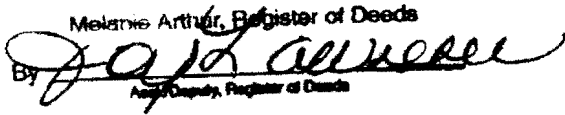


Melanie Arthur 44P  
CARTERET COUNTY  
BWC Date 05/01/2007 Time 16:45:00  
GR 1221458 Page 1 of 44

NORTH CAROLINA, CARTERET COUNTY  
This instrument and this certificate are duly filed at  
the date and time and in the Book and Page shown  
on the first page hereof.

Melanie Arthur, Register of Deeds  
By   
Asst. Deputy, Register of Deeds

DECLARATION OF UNIT OWNERSHIP  
FOR  
THE SHORES AT SPOONERS CREEK  
MARINA **CONDOMINIUMS**

*Prepared by and Return to:*  
Harris Law Firm, PLLC  
304 North 35<sup>th</sup> Street  
Morehead City, NC 28557

BOOK 1321 PAGE 458

(44)

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

DECLARATION OF UNIT OWNERSHIP FOR  
THE SHORES AT SPOONERS CREEK MARINA  
CONDOMINIUMS

THIS DECLARATION is made this the 1st day of May, 2007, by SHORES DEVELOPMENT, INC., a corporation organized and existing under the laws of the State of North Carolina, (hereinafter designated as "Declarant"), pursuant to the Uniform Condominium Act, Chapter 47C of the General Statutes of North Carolina.

BACKGROUND STATEMENT

WHEREAS, Declarant is the owner of certain real property situated in Morehead City, Carteret County, North Carolina, and more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Declarant has constructed or caused to be constructed on the Property, a residential condominium development consisting of three (3) buildings with a total of thirty-four (34) units along with certain attendant facilities, all of which are depicted on the Plat and Plans (the "Project");

WHEREAS, Declarant desires to provide for the preservation of certain values and amenities in the Project and for the maintenance of the common areas and facilities in the Project; and, desires to subject the Property and the improvements constructed thereon to this Declaration and the provisions of the Uniform Condominium Act, Chapter 47C, North Carolina General Statutes.

WHEREAS, Declarant has deemed it desirable to create a non-profit corporation which shall be delegated and assigned powers of maintaining and administering the common facilities of the Project, performing certain maintenance on the building and common areas, administering and enforcing the covenants and restrictions created in this Declaration, levying, collecting and disbursing the assessments and charges provided for and created by this Declaration, and to take any steps or perform any acts deemed necessary or appropriate to promote the recreation, health, safety and welfare of the owners of the condominium units in the Project.

NOW, THEREFORE, Declarant hereby declares that by filing this Declaration, it does submit the Property to the provisions of this Declaration and as applicable to the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes for the purpose of creating the condominium form of ownership. The Property shall hereafter be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division of the same into condominium units, and shall be deemed to run with the land and shall be a burden and a benefit to

BOOK

1221

PAGE

258

Declarant, its successors and assigns and any person acquiring or owning an interest in the Property and improvement constructed thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

## ARTICLE I DEFINITIONS

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

- a. "Act" shall mean the Uniform Condominium Act, Chapter 47C, General Statutes of North Carolina, as amended from time to time;
- b. "Association" shall mean The Shores at Spooners Creek Marina Condominium Owners' Association, Inc., a North Carolina non-profit corporation, and its successors and assigns;
- c. "Association Documents" shall mean collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration and the Rules and Regulations adopted by the Association, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered part of that document.
- d. "Board" shall mean the Board of Directors of the Association;
- e. "By-Laws" shall mean the By-Laws of the Association, which are incorporated herein and made a part hereof by this reference;
- f. "Common Elements" shall mean and comprise (i) all of the real property, improvements and facilities of the Condominium, except the Units as herein defined, (ii) all rights of easement benefiting the Condominium, (iii) all personal property held and maintained by the Association for the joint use and enjoyment of all the Owners of Units, (iv) all permits for construction, maintenance and operation of the Condominium assigned by Declarant to the Association or otherwise procured or acquired by the Association and (v) all Limited Common Elements.
- g. "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserve, all as provided for in the Declaration or under the Act.
- h. "Condominium" shall mean the condominium created by this Declaration.
- i. "Declarant" shall mean the Shores Development, Inc. and (i) any other person who has executed this Declaration except a Security Holder executing this Declaration for purposes of subordinating its interest, and (ii) any person who succeeds to any special Declarant rights pursuant to the Act, and (iii) any successors and assigns

of Developer specifically assigned the rights of Developer hereunder by written instrument recorded in the Office of the Register of Deeds of Carteret County, North Carolina.

