

DECLARATION

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NORTH CAROLINA

DARE COUNTY

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DECLARATION OF UNIT OWNERSHIP
OF WHISPERING SANDS
Nags Head, North Carolina

DORRIS A. FRY
REGISTER OF DEEDS
DARE COUNTY, N.C.

THIS DECLARATION, made this 2nd day of MAY, 1985, by

WHISPERING SANDS, a North Carolina partnership, herein called the Developer,
for itself, its successors, grantees, and assigns.

SECTION 1. SUBMISSION TO CONDOMINIUM OWNERSHIP.

A. The purpose of this Declaration is to submit the lands herein described and the improvements to be constructed thereon to the condominium form of ownership and use in the manner provided by North Carolina General Statutes Chapter 47A, herein called the Unit Ownership Act.

1. The name by which this Condominium is to be identified is Whispering Sands, herein called the Condominium, and its address is U. S. Highway 158, Nags Head, Dare County, North Carolina.

2. The lands owned by the Developer which are hereby submitted to the condominium form of ownership are located north of the Village of Duck, Atlantic Township, Dare County, North Carolina, and are shown on the survey attached hereto and incorporated herein by reference as Exhibit A and is more particularly described on Exhibit B attached hereto. The land described therein shall be known as Phase 1.

3. There is also submitted herewith a non-exclusive easement of ingress, egress and regress, to the aforesaid parcel of land, said easement being more particularly described on Exhibit B-1 attached hereto.

SECTION 2. ADDITIONAL LAND.

A. It is the intent of the Developer to create what is hereby referred to as an "expandable condominium", with the maximum land that may be included in this Declaration being that tract of land lying and being in Nags Head Township, Dare County, and more fully described in Exhibit C, together with the rights, easements and appurtenances thereunto belonging. The Developer, for itself, its successors and assigns, reserves the right herein, but shall not be obligated, to submit all or part of the land described in Exhibit C (excluding the land submitted herewith as Phase 1) to the provisions of the Unit Ownership Act and to the provisions of this Declaration on or before the seventh anniversary date hereof, by filing an amendment to this Declaration in the Office of the Register of Deeds of Dare County. The land described in Exhibit C as may be submitted shall be known as Phase 2.

B. At such time as Phase 2 is hereafter subjected to this Declaration and the Unit Ownership Act by an amended Declaration, the total combined property as submitted shall continue to be known as Whispering Sands. At such time as Phase 2 is submitted to this Declaration, it is hereby declared that the Owners of the Dwellings in the Phase 1, (i.e. the pre-existing Condominium) and the Owners of Dwellings in Phase 2 shall have the rights and privileges and be vested in a determinable fee in a percentage of the undivided interest of the common elements as set forth in Section 7 hereof. In addition, to the extent of any surplus property, conveyed to the Association and subjected to this Declaration, each Owner shall be vested in determinable fee of undivided interest as set forth in Section 10 herein.

A. "Agent" shall mean the Owner's Agent appointed as hereinafter provided.

B. "Association" means Whispering Sands Condominium Association, a non-profit corporation composed of all of the Dwelling owners to act as the "association of unit owner" as that term is defined by N.C.G.S. 47A-3(1). The Articles of Incorporation of the Association are attached as Exhibit D and are incorporated herein by reference.

C. "By-Laws" means the by-laws of Whispering Sands Condominium Association as attached as Exhibit E and incorporated herein by reference and as may be hereafter amended or modified.

D. "Common Elements" or "Common Property" means all that portion of the condominium property which is not included in the individual condominium units and is further defined in N.C.G.S. 47-A-3(2), except as modified herein.

E. "Common Furnishings" shall mean furniture, appliances and furnishings for the particular Dwelling to which an Owner is granted an interest, or other personal property from time to time owned or held for use by Owner of the particular Dwelling during occupancy.

F. "Condominium" means the ownership of single units in a group of multi-unit structures with common areas and facilities and surplus within Whispering Sands Condominium.

G. "Co-Ownership Interest" shall mean an undivided interest in a Dwelling and the right of use and enjoyment of the same in the manner provided herein.

H. "Declaration" shall mean and refer to this Declaration of Unit Ownership of Whispering Sands, as the same now exists or may be hereafter amended.

I. "Developer" shall mean Whispering Sands, a North Carolina partnership, or any successors or assigns in interest by liquidation or distribution or by an express assignment or conveyance of the rights of Developer hereunder by an instrument executed by Developer and recorded in the Dare County Registry.

J. "Building" means one of a group of single free-standing structures [each of which contains two or more "units" or "condominium units" as those terms are defined by N.C.G.S. 47A-3(12)] comprising a part of the "property" as that term is defined by N.C.G.S. 47A-3(10).

K. "Dwelling Unit" or "Dwelling" means an enclosed space consisting of one or more rooms occupying all or part of a floor, floors and building of one or more floors or stories regardless of its designated use and shall include such accessories, spaces and area as may be described in the Declaration, said Dwelling Unit being a "Unit" or "Condominium Unit" as defined in N.C.G.S. 47A-3(12).

L. "Expandable or additional land" or "Development Area" means the entire proposed development and parts thereof described in Exhibit C, which the Developer may, from time to time, but is not required, submit to this Declaration including such common elements, contractual rights, easements, recreation facilities, surplus property, roads, parking areas, and other rights and title appurtenant thereto.

M. "Limited Common Elements" shall mean those "limited common areas and facilities" as defined by N.C.G.S. 47A-3(7) which are a portion of the common elements reserved for the exclusive use of one or more, but less than all of the Dwelling units.

N. "Owner" or "Dwelling Owner" shall mean and refer to one or more unit owners, including Developer, who or which own fee simple title to any dwelling unit, excluding, however, those persons having such an interest under a mortgage or deed of trust. "Owner" or "Dwelling Owner" shall include (i) the grantee or grantees named under each deed of condominium conveyed by the Developer, (ii) the successive owner or owners of each interest therein so conveyed by the Developer, and (iii) the Developer with respect to any interest in a completed unit not conveyed. "Owner" or "Dwelling Owner" shall mean and include all of the owners in the aggregate of a dwelling unit owned in form of joint ownership, including by way of tenants in common or tenants by the entirety. As appropriate herein, reference to Owner or Dwelling Owner shall also include the duly appointed Representative of an Owner or Owners of a Dwelling Unit.

O. "Phase" shall mean and include such parts or portions of the "Expandable or additional land" as specifically identified and designated as Phase 1 or Phase 2 as may be added from time to time by the Developer to the condominium.

P. "Season Week" shall mean a one-week period of right of use in the Dwelling to be assigned as hereafter provided by the Agent. Unless otherwise provided by regulations adopted pursuant to this Declaration, a week shall commence and end at 12 noon on Sunday.

Q. "Surplus Elements" or "Surplus Property" shall mean that portion of the condominium property, not included as common property nor part of an individual unit, submitted by the Developer to this Declaration, and being so specifically designated including but not limited to streets, recreational facilities or sewage treatment facilities.

R. "Unit Owner" means the person, corporation, partnership, association, trust or other legal entities, singular or plural, or any combination thereof, who own a Dwelling unit.

S. "Two-Third's Majority in Interest of Owners" shall mean Owner or Owners owning in the aggregate more than two-thirds of the undivided interest in a particular Dwelling. In voting on matters pertaining to the Dwelling that come before the Owners, each Owner shall be entitled to a vote equal to the percentage of his undivided interest owned in a particular Dwelling.

SECTION 4. DEVELOPMENT OF PLANS. The Condominium is being developed according to the following plans:

A. (1) Phase 1, Whispering Sands - As shown on Exhibit F attached hereto and incorporated herein by reference.

B. This Declaration may be amended by filing in the Office of the Register of Deeds of Dare County such additional plans as may be required to describe adequately the completion of Phase 2. Such completion may be shown by a certificate of an architect or engineer certifying that the improvements have been constructed substantially as herein represented, or designating any changes made. Such plans or certificate when signed and acknowledged by the Developer and filed in the office of the Register of Deeds of Dare County shall in themselves constitute an amendment of this Declaration notwithstanding the procedures for amendment described elsewhere in this Declaration.

C. In the event the Developer shall exercise the option to expand the Condominium by adding Phase 2 from the expandable land to the existing Phase 1, this Declaration shall be amended by setting forth the name and phase number of such Phase 2 as added with a description of the improvements thereon. Along with the filing of the amended Declaration, there shall be attached thereto and filed in the office of the Register of Deeds of Dare

County such additional construction plans and specifications as required to describe the completed improvements. Such completion shall be shown by a certificate of an architect or engineer certifying that the improvements have been constructed substantially as therein represented.

D. Easements are reserved throughout the Condominium as may be required for utility services, including but not limited to those shown on any survey attached hereto, or attached to any amended declaration with respect to the Condominium. A valid easement does and shall continue to exist throughout the common and surplus elements of each existing and subsequent phase for the purpose of installation, maintenance, repair and replacement of sewer, water, television, electric and telephone services, including pipes, lines, mains, conduits, wires, transformers and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system.

E. If any portion of the common elements now encroaches upon any Dwelling Unit, or if any Dwelling Unit now encroaches upon any other Dwelling Unit or upon any portion of the common elements, as a result of the construction or repair of the Dwellings, or if any such encroachment shall occur hereafter as a result of settlement or shifting of any Dwelling, or otherwise, a valid easement for the encroachment and for the maintenance of the same, so long as the Dwelling stands, shall exist. In the event any Dwelling, any adjoining Dwelling, or any adjoining common element, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then reconstructed, encroachments of parts of the common elements upon any Dwelling or of any Dwelling upon any other Dwelling or upon any portion of the common elements, due to such reconstruction, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the building or Dwelling shall stand.

F. To the extent that any present or future Dwelling, common element or limited common element encroaches on any other Dwelling, common element or limited common element, by reason of any deviation from the plat or plans in the construction or rebuilding of any improvements or portion thereof, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist.

