undivided interest in the Common Elements, of the percentage of Common Expenses and of the votes in the Association for all units in Phase I and Phase II of HCC are as follows:

<u>Unit No.</u>	<u>Percentage of Undivided Interest In Common Elements</u>	<u>Percentage of Common Expenses</u>	<u>Votes</u>
101	1/24	1/24	1
101B	1/24	1/24	1
102	1/24	1/24	1
102B	1/24	1/24	1
103	1/24	1/24	1
103B	1/24	1/24	1
104	1/24	1/24	1
104B	1/24	1/24	1
201	1/24	1/24	1
201B	1/24	1/24	1
202	1/24	1/24	1
202B	1/24	1/24	1
203	1/24	1/24	1
203B	1/24	1/24	1
204	1/24	1/24	1
204B	1/24	1/24	1
301	1/24	1/24	1
301B	1/24	1/24	1
302	1/24	1/24	1
302B	1/24	1/24	1
303	1/24	1/24	1
303B	1/24	1/24	1
304	1/24	1/24	1
304B	1/24	1/24	1

(8) As the result of this Amendment to Declaration, twelve additional condominium units are added to HCC for a total of twenty-four units. That property described in "Exhibit A" to this Declaration constitutes that property upon which Phase II of HCC is situated upon.

(9) This Amendment to HCC does not divest any owner of any portion of his dwelling unit and does not materially alter the plan development set forth in the Declaration.

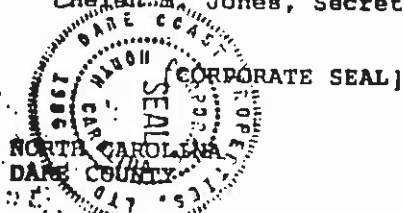
IN WITNESS WHEREOF, Declarant has caused this Amendment to Declaration to be signed and sealed the day and year below acknowledged.

DARE COAST PROPERTIES, LTD.

By: Gordon B. Jones (SEAL)  
Gordon B. Jones, President

ATTEST:

By: Helen M. Jones  
Helen M. Jones, Secretary



I, a Notary Public of the County and State aforesaid, certify that Helen M. Jones personally appeared before me this day and acknowledged that she is Secretary of Dare Coast Properties, Ltd., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

0K 7 2 1 0 0 1 8 4

WITNESS my hand and notarial seal this the 13th day of August, 1990.

2/27/95  
My Commission Expires

Nancy C. Burch  
Notary Public

[SEAL/STAMP]

The foregoing Certificate(s) of Nancy C. Burch a Notary  
Public of Dare County is/are certified to  
be correct. This instrument and this certificate are duly registered at the  
date and time and in the Book and Page shown on the first page hereof.

James A. Ray Register of Deeds for Dare County  
By: James A. Ray Deputy/Assistant - Register of Deeds



## "EXHIBIT A"

All that certain lot or parcel of land situated in the Town of Nags Head, Nags Head Township, Dare County, North Carolina and more particularly described as follows:

BEGINNING at a concrete monument situated in and on the East margin or right-of-way of North Carolina Highway 12 leading through the Town of Nags Head (a/k/a/ Virginia Dare Trail), said concrete monument also being the Southwest corner of Lot 16, Hawks Nest Subdivision as shown on plat recorded in Plat Cabinet A, Slide 286; thence proceeding from the point or place of beginning North 56 deg. 33 min. 02 sec. East 301.86 feet to an iron pipe; thence continuing North 56 deg. 33 min. 02 sec. East 129.14 feet, more or less, to the Atlantic Ocean; thence along the Atlantic Ocean, following the various courses and meanderings thereof in a general Southeasterly direction 174.35 feet to a point, said point being located on a course North 27 deg. 27 min. 16 sec. West 147.46 feet more or less, from the point of intersection of the North line of that property known as "The Admiral Condominiums"; thence cornering and proceeding South 63 deg. 13 min. 13 sec. West 158.72 feet to an iron pipe; thence cornering North 27 deg. 02 min. 41 sec. West 25 feet to an iron pipe; thence cornering South 62 deg. 57 min. 21 sec. West 62 feet to an iron pipe; thence cornering South 27 deg. 02 min. 38 sec. East 30 feet to an iron pipe; thence cornering South 55 deg. 17 min. 18 sec. West 55 feet to an iron pipe; thence proceeding South 63 deg. 22 min. 49 sec. West 89 feet to an iron pipe; thence cornering North 24 deg. 34 min. 54 sec. West 8 feet to an iron pipe; thence cornering South 66 deg. 34 min. 15 sec. West 67 feet to an iron pipe situated in the Eastern margin of the 60 foot right-of-way of North Carolina Highway 12; thence with the Easterly margin of the said right-of-way North 26 deg. 30 min. 15 sec. West 125 feet to the point or place of beginning, containing 1.48 acres more or less designated as "Heron Cove Condominiums Phase II" on that plat or survey for Dare Coast Properties, Ltd. by Quible & Associates, P.C. dated January 6, 1989.