j. "First Mortgage" or "First Mortgagee" shall mean a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Unit described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the office in which the First Mortgage is recorded, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgage for all purposes under this Declaration and the By-Laws.

k. "Fuel" shall mean leaded and unleaded marine grade gasoline, diesel fuel or other types of fuels which may be developed in the future appropriate for use by Boats;

l. "Fuel System" shall mean tanks, lines, pumps, dispensing equipment and all other related fixtures and equipment for the storage and dispensing of Fuel for Boats of Owners, tenants and other users of the marina facilities within the Condominium.

m. "Fuel System Easement Area" shall mean, that certain real property designated as "Fuel System Easement Area" on that Plat entitled "The Shores at Spooners Creek Marina Condominiums", prepared by Stroud Engineering, P.A., dated 5/1/07 and recorded in Map Book 101, Page 193, Carteret County Registry, within which the Declarant has installed portions of the Fuel System

n. "Plat and Plans" shall mean those plans of the Condominium recorded with, and by the Act, made a part of this Declaration, as the same may hereafter be amended and as required by G.S. §47C-2-109. The Plat and Plans of "The Shores at Spooners Creek Marina Condominiums" are recorded in Map Book 101, Pages 193-211 Carteret County Registry and are incorporated herein by reference as if fully set forth herein.

o. "Limited Common Elements" shall mean those portions of the Common Elements allocated by operation of N.C.G.S. § 47C-2-102(2)(4) of the Act for the exclusive use of one but fewer than all of the Units and also any Limited Common Elements specifically allocated to Units in **Exhibit B** attached hereto and incorporated herein by reference.

p. "Master Association" shall mean The Shores at Spooners Creek Property Owners' Association, Inc.;

q. "Master Covenants" shall mean the Declaration of Covenants, Restrictions and Conditions recorded in Deed Book 1168, Page 190, Carteret County Registry;

BOOK 1221 PAGE 458

r. "Member" shall mean any person or entity that holds membership in the Association;

s. "Occupant" shall mean any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests, and invitees of such person or persons, and family members, lessees, guests and invitees.

t. "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or other legal entity, including any combination thereof.

u. "Project" shall mean the Property and the improvements constructed or to be constructed on said Property as indicated by the Plats and Plans;

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

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

x. "Security Holder" shall mean any person owning a Security for an Obligation in a Unit.

y. "Unit" shall mean that portion of the Condominium, whether or not contained solely or partially within a building, together with a percentage of undivided interest in the Common Elements as set forth in **Exhibit C**, attached hereto and incorporated herein by reference. Each Unit is designated and delineated on the Floor Plans.

z. "Unit Boundaries" shall mean pursuant to G.S. 47C-2-102, walls, floors and ceilings are designated as boundaries of the Units; specifically, perimeter walls, the walls separating the Units, and the floors of each Unit, as well as, the ceilings of each Unit shall be the boundaries of the Unit. Furthermore, all windows and exterior doors of a Unit are a part of the Unit.

aa. "Unit Owner" or "Owner" shall mean the Person(s), including the Declarant, owning a Unit in fee simple, including contract-for-deed purchasers of a Unit, but excluding contract-for-deed purchasers of a Unit who are Security Holders, and also excluding all other Security Holders.

Any word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in N.C.G.S. §47C-1-103.

1221 458

ARTICLE II  
CONDOMINIUM

- 2.1 Submission. Developer hereby submits the Property to the Act.
- 2.2 Name. The Project shall hereafter be known as The Shores at Spooners Creek Marina Condominiums.
- 2.3 Division of Property into Separately Owned Units. Developer, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into thirty-four (34) Units and does hereby designate each Unit for separate ownership, subject, however, to the provisions of Paragraph 2.4 below.
- 2.4 Alterations of Units. Subject to Declarant's Development Rights reserved in this Declaration, the provisions of N.C.G.S. §47C-2-108, 47C-2-111, 47C-2-112 and 47C-2-113, and to the limitations contained in Article V of this Declaration, Units may be altered, boundaries between adjoining Units may be relocated, Units may be subdivided, Limited Common Elements may be reallocated and Common Elements may be allocated as Limited Common Elements.
- 2.5 No Separation of Interests. The undivided interest in the Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit, and the undivided interest in the Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which described said Unit by the number designation assigned thereto on the Plat and Plans, shall be deemed and construed to affect the entire Unit and its undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing the ownership of any Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.
- 2.6 Limited Common Elements. The Limited Common Elements serving or designated to serve each Unit are hereby allocated solely and exclusively to each such Unit. Limited Common Elements are those set forth on **Exhibit B** and are hereby allocated to Units as shown on such Exhibit.
- 2.7 Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements and percentage of the Common Expenses are as stated on **Exhibit C**.
- 2.8 Condominium Ordinances. The Condominium is not subject to any code, real estate use law, charter provision or regulation (i) prohibiting the condominium form of Unit Ownership, or (ii) imposing conditions or requirement upon a condominium which

BOOK 1321 PAGE 458

are not imposed upon physically similar developments under a different form of ownership. This statement is made pursuant to N.C.G.S. § 47C-1-106.