SECTION 5. DESCRIPTION OF DWELLINGS. The Dwellings of the Condominium are more particularly described as follows:

A. (1) Phase 1, Whispering Sands - As described on Exhibit G attached hereto and incorporated herein by reference.

B. At such time as Phase 2 may be submitted to this Declaration by the Developer, the description of the Dwellings thereon and development thereof shall be shown by amendments to this Section 5 and the preceding Section 4.

SECTION 6. COMMON ELEMENTS. The common elements of the Condominium shall include the following:

A. All of the land and premises of each phase, as described in such document submitting each respective phase to the Unit Ownership Act, including roads, streets, driveways, sidewalks, parking areas and landscaping located thereon shall be general common elements.

B. All facilities located underground in the Condominium shall be general common elements, including septic tank installation and associated pumps, pipes, tanks, drain fields, water lines, meters, cutoffs, and waste treatment facilities or systems associated therewith, except those retained and owned by the County of Dare.

C. At the ground level and extended upwards, all of the areas of the Condominium, not included in the Dwelling Units located thereon, shall be general common elements.

D. All garbage receptacles and containers located outside of a Dwelling Unit for use of all Dwelling Units of the Condominium shall be general common elements; provided, any such containers or receptacles exclusively for use of a particular Dwelling Unit shall be considered part of that Dwelling Unit.

E. All lighting facilities, equipment and wiring installed to generally illuminate the above common elements of the Condominium (and not controlled from within a particular Dwelling) and all electric lines, both primary and secondary, leading to a Dwelling Unit, (exclusive of any such lines leading from portions of the Dwelling Unit to heating or air conditioning facilities, or hot water heaters, located outside the Unit, but considered part of the Unit) shall be common elements.

SECTION 7. SHARES OF COMMON ELEMENTS AND EXPENSES.

Each Dwelling Owner shall own an undivided and equal interest in the common elements of the Condominium and shall be liable for his pro-rata share of common expenses attributable thereto. To determine the interest of each Dwelling Owner in the common elements of the Condominium, and his share of expenses thereof, the total number of Units in the Condominium shall be divided into one to determine the applicable interest attributable to each Dwelling Unit.

SECTION 8. LIMITED COMMON ELEMENTS.

A. The limited common elements are those portions of the common elements of the Condominium which are reserved for the exclusive use of those persons who are entitled to the use of the Dwelling Unit to which such limited common elements in the Condominium are assigned by this Declaration or by the Association. The limited common elements for each Dwelling Unit shall include the following:

(a) Any patio or porch, together with any enclosure therefore, any outside storage area, any balcony, deck or steps and the air space above and below any balcony, deck or steps, which are appurtenant to such Dwelling unit which are drawn on the architect's plans.

(b) All portions of the common elements on which there is located any portion of the heating and air conditioning system exclusively serving a particular Dwelling Unit shall be a limited common element assigned to the Dwelling Unit which is exclusively served by such heating and air conditioning system.

(c) All portions of the common elements on which there is located any hot water heater connected to the plumbing system serving a Dwelling Unit shall be a limited common element assigned to the Dwelling Unit to which it is connected.

(d) All individual door knocks, door bells, if any, door lights, exterior lights serving a single Dwelling Unit, exterior railings, exterior steps or stairs, all flues and chimneys and all doors and windows shall be limited common elements which belong to the Dwelling Unit to which they are attached or which they serve. All parking spaces as assigned to a Dwelling Unit by the Association shall be limited common elements of the appurtenant Dwelling Unit.

B. Limited common elements shall not be construed or interpreted to be separate and apart from common elements in general, being limited only with respect to the reserved use thereof to the Dwelling Unit served thereby. Each

limited common element appurtenant to a Dwelling Unit to which it attaches shall constitute an exclusive easement right to the owner of the appurtenant Dwelling Unit.

SECTION 9. SURPLUS ELEMENTS.

A. Developer may from time to time, but is not obligated to, submit to this Declaration, part or portion of the additional land, said submission being designated as "Surplus Property", including streets, roads, recreational facilities, and sewage treatment facilities or other properties the primary use of which is for the enjoyment and benefit of the Dwelling Owners of the Condominium.

B. Said surplus property as and when submitted to the Unit Ownership Act shall be deemed in general to be a common element of the Condominium subject to the easements set forth herein.

C. Subject to the rights of the Association, each Dwelling Owner shall be vested with an equal and undivided interest in the surplus property in determinable fee as set forth in Section 10 during and so long as the surplus property is subject to the Unit Ownership Act. Upon such time as the Developer shall exercise his option under Section 2 to add Phase 2 to the Unit Ownership Act, the interest of each Dwelling Owner (irrespective of phase) in the surplus property shall be reduced pro-rata in accordance with the total number of Dwelling Units submitted hereunder.

D. The Developer, for itself, its successors and assigns, hereby reserves unto itself a non-exclusive easement of ingress and egress over and across all streets, driveways and parking areas and walkways or other easements to the Atlantic Ocean within the expandable land, which may be hereinafter designated upon submission as "surplus property", and said reserved non-exclusive easement shall be for the benefit of the Developer to facilitate the completion of the proposed development, and for the use of any subsequent owner, tenants, or guests thereof, of property located within the development area, whether or not said property is submitted to this Declaration or the Unit Ownership Act.

E. In the event any surplus property is hereby or subsequently submitted to this Declaration and Uniform Ownership Act, Developer, for itself, its successors and assigns, hereby reserves unto itself, its successors and assigns, and successors and assigns thereof, including their tenants, guests, and other occupants, and all other Owners of property located within the development area, whether such property is submitted to this Declaration as a part of the Condominium, the right to use said facilities, subject to the lien of assessment by the Association, and further subject to:

(i) the right of the Association to charge a reasonable admission, dues or other fees for the use of the facilities;

(ii) the right of the Association to suspend the right to use of any facility by a Dwelling Owner or other property owner for any period during which any assessment against his Dwelling Unit or other property, (including fee or undivided fee interest in any property located within the development area but outside the Condominium) remains unpaid; or for any infractions of its published rules and regulations with regard to the use of the facility. Failure to pay an assessment by a Dwelling Owner for common elements shall be deemed a default as to the assessment for use of the aforesaid surplus property;

(iii) the right of the Association to dedicate or transfer any or all of its surplus property to any public agency, authority or utility for such purpose and such conditions as may be determined by its Board of Directors.

(iv) the right of the Association to limit the number of guests of the users of said facilities;

(v) the right of the Association, in accordance with its Articles of Incorporation and By-Laws to borrow money for the purpose of improving the facility property or in aid thereof to mortgage and grant liens and encumbrances upon the facilities property; the rights of any such mortgagee of the Association's surplus property and facilities shall be subordinate to the rights of the Dwelling Owners and other users hereunder.

(vi) the right of the Dwelling Owners of the Condominium to elect not to restore any surplus property more than two-thirds (2/3) destroyed by casualty pursuant to N.C.G.S. 47A-25, or the termination of the Condominium.

F. The right to use the surplus property shall be appurtenant to and may not be separated from ownership of any Dwelling Unit subject to this Declaration or any other property located within the development area.

G. The Association shall have all rights and causes of action to enforce assessments with regard to the surplus property against the Owners of the Dwelling Units as granted herein with regard to assessments for common elements set forth in Section 14. No Dwelling Owner may waive or otherwise escape liability for assessments for his share of the surplus property by non-use of the facilities thereof or abandonment of his interest herein.

H. Upon such time as the Condominium shall be terminated, all rights of use conveyed herein shall terminate, except such rights of ingress and egress as conveyed and reserved in D hereof.

SECTION 10. SHARE OF SURPLUS PROPERTY AND EXPENSES

A. Each Dwelling Owner of the Condominium shall have an equal and undivided determinable fee interest in the surplus property as may be submitted, from time to time, to this Declaration, said interest subject to automatic revision upon the submission of Phase 2, and determined as follows. To determine the interest of a Dwelling Owner in the surplus property, divide the number of Dwelling Units then submitted in both Phase 1 and Phase 2 of the Condominium into one (1). The percentage as determined shall represent the interest of each Dwelling Owner. By acceptance of a deed of conveyance of an interest in a Dwelling, each Owner, for himself, his heirs and assigns, and any mortgagee lien holder, or judgment creditor thereof accepts the appurtenant interest in surplus property as determined herein and expressly waives any right of determination thereof under N.C.G.S. 47A-6.

B. Each Owner of a Dwelling Unit within the Condominium, or any owner of property in the development area not within the Condominium but entitled to the use membership in the surplus property, by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agreed to pay to the Association: (i) annual assessments of charges for the use of the surplus property, and (ii) special assessments for capital improvements or operating deficits upon such surplus property. All such annual and special assessments, together with interest, cost and attorney's fees for the collection thereof shall be a charge and lien upon any such Dwelling Unit, or other property entitled to use of the surplus property, and the same shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest cost, and reasonable attorney's fees for the collection thereof, shall also be a personal obligation of the person or persons who was, or were, the Owner, or Owners, of such Dwelling Unit or other property at the time when the assessment became due.

C. The assessments levied by the Association shall be determined annually by its Board of Directors shall be used exclusively to provide for necessary insurance coverage, reserve funds for replacements, maintenance and operation of the surplus property to promote the recreation, health, safety and welfare of its users.

D. Each user of the surplus property shall pay an annual assessment equal to his pro-rata share of the budget as determined by the Board of Directors of the Association or the surplus property. For this purpose, the term "user" shall include each Owner of a Dwelling unit in the Condominium or any residence or other single family dwelling unit permitted the use of said surplus property, whether said unit is within or without the Condominium, that has been completed and conveyed to an Owner (other than the Developer).

E. The Association reserves a non-exclusive easement over the common elements of the Condominium, and over the surplus property, to reasonably regulate, locate and direct routes or ingress and egress into the surplus property for the benefit of its users, and for the purpose of exercising its function of maintenance and repairs thereof, and other obligations and responsibilities granted herein.

F. Until such time as the project is completed or the seventh anniversary date hereof, whichever occurs earlier, the Developer reserves the right to retain in its name all surplus property in order to facilitate the completion of the overall project. It is understood that in such event, the Developer shall enter into a reasonable leasing arrangement with the Association for the use, maintenance and rental value of such surplus property so retained.