### ARTICLE III ASSOCIATION

3.1 Association. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Units, an association of all Owners has been organized pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "THE SHORES AT SPOONERS CREEK MARINA CONDOMINIUM OWNERS' ASSOCIATION, INC.," and the Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the Association Documents.

3.2 Powers. In the administration of the operation and management of the Condominium, the Association, subject to the provisions of N.C.G.S. §47C-3-105 and 47C-3-112, shall have and is hereby granted the authority and power to enforce the provisions of this Declaration and all other Association Documents, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board may deem to be in the best interests of the Association and to exercise all powers set forth in N.C.G.S. §47C-3-102, including the specific power to assign its rights to future income and to receive Common Expense assessments as provided in N.C.G.S. §47C-3-102(a)(14).

3.3 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject by this Declaration to assessment by the Association, and continuing only for such time as they own such interest shall be a Member, shall be a Member, provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

3.4 Voting Rights. The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all those Owners of Units. Class A Members shall be entitled to one (1) vote equal to its interest in the Common Elements for each Unit in which they hold the interests required for membership by Paragraph 3.3. When more than one person holds such interest or interests in any Unit all such persons shall be Members, and the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Unit.

CLASS B. The Class B Members shall be the Developer. The Class B Member shall be entitled to vote three (3) times the interest in the Common Elements assigned to each Unit for which it holds the interest required for membership by

BOOK 1321 PAGE 458

Paragraph 3.3. The Class B membership shall cease and convert to Class A membership at the earlier occurrence of the following events:

- i. when the total votes outstanding in the Class A membership equal or exceed the total outstanding votes in the Class B membership, or
- ii. two (2) years after any Developer has ceased to offer Units "for sale" in the ordinary course of its business;
- iii. January 1, 2010.

From and after the happening of the earlier to occur of these events, the Class B Member shall be deemed to be a Class A Member entitled to vote for each Unit in which it holds the interests required for membership under Section 3.3.

3.5 By-Laws. The initial By-Laws of the Association are attached hereto as **Exhibit D**, incorporated herein by reference.

3.6 Membership in Shores at Spooners Creek Property Owners' Association, Inc. In addition to the restrictions, conditions and covenants contained in this Declaration, each Unit and Unit Owner shall be subject to those restrictions, conditions and covenants contained in the "Declaration of Covenants, Restrictions and Conditions for Spooners Creek", (the "Master Covenants"), as recorded in Deed Book 1168, Page 190, Carteret County Registry. Under the Master Covenants, the Master Association of which every Unit Owner shall be a Member (along with others as defined in such covenants) is authorized and directed to maintain and manage certain additional common elements which are to be shared with other properties. The Master Association shall have the right to assess the Unit Owners and its other members as defined in the Master Covenants. The restrictions, covenants, obligations and voting rights of members of the Master Association shall be as set forth in the Master Covenants.

#### ARTICLE IV EASEMENTS

4.1 Enjoyment. Subject to the development rights reserved to Declarant in this Declaration, the restrictions contained in Article V hereof and the provisions of N.C.G.S. §47C-3-112, all of the Common Elements, except the Limited Common Elements, shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Units in the Condominium for their use and the use of their tenants, guest and invitees, for all proper and normal purposes, and for the furnishing of services and facilities both of which are reasonably intended for and related to the use and enjoyment of the Units. Subject to Declarant's development rights reserved herein and Paragraph 4.5 below, the Association shall have the exclusive right to establish rules and regulations pursuant to which the Owner of any Unit, his tenants, guest and invitees, shall be entitled to use the Common Elements.

4.2 Encroachments. In the event that, by reason of the construction, re-construction, rehabilitation, alteration, or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter



encroaches upon any part of any Unit, or any part of any Unit now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided, that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units encroached upon.