G. Notwithstanding anything to the contrary in the foregoing provisions, any surplus properties retained by the Developer and then being used as such for the benefit of the Dwelling Owners shall be submitted to this Declaration and the Unit Ownership Act no later than (i) the seventh anniversary date hereof, (ii) the completion and conveyance by the Developer of seventy-five percent (75%) of the maximum developable units, or (iii) the conveyance by the Developer of seventy-five (75%) of the development area, whichever shall occur earlier. Provided, notwithstanding the foregoing, the Developer reserves the right at any time prior to such time to submit any and all surplus property to the Association upon a duly recorded deed of conveyance, without any requirement for consent or joinder by any Unit Owner or the Association. Notwithstanding anything to the contrary, there is no obligation upon the Developer to submit any property comprising the development area which is not so used as surplus property.

SECTION 11. EASEMENTS

A. The common elements, exclusive of limited common elements, of the Condominium shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement which easement is hereby created, in favor of all of the Dwelling Owners in the Condominium for their use and for the use of their immediate families, guests, invitees, and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Developer, the Association, and all Dwelling Owners of the Condominium, and may be used for ingress and egress for the providing of electric power, telephone, sewer, water, and other utility services and lighting facilities, including but not limited to television transmission facilities, security services, and facilities connected therewith. The Developer, for itself, its heirs and assigns, and the Association reserve the right to impose upon common elements of the Condominium such easements and cross easements in favor of the Dwelling Owners for any of the foregoing purposes as they deem in the best interest of and necessary and proper for, the Dwelling Owners of the Condominium.

B. Developer, for itself, its successors and assigns, reserves the right to use a portion of the common elements for the purpose of aiding in the sale of Dwelling Units within the Condominium, including the right to use portions of the common elements for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall include the right to use an unsold unit therein as a model, granting use thereof to prospective purchasers, and the right to display and erect signs, billboards and place cards and to store, keep and exhibit the same and distribute audio and visual promotional materials upon the common elements.

C. The entire Condominium, including common elements and Dwelling Units, shall be subject to cross easements for encroachments which now exist or hereafter may exist, caused by the settlement or movement of any building or Dwelling Unit, or caused by minor inaccuracies in construction or reconstruction, which encroachments shall be permitted to remain undisturbed and which said easement shall run in favor of each Dwelling Owner, the Association, and the Developer.

D. It is hereby conveyed and reserved a non-exclusive easement of access, egress and ingress to and from each Dwelling Unit situate in the Condominium and North Carolina Highway 158 upon such roads and streets as described in Section 1 hereof, or as may be subsequently submitted herein as surplus property, and for parking in designated surplus parking areas and for access, egress and ingress to recreational facilities situate within the development area (subject to such assessments and conditions of use as set forth in Section 10) and for access, egress and ingress over such easements as may be submitted to this Declaration for purposes of access to and from the Atlantic Ocean, said easement being also for the benefit of the Developer and those to whom Developer may convey a similar easement or easements as an appurtenance to any real property interest conveyed by the Developer, its successors and assigns, in and to the development area or any other land now or hereafter owned by the Developer, its successors, heirs or assigns, within the development area, whether within or without the Condominium.

E. There is retained, by the Developer, its successors and assigns, a construction easement over, upon, and across the common elements of the Condominium for the purpose of constructing improvements on the properties now owned or hereafter acquired by the Developer, said easement to run in favor of the Developer, its successors and assigns, their contractors, subcontractors, laborers, and materialmen. This easement shall expire and become null and void upon the completion of all of the permanent improvements which are to be constructed.

F. There is hereby conveyed an easement of right of way in and to the Development area as may from time to time be submitted to this Declaration for the benefit of the Dwelling Owners and the Association, for the construction, operation, and maintenance of all utilities lines, pipes, sewage lines, septic tanks, waste treatment facilities, pumps, drain lines and facilities related thereto, which said easement shall enure to the benefit of the Developer, its successors and assigns, and all future owners of property, and their heirs, and assigns, located within the development area, whether within or without the Condominium.

G. Each Dwelling Owner shall have an easement in common with the other Dwelling Owners to use all pipes, wires, ducts, fuels, cable, conduits, public utility lines and other common elements located in another Dwelling Unit and serving his unit. Each Dwelling Owner shall be subject to an easement in favor of the Owners of the other Dwelling units to use the pipes, wires, ducts, fuels, cables, conduits, public utility lines, and other common elements serving other units of the Condominium. The Board of Directors and the authorized agents of the Association shall have the right of access to each Dwelling unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common elements contained therein, if any.

H. The Developer specifically reserves the right for its successors and assigns the right to convey easements to and rights to the use of any recreational facilities submitted to this Declaration as surplus property (subject to the administration and use fees as required by the Association) to any Dwelling Owner and any other holder of a freehold interest, his heirs and assigns, of property located within the development area, whether included as part of the Condominium or not. Said rights shall include the right to use such surplus property, including roads, streets, walkways, parking areas, utility lines, and recreational facilities, and access to and from the Atlantic Ocean.

1. The Developer reserves unto itself and the Association, the right to specifically designate on the ground within the development area, as may be subsequently submitted as surplus property, the location of the above described easements, including but not limited to, all road, walkways, parking areas, utility lines, and recreational facilities.

SECTION 12. MAINTENANCE AND ALTERATION OF DWELLINGS.

A. The Association shall maintain, repair and replace all portions of a Dwelling, except interior surfaces and walls, contributing to the support of the Dwelling, which portions shall include but not be limited to the outside walls of the Dwelling and all fixtures, including plumbing and electrical fixtures, on the exterior thereof; boundary walls of Dwellings and roofs; and load-bearing columns, piers and pilasters and load-bearing walls. The Association will repair, maintain and replace all common elements (including limited common) except as set forth as the responsibility of the Dwelling Owner in Paragraph B hereof.

B. The responsibility of the Dwelling Owner shall be:

(1) To maintain, repair, and replace at his expense all portions of his Dwelling except the portions to be maintained, repaired and replaced by the Association.

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of any Dwelling.

(3) To repair any frozen pipes, repair any stopped interior sewer and sink lines, to repair any heating and air conditioning equipment, whether located within a Dwelling or on a limited common element, and which exclusively serve only that unit, and to replace any broken window panes, screening or doors that serve his Dwelling.

(4) To maintain the area within the enclosure of the porch and deck and balcony except for structural repairs, which structural repairs shall be the responsibility of the Association.

(5) To drain all water from all pipes which serve his Dwelling from the point of the unit's individual water meter when the unit is not in use to prevent the freezing and bursting of said pipes. Said Dwelling Owner shall be responsible for any damage due to his negligence in failing to perform this requirement.

(6) To repair, maintain, and replace any flues and fireplaces or any portions of the heating, air conditioning, water heating, plumbing electrical and mechanical systems located within or without his Dwelling Unit, if those items serve only that unit. To repair, replace and maintain all door bells, door knocks, door lights, if any, heating and air conditioning units, hot water heaters and related equipment and all doors and windows whether designated as limited common elements or not, if said items serve only that Dwelling Unit. At such point that the sewer line leaves the unit and all points thereafter, the sewer line, and septic tank and drain field shall not

be considered as serving any particular unit and the repair and maintenance of such shall be the responsibility of the Association.

(7) To repair any damage caused by the intentional or negligent act or omission of any Dwelling Owner, his family guests, invitees or lessees, to the extent the damage to be repaired is not covered by insurance.

(8) To promptly report to the Association any defect or need for repairs, the responsibility for which is that of the Association.

C. Except as elsewhere reserved to the Developer, neither a Dwelling Owner nor the Association shall make any alteration in the portions of a Dwelling which is to be maintained by the Association, or remove any portion thereof, or make any additions thereto, without first obtaining approval in writing of the Owner of the Dwelling in which work is to be done and the approval of the Board of Directors of the Association. In no event shall any alteration jeopardize the safety or soundness of the Dwelling or impair any easement.

D. There shall be no actual partition or subdivision of any Dwelling Unit as defined and established by this Declaration. Nor shall any Dwelling Unit be physically altered to be used as two separate living units.

SECTION 13. MAINTENANCE AND ALTERATIONS OF COMMON ELEMENTS.

A. The maintenance and operation of the common elements and the limited common elements (except those limited common elements the maintenance of which is the responsibility of the Owner, as set forth in Section 12) as hereinabove specified shall be the responsibility and the expense of the Association.

B. After the completion of the improvements included in the common elements of the Condominium which are contemplated by this Declaration, there shall be no alteration or further improvement of the real property constituting the common elements of the Condominium, without prior approval in writing by the Owners of not less than 66 2/3% of the common elements of the Condominium and any such alteration or improvement shall not directly interfere with the rights of the Owner of any Dwelling within said Condominium, without first obtaining their written consent. There shall be no change in the shares and rights of a Dwelling Owner in the common elements which are altered or further improved, whether or not the Dwelling Owner contributes to the cost thereof. Any such alteration or further improvements shall require the prior consent of the Board of Directors of the Association.

C. The Developer, in order to assure proper maintenance during the development of each phase of the Condominium, by contract and agreement with the Association, shall reserve the right to be or select the entity or firm that will be employed for the maintenance of the common elements of each phase so long as said Developer controls the right to appoint the Board of Directors (as set forth in Paragraph G of Section 15 herein). The fees and charges for such maintenance shall be reasonable and comparable with the costs that would otherwise be charged by local persons, firms or other entities for the same or similar services. Thereafter the aforementioned maintenance agreement shall not exceed one year in duration; and unless terminated upon 90 days notice prior to the end of any contract year said contract shall automatically renew for an additional year. After the aforesaid transfer of control, said contract may be terminated at any time without cause or penalty on ninety (90) days written notice.

SECTION 14. ASSESSMENTS

A. Assessments against the Owner of a Dwelling for common expenses or surplus expenses shall be made pursuant to North Carolina General Statutes Section 47A-12 and the By-laws of the Association and shall be allocated as set forth in Sections 7 and 10 of this Declaration.

B. Any sum assessed by the Association for the share of the common expenses or surplus expenses chargeable to any Dwelling, and remaining unpaid for a period of thirty (30) days or longer, shall constitute a lien on such Dwelling when filed for record in the Office of the Clerk of Superior Court of Dare County by the Association under the provisions of Article 8 of Chapter 44 of the North Carolina General Statutes and any amendments or supplements thereto. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, and (b) all sums unpaid on deeds of trust and other encumbrances recorded against the Dwelling prior to the docketing of the lien, and (c) materialmen's and mechanic's liens.

C. A lien created pursuant to Paragraph B above may be foreclosed by suit by the Board of Directors of the Association, acting on behalf of one or more of the Dwelling Owners of the affected phase, in like manner as a foreclosure of a deed for trust or mortgage of real property. The Board of Directors is hereby granted a power of sale for such purpose. The Board of Directors of the Association, acting on behalf of said Dwelling Owners, shall have power to bid in the Dwelling Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. In the alternative, the Board of Directors of the Association, acting on behalf of said Dwelling Owners, may maintain a suit to recover a money judgment for unpaid common or surplus expenses without foreclosing or waiving the lien securing said unpaid common or surplus expenses. The Dwelling Owner in default shall be responsible for all court costs, interest and reasonable attorney's fees incurred in the collection, by foreclosure or otherwise, of said lien for common or surplus expenses.

D. Any sum assessed by the Association for the share of the common or surplus expenses due to the acquisition of title to the Dwelling pursuant to the foreclosure proceeding of a first lien deed of trust shall not be assessed against the holder of a first lien deed of trust of record who forecloses said deed of trust or other purchaser of the Dwelling as a result of the foreclosure of a first lien deed of trust. Any sums assessed against the Dwelling which is the subject of a foreclosure of a first lien deed of trust shall be collectible out of the proceeds thereof or from the former Dwelling Owner, or if not collectible; then from all Dwelling Owners of the Condominium, including the purchaser at the foreclosure sale, in the proportions which their shares in the common and surplus elements bear to each other.

E. Prior to, or contemporaneously therewith, the filing of a lien for unpaid assessments in the Office of the Clerk of Superior Court of Dare County as provided for in Paragraph B above, the Association shall cause a copy of said lien to be sent the holder of any deed of trust conveying said Dwelling that has given the Association notice of its deed of trust and the address to which such notices should be sent.

F. No Dwelling Owner may exempt himself from contributing toward the common or surplus expenses by waiver of the use or enjoyment of the common or surplus elements or by abandonment of the Dwelling belonging to him.

SECTION 15. ASSOCIATION. The operation of the Condominium shall be by Whispering Sands Condominium Association, herein called the Association, a Non-Profit Corporation under the laws of North Carolina which shall be organized and shall fulfil its functions pursuant to the following provisions:

A. The members of the Association shall be the Dwelling Owners.

B. The Association is incorporated under the Articles of Incorporation in the form attached as Exhibit D, but the Articles of Incorporation may be amended as permitted by law.

C. The By-Laws of the Association shall be in the form attached as Document E, but may be amended as therein provided or as permitted by law.

D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such member's Dwelling.

E. Whenever the decision of a Dwelling Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting. Where any unit is owned as tenants in common or as tenants by the entirety, said tenants may determine between or among themselves how the vote they are entitled to shall be cast, but the Chairman of a meeting of the Association shall not accept any division of a vote that said Owners would otherwise be entitled to cast if at least a two-thirds (2/3) majority in interests of Owners of a particular Dwelling do not agree between themselves how their vote should be cast.

F. Whenever the decision of a Dwelling Owner is required upon any matter which is the subject of a members meeting before the Association, the Board of Directors of the Association shall be authorized to recognize a duly appointed representative of the Owner or Owners of a Dwelling Unit in such manner as may be established in the By-Laws of the Association. Removal of a representative shall require the vote of a majority in interest of the Owners of the Dwelling Unit.

G. Upon the initial creation of the Association, the Developer shall have control of and the right to appoint the Board of Directors thereof or any officer or officers until the earliest to occur of (i) the expiration of seven years after the date of the recording of this Declaration, (ii) the date on which Dwelling Units equal to three-fourths (3/4) of the maximum developable units (as defined in Section 2) have been completed and conveyed by the Developer, (iii) the date of the conveyance by the Developer of seventy-five percent (75%) of the development area, or (iv) the surrender by the Developer of the authority to appoint and remove members of the Board of Directors and Officers, by an express amendment to this Declaration executed and recorded by the Developer. Until such time, the Developer shall be entitled to three (3) votes per unit for each of the maximum developable units or portion thereof not yet completed or sold for all matters requiring general membership vote before the Association.

H. Thereafter, the Developer shall be entitled to vote as a member in the same manner to the extent of any interest it may own in a completed and unsold Dwelling Unit.

I. Subject to the foregoing, the Board of Directors of the Association shall consist of such number and be elected in the manner as established in the By-Laws of the Association.

SECTION 16. INSURANCE.

A. Insurance policies upon the Condominium property covering the items described in Paragraph B of this Section shall be purchased by the Association for the benefit of the Association and the Dwelling Owners and their mortgages as their interest may appear. Such policies and endorsements shall be issued in the name of and deposited with the Board of Directors of the Association as Trustee for the Dwelling Owners.

B. Insurance shall cover the following:

(1) All building and improvements upon the land and personal property included in the common or surplus elements in an amount equal to the maximum insurable replacement value without deduction for depreciation, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as are customarily covered with respect to buildings similar to the buildings on the land, such as vandalism and malicious mischief.

(2) Public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association, and with a cross liability endorsement to cover liabilities of the Dwelling Owners as a group to a Dwelling Owner.

(3) Workmen's compensation as required by law.

(4) Flood insurance required by any federally regulated lending institution pursuant to the Flood Disaster Protection Act of 1973.

(5) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

C. Premiums upon insurance policies as purchased by the Association shall be paid by the Association as a common expense and shall be allocated among the Dwelling Owners as a common expense.

D. The Board of Directors of the Association, acting on behalf of the Dwelling Owners, is hereby irrevocably appointed agent for each Dwelling Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.

E. All Dwelling Owners and mortgagees of Dwelling Owners shall upon request be furnished copies of each insurance policy purchased by the Association, showing the name of the insurance trustee, the name of the insurance company, the policy number, the effective date and the expiration date of the policy, the total amount of the policy and the name and address of the insurance agent issuing the policy. The copy shall also provide that the Dwelling Owner and the mortgagee of each Dwelling Owner shall be furnished notice of any change in or cancellation of the policy with thirty (30) days prior written notice before the effective date of said change or cancellation.

F. Each Dwelling Owner shall have the right to insure his own Dwelling for his own benefit, though this provision will not alter or vary the requirement that the Association purchase insurance on all buildings and improvements in the Condominium. Any Dwelling Owner that has made, or does make, permanent improvements within his Dwelling that have become or will become affixed to the realty, and who desires additional specific contingent insurance on such improvements, may request the Association's insurance trustee to include this coverage as a separate item in the Association's policy's standard Improvements and Betterments clause, the premiums for said additional coverage to be paid for in advance by the Dwelling Owner at his own expense and said premium shall not be a portion of the common expenses of the Association. The Association's insurance trustee may not unreasonably deny such a request, but it shall not be liable for failure to see that such additional insurance is properly issued. In no event shall any recovery or payment under the insurance coverage obtained and maintained by the Board of Directors hereunder be affected or diminished by insurance purchased by individual Owners of their mortgagees.

G. The Association will not purchase or obtain insurance to cover the personal property of each Dwelling Owner, nor will the Association purchase or obtain insurance to cover the individual liability of a Dwelling Owner for injuries and damages suffered by anyone or anything within a Dwelling if said injuries or damages are not a liability of the Association.

SECTION 17. REPAIR AND REPLACEMENT OF DESTROYED PROPERTY.

A. Damage to or destruction of any one or all of the buildings and/or improvements shall be promptly repaired and restored by the Board of Directors of the Association using the proceeds of insurance for that purpose. If there is a deficiency in the proceeds of the insurance policies, the Dwelling Owners shall be assessed, as a common expense, the difference between the amount of the insurance proceeds and the amount necessary to repair, rebuild or replace the damaged building or improvement to its original condition. If the deficiency is with regard to surplus property, said amount shall be assessed against all Dwelling Owners as a surplus expense in accordance with Section 10. Except if damage is due to the intentional or negligent act or omission of any Owner, his family, guests, invitees or lessors, said Dwelling Owner responsible therefore shall pay the costs of the repair or restoration of said damage to the extent said damage is not covered by available insurance.

B. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures or building in accordance with the building or construction plans describing said structures and buildings as submitted to the Unit Ownership Act.

C. Because of the horizontal development of Whispering Sands Condominium, in the event a Dwelling is totally destroyed, the Board of Directors of the Association will promptly cause the erection of an identical building to be commenced, using the proceeds of insurance for that purpose. If there is any deficiency in the insurance proceeds for complete restoration, the difference shall be borne by the Dwelling Owners of the Condominium as a common expense.

D. Only in the event of a destruction of two-thirds (2/3) of all Dwellings situated on the land subjected to the Unit Ownership Act, shall the provisions of North Carolina General Statutes Section 47A-25 become operative. This provision shall in no way derogate from North Carolina General Statutes Section 47A-16 providing for termination of unit ownership.

E. Any proceeds remaining from any insurance policies after damages for which proceeds have been paid for repair or restoration, and such repair or restoration has been completed, shall be paid to the Association to be applied to common expenses.

F. If damage occurs only to those parts of a Dwelling for which the responsibility of maintenance and repair is that of the Dwelling Owner as provided in Section 12, then the Dwelling Owner shall be responsible for construction and repair after casualty.

G. The Board of Directors of the Association shall have the irrevocable right of access to each Dwelling during reasonable hours to inspect, maintain, repair or replace any of the general common elements or limited common elements in or about said Dwelling.

SECTION 18. USE RESTRICTIONS. The use of the property of the Condominium shall be in accordance with the following provisions:

A. Except as set forth in subsection G herein, each of the Dwellings shall be occupied only by a family, its servants and guests, or tenants and their servants and guests, as a residence and for no other purpose. No Dwelling may be used for any commercial or professional purpose, provided, however, this restriction shall not prohibit any Dwelling Owner from renting, leasing or letting his Dwelling for any period of time.

B. The common and surplus elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Dwellings.

C. A Dwelling Owner may keep a pet or pets in his Dwelling Unit, but only under the regulations as promulgated by the Association from time to time, and provided such action is not contrary to any house rules or regulations as agreed upon by the co-owners of a multi-owner Dwelling Unit. No person may keep any other animals, livestock or poultry nor may any of the same be raised, bred, or kept upon any portion of the Condominium property, including the common elements, balconies, decks, and terraces. The Association shall have the authority to declare any pet or pets a nuisance and may cause the Owner thereof to remove the same from his Dwelling Unit.

D. No use or practice shall be permitted in the Condominium property which is the source of annoyance to other Owners or which interferes with the peaceful possession and proper use of the property by the other Owners, their guests or tenants. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. The use of clothes lines, except inside the porch area out of view of any other Dwelling, is prohibited. No Dwelling Owner shall permit any use of his Dwelling, or the common or surplus elements, which increase the rate of insurance upon the Condominium property. No immoral, improper, offensive, or unlawful use shall be made of the Condominium property or any part thereof. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification, or repair of the Condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

E. No trailer, tent, barn, storage shed, tree house or other similar outbuilding or structure shall be placed on the Condominium property at any time, either temporarily or permanently, excepting that individual boat trailers and travel trailers not being used as living quarters, neither of which exceed the size of one parking space, may be permitted, providing said parking space or area is properly assigned to the Dwelling Owner who owns said boat trailer or travel trailer.

F. Except as set forth in subsection G herein, no signs (including but not limited to "for sale", "for rent", or the unit owner's name) shall be erected or maintained on any Dwelling or any portion of the common elements, except with the written consent of the Board of Directors, it being understood that the Board of Directors will not grant permission for said signs unless their erection is reasonably necessary, or unless said sign conforms with a previously adopted sign format approved by the Board of Directors.

G. Until the Developer has completed and sold all of the Dwellings, neither the Dwelling Owners, nor the Association, nor the use of the Condominium property shall interfere with the completion of the contemplated improvements and sale of the Dwellings. The Developer may make such use of the unsold Dwellings and common and surplus areas as may facilitate such completion and sale, including but not limited to the maintenance of a sign, sales office or model, the showing of the property and the display of signs and use thereof by a prospective buyer.

H. All utilities serving the Condominium property (including but not limited to electrical utility service, telephone service, television cable service, water, sewage and drainage) shall be located underground along and under easements as heretofore and hereafter reserved in this Declaration. The use of exterior radio or television antennas on the roof or outside of any

Dwelling is expressly prohibited. Each Dwelling Owner shall be responsible for all charges and assessments made by an utility company or municipal agency for service furnished each individual Dwelling. Charges and assessments for utilities furnished to the common elements, such as general exterior lights, shall be a common expense borne by the Association; provided, charges for utilities used within and by a Dwelling shall be the responsibility of the Dwelling Owner.

I. Reasonable regulations concerning the use of the Condominium property may be made and amended from time to time by the Association in the manner provided by its By-Laws. Copies of such regulations and amendments thereto shall be furnished by the Association to all Dwelling Owners upon request.

J. In the event of a violation or breach of any of these use restrictions or of any other covenant of this Declaration by any Dwelling Owner or his guest, tenant, invitee, licensee, or agent, the Board of Directors of the Association or the Owner of any other Dwelling unit shall have the right to proceed at law or in equity to compel a compliance of the terms hereof or to prevent the violation or breach in any event, and deny the use of any recreational facilities of the Condominium.

SECTION 19. ARCHITECTURAL CONTROL. To assure a community of congenial Dwelling Owners and to preserve the architectural appearance of the Condominium and the value of the Dwelling Units, the property, including all improvements comprising a part thereof shall be subject to the following restrictions and such other rules and regulations as may be promulgated by the Association:

A. No building, fence, wall, landscaping scheme or other improvement shall be commenced, erected or maintained on the Condominium, nor shall any construction, painting, or exterior additions or changes or reconstruction thereto be made to any portion of a Dwelling Unit or other improvement located within the Condominium, including any limited common elements appurtenant thereto, until and unless the plans and specifications showing the nature, kind, shape, color, height, materials and location of same shall have been submitted and approved in writing as to harmony of external design and location in relation to surroundings structures and topography and as to compatibility with the overall improvements in all phases of the Condominium as determined by the architectural committee. The architectural committee shall be composed of three persons. The right to appoint all members of such architectural committee shall be in and belong to the following persons:

(i) So long as the Developer has the reserved right to submit additional land to the Condominium, the Developer shall have the right to appoint all members of the architectural committee;

(ii) At and after such time as there no longer exists any right in the Developer to submit such additional land to the Condominium, the Developer shall relinquish all rights to appoint the members of the architectural committee, and thereafter the committee members shall be appointed by the Board of Directors of the Association.

B. A Dwelling Owner may make improvements and alterations within his Dwelling unit; provided, however, that no Owner shall make any structural alterations in a Dwelling Unit or remove any portion thereof or make any additions thereto or do any which would or might otherwise jeopardize or impair the safety, soundness or structural integrity of that Dwelling Unit or any other Dwelling Unit, or otherwise materially lessen the support of any portion of the Condominium; nor shall any Dwelling Owner impair any easement without first obtaining the written consent of the architectural committee and that of the Owner or Owners and their mortgagees for whose benefit such easement exists.

C. The design, type, location, size, intensity and color of all exterior lights, mounted on a Dwelling Unit shall be subject to approval by the architectural committee.

D. To provide a neat, attractive and harmonious appearance throughout the Condominium, no awnings, shades, screens or other items shall be attached to, hung or used on the exterior of any window or door of the Dwelling unit or on the exterior of any building, nor shall outside clotheslines, or other outside facilities for drying or airing clothes be allowed.

SECTION 20. CREATION OF CO-OWNERSHIP INTERESTS IN DWELLINGS. Developer intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the Dwellings of the Condominium and the interests therein so conveyed or reserved, and the payment of taxes, assessments and other expenses pertaining thereto, and declares that the Dwellings are and shall be held, conveyed, encumbered, leased, rented, occupied and improved subject to the limitations, restrictions, covenants and conditions hereafter set out, all of which are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the property and the interest so to be conveyed or reserved. All such limitations, restrictions, covenants and conditions are intended to run with the Dwellings and property, to wit, the interests so conveyed or reserved, and to inure to the benefit of and be binding upon such interest so conveyed or reserved and all parties having or acquiring any right, title, interest or estate therein. The following plan of common use shall apply with respect to each phase, or subpart thereof, as designated.

1. As to Phase 1, Whispering Sands - a form of co-ownership with each Owner having a one-tenth (1/10) undivided interest in his Dwelling Unit, the following will apply:

A. Each Owner shall have the exclusive right to occupy the Dwelling in which a Co-Ownership interest is conveyed to that Owner, and the rights and easements appurtenant to such Dwelling, during such of the Season Weeks as are hereafter provided (and, in the case of Developer, during all Season Weeks not included in any Co-Ownership Interests theretofore conveyed) and to authorize others so to do, together with the nonexclusive right in common with all other Owners, but only when acting through the Agent (or, if no Agent be appointed and acting, when acting with a Two-Third's Majority In Interest of Owners of the Dwelling), to maintain and repair the interior of the Dwelling. No Owner shall occupy the Dwelling, or exercise any other rights or ownership in respect of the Dwelling other than the rights herein provided to him, during any other Season Week unless expressly so authorized by the Owner entitled to occupy the Dwelling during such Season Week. The Agent shall reserve two weeks for the repair, maintenance, repainting and thorough housecleaning of the interior of the Dwelling and said weeks shall not be conveyed as a week of use and occupancy to any Owner, but shall be owned jointly by all Owners. All painting, maintenance and repairs, except emergency repairs, shall be confined to the two weeks so designated by the Agent. The maximum overnight occupancy of the Dwelling shall be ten (10) persons. No animals or pets of any kind shall be kept in the Dwelling, except personally by an Owner when the Owner is physically present on the premises. Each Owner shall keep the Dwelling and all Common Furnishings in good condition and repair during his Season Week, vacate the Dwelling at the expiration of his Season Week, remove all persons and property therefrom excluding only Common Furnishings, leave the Dwelling in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Agent or by a Two-Thirds Majority in Interest in Owners of the Dwelling. In order to provide the Agent sufficient time to provide housekeeping services for each Owner, all Owners agree to abide by the reasonable rules

adopted by the Agent for checking in and checking out, provided the Agent can increase the check out time and reduce the check in time if each Owner involved agrees.

B. Subject to all of the terms and conditions contained elsewhere in this Declaration, each Owner of a Co-Ownership Interest in a particular and specified Dwelling shall have the exclusive right to use and occupy that Dwelling and the Common Furnishings of that Dwelling for a period composed of five (5) Season Weeks a Year, consisting of one (1) week from the Spring Season, one (1) week from the Summer Season, one (1) week from the Fall Season, one (1) week from the Winter Season, and one (1) week from the Holiday Season. The various weeks shall be assigned in the manner described herein.

Each Owner of a Co-Ownership Interest in a particular and specified Dwelling initially will be assigned a number from one (1) to ten (10), that number determining the particular Season Weeks to comprise that Owner's period of use for the remaining portion of the year of purchase. The weeks of each season are numbered consecutively from one (1) to ten (10), and an Owner's annual number will correspond to the number of each of the four (4) Season Weeks and one (1) Holiday Week assigned to him. The "year of purchase" shall mean the year in which the Dwelling is first sold by the Developer.

The Holiday Season is a separate season comprised of ten weeks, being the weeks during which New Year's Day, Easter, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas fall, together with three additional weeks selected by the Agent. Each of these Weeks is assigned a number from one to ten as the week occurs chronologically during the year to determine the Season Week to be assigned to each Owner.

An Owner who is assigned the number "one" (1) for the remaining portion of the year of purchase will be assigned a period composed of the first week in the Spring Season, the first week in the Summer Season, the first week in the Fall Season, the first week in the Winter Season, and the first week in the Holiday Season; in like fashion, the other Owners of that particular and specified Dwelling will receive a period of use for that year composed of Season Weeks corresponding to their assigned numbers. The numbers used to establish the periods of use will be assigned at the closing of each Owner's purchase, and, for the subsequent year and following years, the said numbers will be rotated among the Owners in an orderly and consistent manner, that is, the Owner assigned the number "one" (1) for the year of purchase will be assigned the number "two" (2) for the following calendar year, with other Owners' numbers to be rotated in the same manner.

When the Agent submits the proposed budget to each Owner prior to November 1 each year as hereafter described, he shall at the same time provide each Owner with the calendar indicating which weeks are allocated to each Owner for the forthcoming year, together with the names and addresses of the other Owners and the number of the period of use for each Owner.

In the event the Agent determines that the assignment procedures set forth herein are unmanageable or are, for any reason, unfair to Owners, the Agent may, without the consent of the Owners, revise the assignment procedures from time to time and set other conditions, restrictions and limitations deemed necessary to assure a manageable and fair procedure for use by Owners. Agent will give Owners at least a ten days' notice of such revisions. In no event, however, will the period of use of five (5) weeks per year, one (1) from each of the four established regular seasons and one (1) week from the Holiday Season, be diminished.

C. Management of the Dwelling, maintenance and repair of the Dwelling, acquisition, maintenance, repair and replacement of Common Furnishings and administration of the affairs of the Owners with respect to the Dwelling, occupancy of the Dwelling and payment of expenses and costs enumerated in this Section, shall be under the direction and control of an Agent appointed by a Two-Thirds Majority in Interest of Owners of the Dwelling. The Agent so appointed is expressly authorized, in the Agent's discretion and on behalf of the Owners, to do any or all of the following to the extent not inconsistent with directions given by a Two-Thirds Majority in Interest of Owners of the Dwelling:

(a) To repair, maintain, repaint, remodel, furnish or refurnish the interior of the Dwelling or any part thereof, to establish reserves for anticipated costs, including the acquisition and replacement of Common Furnishings; and to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Agent deems necessary or proper for the maintenance and operation of the Dwelling that have been previously approved in the budget adopted by the Owners of a Dwelling. The Agent shall be permitted to make emergency capital expenditures from the reserve funds not exceeding \$2000.00 without prior consent, if for instance, the air conditioner or heating plant needs repair or replacement. The Agent shall not, however, make any other capital expenditures without the prior approval of a Two-Third's Majority in Interest of Owners of the Dwelling.

(b) To pay all personal property taxes and assessments, including assessments by Whispering Sands Condominium Association, and other costs or charges affecting or relating to the Dwelling.

(c) To obtain and pay the costs of electrical, water, sewer, telephone, cable television and other utility services for the Dwelling.

(d) To adopt from time to time and enforce reasonable rules relating to the possession, use and enjoyment of the Dwelling by the Owners, provided such rules shall be subordinate to the rules, regulations and policies of the Association.

(e) To obtain and pay the cost of legal and accounting services necessary or proper in the maintenance and operation of the Dwelling and the enforcement of these conditions and restrictions.

(f) To obtain and pay the cost of: (i) insurance covering the Common Furnishings against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage; (ii) public liability insurance, insuring against liability for personal injury or property damage resulting from an occurrence in, on or about the Dwelling; and (iii) any other insurance deemed necessary or desirable by the Agent or by a Two-Third's Majority in Interest of Owners of the Dwelling. The policies of insurance shall cover such risks, be written by such insurers, and in such amounts, as the Agent shall deem proper, provided insurance for the full replacement value of the Common Furnishings shall be maintained.

(g) To do all other acts or things necessary or appropriate to the ordinary and necessary operation and maintenance of the Dwelling or to preserve and protect the Dwelling in the event of any emergency.

(h) To delegate the authority and responsibilities of Agent hereunder to one or more subagents for such periods and upon such terms as the Agent deems proper.

(i) To collect, either in advance of disbursement or following disbursement if the Agent advances sums in payment of any of the foregoing, each Owner's share of the aforesaid costs and any other amounts properly expended by the Agent; to estimate any such expenditure in advance, and to bill the Owners accordingly; and to take proper steps to enforce any Owner's obligation hereunder.

(j) Each year, prior to November 1, the Agent shall submit to each Owner a proposed budget for each Owner's Dwelling for the forthcoming calendar year specifying the amounts that will be required for maintenance, expenses, utilities, services and reserves. The budget proposed by the Agent shall be deemed to be adopted if the Agent does not receive objections to the proposed budget from Two-Third's Majority in Interest of Owners of the Dwelling prior to the next January 1, and each Owner shall pay his proportionate share of the budget so adopted in advance in monthly installments on or before the first day of each month.

(k) The Agent shall provide each Owner an Income and Disbursement Statement within sixty (60) days after the end of each calendar year showing the receipts of common assessments and any other sums for that year, the payment of all expenses and fees and the balance in the reserve fund. The Agent shall retain all invoices, paid receipts and cancelled checks for each Dwelling for a period of three (3) years subsequent to the furnishings of each Income and Disbursement Statement for audit and review by any Owner or attorney or agent of any Owner.

(l) Upon request by any Owner or prospective purchaser of a Co-Ownership Interest, or attorney or agent of any Owner or prospective purchaser, the Agent shall furnish a written statement setting forth the status of any Owner's account as to any arrearages, or funds held for the benefits of said Owner, in reserve or otherwise, and said statement shall be binding on the Agent in favor of any person who in good faith relies upon it.

(m) Upon a sale or transfer of any Owner's Co-Ownership Interest, any funds so held by the Agent, or held otherwise for an Owner, shall be deemed transferred with the Co-Ownership Interest so transferred.

(n) The Agent shall obtain and keep in force a surety bond for the faithful performance of his duties in the amount of \$10,000.00, unless directed otherwise in writing by a Two-Third's Majority in Interest of Owners of the Dwelling, and the premium for such bond shall be an expense of the Dwelling.

D. Each Owner shall pay the following expenses:

(a) The cost of long distance telephone charges, other special service allocable to the occupancy of the Dwelling during each Owner's Season Week or Weeks, the costs net of insurance to repair any damage to the Dwelling or to repair or replace any property contained therein on account of loss or damage occurring during his Season Week or Weeks, or the costs to satisfy any expense to any of the other Owners due to any intentional or negligent act or omission of such Owner, his family, guests, invitees, tenants or lessees or resulting from his breach of any provisions of these conditions and restrictions; and

(b) A share of the following costs and expenses which bears the same relationship to the whole as such Owner's undivided Co-Ownership Interest in the Dwelling bears to the entire Ownership of the Dwelling; (i) personal property taxes and special assessments, (ii) insurance premiums for fire and extended coverage insurance on the Common Furnishings and other casualty insurance and liability insurance, and (iii) utility charges for electricity, water, sewer, telephone and cable television and for firewood, (iv) common and surplus property assessments and special assessments levied by the Whispering Sands Condominium Association, (v) pest control, (vi) charges for maintenance and cleaning supplies and replacement costs for nondurable items consumed by the Owners in the Dwelling, (vii) costs for ordinary maintenance, repairs and replacement of appliances and fixtures, (viii) costs for cleaning, maintaining, painting and refurbishing the interior of the Dwelling, (ix) the Agent's compensation for management services, and (x) amounts necessary to establish proper reserves for the foregoing items; and

(c) Other costs and expense elsewhere herein provided to be paid, or other costs and expense deemed necessary or desirable by the Agent for the maintenance and repair of the Dwelling.

All such payments shall be made through the Agent unless the Agent or a Two-Third's Majority in Interest of Owners of the Dwelling otherwise directs.

The Agent shall be under no obligation to, but may in its discretion, advance sums required to pay the obligations of any one or more of the Owners or to make the aforesaid payments or incur obligations within the Agent's authority, notwithstanding the failure of any one or more of the Owners to provide funds therefore. The Agent shall not be responsible for the acts or conduct of any of the Owners or for the breach of any of the obligations of any of the Owners hereunder. The Agent shall not be liable to any Owner in the absence of bad faith or negligence but shall hold the Owners harmless from and against any and all claims, expenses, liabilities, demands, causes of action, awards, or judgments rendered against the Agent or the Owners arising out of or in connection with the negligent conduct of the Agent, its officers, employees or subagents.

In addition to the enforcement of a lien for the payment of an Owner's share of the costs and expenses in Paragraph 1 hereafter, the Agent is hereby granted the right to prohibit any Owner from using and occupying the Dwelling at any time if the Owner is in arrears in his share of costs and expenses as determined hereunder. In the event there is any dispute as to the nature or amount of any charges sought to be collected, the Owner may pay such charges under protest and sue for a refund in Dare County District Court or Dare County Superior Court, whereupon the Owner shall be entitled to the use, possession and occupancy of the Dwelling for the Owner's Season Week or Weeks.

E. Developer shall employ the initial Agent for each Dwelling. The initial Agent and each successor Agent may be removed upon 30 days written notice which shall also set forth the appointment of a successor Agent and shall be signed, or otherwise consented to by a Two-Thirds' Majority in Interest of Owners of the Dwelling and filed with the Association.

An Agent may resign upon given 45 days notice to each of the Owners of the Dwelling. In such event the Owners shall use their best efforts to agree upon the appointment of a successor Agent with the consent of Two-Third's Majority in Interest of Owners. If they cannot so agree within 30 days after receipt of the notice of the Agent's resignation, the Board of Directors of the Association shall have authority to appoint a successor Agent upon such reasonable terms and for such reasonable compensation as the Board may, in its discretion, determine, but an Agent appointed by the Board shall be subject to removal as hereinafter provided.

Each Dwelling shall be managed by an Agent until the termination of the estate of Co-Ownership Interests as hereinafter provided, unless all of the Owners of an interest in a Dwelling agree to eliminate the services of an Agent.

Each Agent shall enter into a written contract in which the Agent agrees to perform the obligations and duties set forth herein. The Agent shall be entitled to compensation from the Owners for its services at the rate provided for and adopted in the budget each year unless the Agent and a Two-Third's Majority in Interest of the Owners of the Dwelling shall otherwise agree or unless a new rate shall be established by the Board of Directors of the Association upon the appointment of a successor Agent as provided above.

F. In the event of any damage or destruction to the Common Furnishings, the Agent shall forthwith cause such damage to be repaired and shall so apply any available insurance proceeds. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Agent shall assess and the Owners shall pay the cost thereof or deficiency in proportion to their undivided ownership interests in the Dwelling unless the damage was caused by the intentional or negligent act or omission of any Owner, his family, guests, invitees or lessees, in which event the cost of repair or deficiency shall be paid by such Owner.

Any insurance proceeds allocable to the Dwelling and payable to the Owners as the result of (i) any excess of insurance proceeds over the cost of repair or restoration, or (ii) not being required to repair or restore the Common Furnishings or any part thereof, or paid to compensate any one or more Owners for loss or damage to their individual person or property (in which case such distribution shall be with due regard to the loss or damage incurred), shall be distributed to the Owners in proportion to their respective undivided ownership interests in the Dwelling.

G. Except as otherwise provided in this Section, by direction of the Agent, by express consent of all Owners, or as required to prevent damage or injury to persons or property in an emergency, no Owner shall make improvements, decorations or repairs to the Dwelling or the Common Furnishings or contract so to do or subject the Dwelling or the Common Furnishings to any liens for the making of improvements, decorations or repairs. No Owner shall create or permit to exist any nuisance in the Dwelling or commit waste with respect to the Dwelling or permit anything to be done or kept in the Dwelling which would increase the rate of insurance upon the Dwelling or the Common Furnishings.

H. In the event that any Owner should fail to comply with any of the provisions of this Declaration, the Agent or any other Owner or Owners may bring action for damages, or to enjoin the violation or specifically enforce the provisions of this Section, or to enforce any statutory or contractual lien or lien provided herein, including foreclosure of any such lien and the appointment of a receiver for any Owner or take possession of the Co-Ownership Interest of any Owner. In any such legal proceeding, the prevailing party shall be entitled to costs and reasonable attorney's fees. All sums payable hereunder by any Owner shall bear interest at 15% per annum from the due date, or if advanced or incurred by any other Owner or by the Agent, and provided herein to be repaid, from 10 days after repayment is requested.

The aforesaid remedies shall be cumulative and in addition to all other remedies which may be available at law or in equity; provided, however, that no breach of any provision hereof by any Owner or by Agent or failure of any Owner or Agent to comply with any provision hereof shall permit or empower any other Owner to terminate any such provision or excuse any such breach or failure, and each Owner shall continue to perform and comply with and hold his Co-Ownership Interest subject to all of the provisions of this Declaration notwithstanding any such breach or failure.

If any Owner of a Season Week fails to vacate the Dwelling at the time prescribed by these rules and regulations, or otherwise uses or occupies the Dwelling during a Season Week for the Dwelling conveyed to another, including the Season Week which Developer owns by reason of its not being conveyed, or prevents another Owner from using or occupying the Dwelling during such other Owner's, including the Developer's, Season Week, the Owner in wrongful possession (1) shall be subject to immediate removal, eviction or ejection from the Dwelling wrongfully occupied; (2) shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection of such Owner in wrongful possession; (3) shall pay to the Owner entitled to use the Dwelling during said wrongful occupancy, as liquidated damages for the wrongful use of the Dwelling.

ing and the appropriation of such other Owner's Season Week, a sum equal to three hundred percent (300%) of the fair rental value per day of the Dwelling that such Dwelling is wrongfully occupied, for each day or portion thereof, including the day of surrender, during which the Owner in wrongful possession occupies the Dwelling; (4) shall be subject to having his voting rights, if any, suspended by the other Owners and by the Association; and (5) shall be subject to having the Association terminate any and all utility and other services to the Dwelling during the period of his wrongful occupancy.

I. Each Owner shall have a lien, in the nature of a deed of trust with a private power of sale, on the interest of each other Owner in the Dwelling and Common Furnishings as security for the prompt and faithful performance by such other Owner of the obligations under this Section and payment of costs of enforcement and reasonable attorney's fees; provided, however, that as against any transferee, mortgagee or beneficiary of an Owner's interest acquiring all or any interest in such Owner's interest by deed, mortgage or deed of trust given by such Owner for valuable consideration and accepted by the transferee, mortgagee or beneficiary without notice of default in the payment or performance secured, no such lien shall be effective to secure any past due payment or performance in default at the time of recording such deed, mortgage or deed of trust except to the extent that notice of default in the payment or performance has been given at the time of recording such deed, mortgage or deed of trust by the prior recording of a notice of lien recorded within the immediately preceding 24 calendar months in the Office of the Clerk of Superior Court of Dare County, which notice of lien describes the Co-Ownership Interest affected and sets forth the name of the record Owner thereof and recites that the particular payment or performance is or may be in default.

The lien herein created may be enforced by sale by any Owner, or by the Agent, as agent and attorney-in-fact for any Owner or Owners, and the delinquent Owner's interest in the Dwelling and Common Furnishings may be sold at a sale conducted in accordance with the provisions of North Carolina General Statutes, Chapter 44A, Article 2, Part 1, as amended, or in any other manner permitted by law. The purchaser at any foreclosure sale shall obtain title subject to the provisions of this Section. Either the Agent or any Owner or Owners may bid at the foreclosure sale and may hold, lease, mortgage or convey any interest in the Dwelling or Common Furnishings acquired by such sale. The aforesaid lien and right of foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Owners or Agent may have hereunder.

J. No Owner shall permit his interest in the Dwelling, or Common Furnishings to be subject to any lien (other than the liens of current personal property taxes and the current and future installments of special district assessments), the enforcement of which may result in a sale or threatened sale of the interest of any other Owner in the Dwelling or Common Furnishings or any part thereof, or in any interference with the use or enjoyment thereof by any Owner; and in the event that the sale of the entire Dwelling or Common Furnishings or the interest of any Owner or any part thereof, or the use and enjoyment of any thereof by any Owner be threatened by reason of any lien against the interest of any other Owner, or proceedings be instituted to affect any such sale or interference, any Owner or Owners acting on his or their own behalf or through the Agent, or the Agent acting on behalf of any one or more Owners, unless promptly indemnified to his or their satisfaction, may, but shall not be required to, pay or compromise the lien without inquiry into the proper amount or validity thereof and, in that event, the Owner whose interest was subject to such lien shall forthwith repay the amount so paid or expended to the Owner or Owners or Agent, whomsoever shall have paid or compromised the lien together with such reasonable attorney's fees and related costs as he or they may have incurred.

No Owner shall permit his interest in any funds from time to time in the possession of the Agent to be subjected to any attachment, lien, claim or charge or other legal process and each shall promptly restore any funds held by the Agent in respect of his Co-Ownership Interest to the extent depleted by reason of the assertion of any such attachment, lien, claim, charge or other legal process and reimburse the Agent for all reasonable attorney's fees or other costs incurred in respect thereof.

K. If an Owner desires to sell his Co-Ownership Interest, such Owner shall, in writing, first notify the Agent of his intention to do so. An Owner may not sell to any subsequent purchaser less than the Co-Ownership Interest as described herein.

L. The provisions contained in this Section 20 shall terminate under the following conditions.

(a) At the expiration of fifty (50) years from the date said Dwelling was submitted to this Declaration; provided, however, by unanimous consent of all Owners of undivided interests in the Dwelling, the estates of Co-Ownership Interests may be extended for a specified period of time. If the Owners fail to unanimously extend within 60 days of the aforesaid expiration date, then the Dwelling shall be required to be sold within three (3) years thereafter at public sale (or private sale upon consent of Two-Third's Majority in Interest of Owners of said Dwelling) and the net proceeds divided among the then Owners of the Dwelling in proportion to their existing undivided interests.

(b) By the unanimous consent of all Owners of undivided interests in the Dwelling together with the holders of all liens on Co-Ownership Interests of said Owners.

M. If any provision of this Section shall be held invalid it shall not affect the validity of the remainder of this Section. If any provisions of this Section would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provision shall be deemed to remain in effect only for the maximum permissible period permitted by law.

N. Each Owner shall have the right to mortgage or otherwise encumber his Co-Ownership Interest. No Owner shall attempt to mortgage or otherwise encumber in any manner whatsoever the Dwelling or any part thereof except his Co-Ownership Interest, nor shall any Owner have the right or authority so to do. Any mortgage, deed of trust or other encumbrance of any Co-Ownership Interest shall be subordinate to all of the provisions of this Section and in the event of foreclosure, the provisions of this Section shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

O. No Owner or other person or entity acquiring any right, title or interest in the Dwelling shall seek or obtain through any legal procedures, judicial partition of the Dwelling or sale of the Dwelling in lieu of partition at any date prior to the expiration of 50 years after the date of submission of said Dwelling to this Declaration. If, however, any Co-Ownership Interest as herein defined shall be owned by two or more persons as tenants-in-common, nothing herein contained shall prohibit a judicial sale of the Co-Ownership Interest in lieu of partition as between such co-tenants or joint tenants.

11. At such time as Phase 2 may be submitted to this Declaration, the Developer reserves the right to establish a common scheme and plan for the use, enjoyment and assessments appurtenant to the Dwelling units and Owners within the Phase 2 as added.

SECTION 21. COMPLIANCE AND DEFAULT

A. Each Dwelling Owner shall be governed by and shall comply with the terms of this Declaration, by the By-Laws of the Association and the regulations adopted pursuant thereto, and by such documents and regulations as they may be amended from time to time. A default shall entitle the Association or other Dwelling Owners to the relief described in Paragraph B of this Section in addition to the remedies provided by the Unit Ownership Act. Prior to, or contemporaneously therewith, the filing of an action as provided in North Carolina General Statutes Section 47A-10, the Association shall cause a copy of said pleadings to be sent to the holder of any deed of trust conveying a Dwelling that has given the Association notice of its deed of trust and the address to which such notices should be sent.

B. A Dwelling Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests, tenants, employees, agents or lessees. This provision shall apply even though the maintenance, repair or replacement would otherwise be a common expense to be paid by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Dwelling or its appurtenances.

C. The failure of the Association or any Dwelling Owner to enforce any covenant, restriction or other provision of this Declaration, the By-laws of the Association or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

D. Any Dwelling Owner, their agent, the Board of Directors of the Association, or any combination of Dwelling Owners may invoke an appropriate civil remedy to enforce the terms of this Declaration, or the By-Laws of the Association, for any regulations adopted pursuant to either.

E. All matters involved in the Condominium, and the rights and interests of any Dwelling Owner, the Association, or the Agent, shall be governed by the laws of the State of North Carolina. It is expressly agreed that by the acceptance of any conveyance of an interest in the Condominium property described herein, that the Grantee for himself, his heirs and assigns, consents and agrees that the jurisdiction for all matters with regard to any rights or interests therein and any covenants or restrictions, or other provisions pursuant to this Declaration shall be before the Superior Court of Dare County, North Carolina, and that any service of process pursuant to such matters may be given by any means acceptable under the North Carolina Rules of Civil Procedure, including by certified mail.

SECTION 22. AMENDMENTS. This Declaration may be amended by the Association in the following manner:

A. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the members of the Association at which a proposed amendment is to be considered.

B. A resolution adopting a proposed amendment of the Declaration may be proposed by either the Board of Directors of the Association or by any member of the Association. Directors and members not present in person or by proxy at any meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary of the Association at or prior to the meeting. Except as elsewhere provided, such approvals must be either by (a) not less than 66 2/3% of the entire membership of the Board of Directors and by not less than 66 2/3% of the votes of the entire membership of the Association, or (b) not less than 80% of the votes of the entire membership of the Association. However, it is expressly understood that the Developer may add Phase 2 to the Condominium, which addition will change all Dwelling Owners shares in the common and surplus elements upon a pro-rata basis, by filing a supplementary or amendment Declaration without the necessity of obtaining the approval of any Dwelling Owner.

Any amendment to the By-laws requiring the filing of an amendment to the Declaration evidencing such amendment or modification shall be made in the manner and upon the vote as set forth in said By-Laws.

C. The Board of Directors of the Association may amend this Declaration without the consent of the Dwelling Owners or any mortgagees of record under the following circumstances.

(1) To correct any obvious error or inconsistency in drafting, typing or reproduction.

(2) To change the person designated as the agent upon whom service of process may be made as set forth in Section 24 hereafter.

(3) To conform to the requirements of any law or governmental agency having legal jurisdiction over the Condominium or to qualify the Condominium or any Dwelling Units therein for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any governmental corporation or agency regarding purchase of mortgage interests in units by such agency.

D. In the event that the Developer shall seek to obtain approval of this Declaration and the plan of development of the Condominium in order that any Dwelling Units constructed thereon shall be eligible for loans approved or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, or the Department of Housing and Urban Development, or any other governmental agency, hereinafter all of the foregoing referred to as "Agency", it is possible that any such agency or agencies will require changes in this Declaration in order to make the Dwelling Units constructed eligible for such loans. In such event, Developer, without the consent or approval of any other Dwelling Owner, shall have the right to amend this Declaration, (provided such amendment does not effect the fundamental rights of Owners, including those as set forth in Paragraph E hereinbelow) and the amendment shall become effective upon recordation of the amendment, along with attached evidence of approval by the appropriate agency, in the office of the Register of Deeds of Dare County, North Carolina. A letter from an officer or official of such agency shall be deemed conclusive evidence for all purposes of such agency's requirement of changes. Each Owner and his respective mortgagees, by acceptance of a deed conveying an interest in the Condominium or a mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Developer, his successors and assigns as attorney-in-fact, such power of attorney being coupled with an interest, and authorizes, directs, and empowers such attorney-in-fact at the option of the attorney-in-fact, in the event the Developer exercises the rights reserved herein to amend this Declaration as provided herein to execute, acknowledge and record for and in the name of such Owner or Owners and such mortgagee an amendment for such purposes, and for and in the name of such respective mortgagees, a consent and joinder to such amendment or amendments. In the event any title insurance company desires certain changes in the Declaration in order to issue title insurance on the Dwelling units, the Developer, in the aforesaid manner, reserves a right of amendment of the Declaration for such purpose.

E. Notwithstanding anything to the contrary, no amendment shall discriminate against any Dwelling Owner or against Dwelling or class or group of Dwellings unless the Dwelling Owners so affected shall consent. No amendment shall change the share in the common or surplus elements appurtenant to any Dwelling Unit, nor increase the Dwelling Owner's share of the common or surplus expenses, unless the record Owner of the Dwelling and all record owners of liens thereof shall join in the execution of the amendment. Nonetheless, an amended Declaration may change a Dwelling Owner's share in the common or surplus elements and appurtenant to his Dwelling Unit in the manner herein if Phase 2 is added to the Condominium.

F. Notwithstanding anything herein to the contrary, no amendment or modification of this Declaration may alter, change, revoke, abrogate or diminish any rights, powers, or interests granted to, or reserved unto the Developer, or any easements retained by the Developer, or any obligations of the Developer herein, without the express written consent of the Developer.

G. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Office of the Dare County Register of Deeds.

SECTION 23. Mortgage Holders. The Association is required to make available to all Dwelling Owners and their respective lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other rules concerning the Condominium and books, records and financial statements of the Association. Said availability shall be upon request during normal business hours, or under reasonable circumstances. Any holder, insurer or guarantor of a first mortgage shall be entitled upon written request, to a financial statement for the immediately preceding fiscal year, free of charge to the parties so requesting. Said financial statement shall be furnished within a reasonable time, following such request.

B. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Dwelling Unit number or address, such mortgage holder, insurer or guarantor shall be entitled to timely written notice of:

(1) Any condemnation loss or other casualty loss which effects a material portion of any Dwelling Unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder, or eligible insurer or guarantor, as applicable;

(2) Any delinquency in the payment of assessments or charges owed by the Dwelling Unit Owner subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty days.

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) Any proposed action which would require the consent of eligible mortgage holders.

SECTION 24. AGENT FOR THE SERVICE OF PROCESS. John H. High, whose address is 203 Forest Hill Avenue, Rocky Mount, Nash County, North Carolina, 27801, is hereby designated as the agent upon whom service of process may be made in any action or proceeding brought against the Condominium. The Association may substitute the agent for process from time to time by a duly adopted amendment pursuant to Paragraph C(2) of Section 22 that is recorded in the Office of the Dare County Register of Deeds.

SECTION 25. TERMINATION.

A. This Condominium may be terminated by all of the Dwelling Owners executing an instrument for that purpose to be recorded in the Dare County Registry. Said instrument must also include the consent of all holders of liens on Dwellings of the Condominium, or must include the consent of all holders of liens on Dwellings of the Condominium, that his or its lien may be transferred to the fractional share of undivided interest of the Dwelling Owner subsequent to termination.

B. When a termination has been effected as herein provided, all the property of the Condominium, previously subject to the Unit Ownership Act shall be deemed to be owned, by all of the Dwelling Owners as tenants in common. Each Owner's undivided interest shall be that fractional share of the undivided interest previously owned by such Dwelling Owner in the common and surplus elements.

C. Upon such termination, the tenants in common, their successors and assigns, for themselves shall take and hold their undivided interest in the surplus elements encumbered by any easements thereon and subject to the right of use thereof for the benefit of all users thereof in the development area. Said tenants in common of the terminated Condominium and other uses within the development area shall be subject to the assessments and lien of any successor entity or organization (formed by or assigned to by said tenants in common) for the management and use of said surplus property.

SECTION 26. CONDEMNATION. The Association shall give written notice to the Owners of all Dwellings of a phase and to the holder of any deed of trust conveying a Dwelling in said phase that has given the Association notice of its deed of trust and the address to which such notice should be sent if any threatened or actual condemnation proceeding affecting any interest in the common or surplus elements appurtenant to the interests therein of any Owner, mortgagee, or holder of such phase.

SECTION 27. NOTICES. Each Owner shall register his mailing address, telephone number and the name and address of the holder of the first lien deed of trust on his undivided interest, if any, and changes thereto with the Association, and notices or demands which may be served upon an Owner or mortgagee may be sent by U.S. mail, postage prepaid, addressed to the Owner or mortgagee at such registered address.

SECTION 28. SEVERABILITY. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, paragraph, sentence, clause, phrase or word, or other provision of this Declaration, or the By-laws and regulations of the Association, shall not affect the validity of the remaining portions thereof.

Spruillco, Ltd., Trustee, and Peoples Bank and Trust Company join in this Declaration for the sole purpose of consenting to the submission of all that portion of the property herein described as Phase 1, Whispering Sands, to the Unit Ownership Act, said property being previously conveyed by deed of trust from Whispering Sands to Spruillco, Ltd., Trustee for Peoples Bank and Trust Company, dated MAY 2, 1985, recorded in Book 400, Page 142, Dare County Registry, and Spruillco, Ltd., Trustee, and Peoples Bank and Trust Company agree that the land conveyed in the aforementioned deed of trust shall be subject to the provisions of this Declaration for the purposes of creating a condominium form of ownership in said land, but in no way shall this joinder affect the validity of the lien of the aforementioned deed of trust, it being expressly retained on all the property therein described. Peoples Bank and Trust Company covenants that it is the owner and holder of the promissory notes secured by the aforementioned deed of trust, and Peoples Bank and Trust Company has authorized and directed Spruillco, Ltd., Trustee, to join in the execution of this Declaration for the purposes herein expressed.

IN WITNESS WHEREOF, Whispering Sands, a North Carolina Partnership has caused this instrument to be executed by its partners as a true act of the partnership and within its purposes, and Peoples Bank and Trust Company, and Spruillco, Ltd., Trustee, have caused this instrument to be exe-