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

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

4.5 Easement – Master Association. An easement is declared for the benefit of the Master Association, over, across and upon the Common Elements as such easement(s) is labeled and depicted on the Plat and Plans. Such easement(s) shall be for the upkeep, maintenance and operation of those improvements within the easement(s) as depicted on the Plat and Plans, including but not limited to: (i) stormwater systems, (ii) retaining walls, (iii) signage, (iv) parking areas, (v) sidewalks, (vi) roads, (vii) pool and pump/treatment system, (viii) clubhouse and (xi) landscaping, the costs of which shall be treated as a common expense of the Master Association. All members of the Master Association shall also have an easement as to the use and enjoyment of such Common Elements by themselves and such other persons authorized under the Master Covenants. The Master Association shall have the exclusive right to establish the rules and regulations pursuant to which any member of the Master Association or other authorized person under the Master Covenants may be entitled to use the portion of the Common Elements subject to this easement.

4.6 Fuel System Easement. An easement for the purpose of constructing, installing, maintaining, repairing, replacing and operating the Fuel System over, upon, within and through that area depicted as "Fuel System Easement Area" as described and shown on the Plat and Plans is reserved to Declarant for the benefit of Lot 21 also depicted on the Plat and Plans.

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

Lot 21 1221 458

4.8 Construction Easements. Declarant hereby expressly reserves such easements through the Common Elements as may be reasonably necessary for the purpose of allowing Declarant to construct additional Units on property allowed to be annexed into this Condominium by a specific provision in this Declaration, a part of which construction may occur, as more specifically set out hereinafter, upon the Common Elements.

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

#### ARTICLE V RESTRICTIONS, CONDITIONS AND COVENANTS

5.1 Compliance with Declaration, By-Laws, Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the By-Laws, and the rules and regulations promulgated by the Board, or the Association, all as may be adopted and/or amended from time to time. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief, including reasonable attorneys fees if successful on the merits of the specific case.

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

5.3 Use Restriction. All Units shall be occupied and used by Unit Owners and Occupants exclusively for single family residential purposes. No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted in a Unit without the prior written consent of the Board. An Owner or Occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Unit; (iii) the business activity does not involve regular visitation to the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents in the Condominium; and (iv) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of good or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

For purposes of this Declaration, the leasing of a Unit shall not be considered a trade or business.

Notwithstanding anything to the contrary above, Declarant shall be entitled to maintain an office on the Property for the purpose of the marketing and sale of Unit(s) for as long as the Declarant owns at least one (1) unit.

5.4 Timeshare. No Unit may be transferred or conveyed as a timeshare, as the same is defined in Chapter 93A, Article 4, of the North Carolina General Statutes.

5.5 Obstruction. The entrances, passages, corridors, stairways, and parking area and other Limited and Common Elements of the Condominium shall not be obstructed, encumbered, or used for any purpose other than ingress and egress to and from the Condominium and other purposes for which they are intended and no carriages, bicycles, mopeds, wagons, carts, chairs, benches, tables, toys or other objects, or things, regardless of the nature thereof shall be left or stored therein, except as may designated by the Association.

5.6 Children. Children less than twelve (12) years of age shall be accompanied by an adult at all times. Children shall not play or loiter in the hallways, corridors, stairways, or other public areas of similar nature in the Condominium.

5.7 Storage. Personal property of the Owners or Occupants shall be stored in their respective Units only.

5.8 Articles. No garbage cans, supplies, bottles, or other articles shall be placed in the corridors, on the balconies, decks, patios, on the stairways, on any other Limited or Common Element of the Condominium, nor shall lines, clothing, curtains be located on any part of the Limited or Common Elements.

5.9 Debris. The Common Elements shall be kept free of rubbish, debris, garbage, or unsightly material.

5.10 Safety. Owners shall take reasonable precautions not to permit anything whatsoever to fall from his/her Unit nor shall an Owner or Occupant sweep, wash or throw any dirt or substance from the Unit into the Common Elements, e.g. from a deck or into a corridor.

5.11 Trash. Refuse, rubbish and garbage shall be disposed of promptly in the receptacles located and provided for by the Association. Trash shall not be placed or stored in the corridors, hallways, balconies, decks, patios or stairways of the Condominium.

5.12 Windows. Drapes or Shades covering the windows in a Unit shall be completely lined with white lining.

5.13 Fire Equipment. Fire prevention and fire fighting equipment located throughout the Condominium shall not be tampered with except in the case of an emergency.

5.14 Parking and related facilities. Vehicles shall only be parked in designated parking areas. The parking spaces, and facilities shall be used exclusively for the parking of passenger automobiles except upon the written consent of the Board of Directors and then only in designated areas. Except as herein provided, no trailers, buses, boats, tractors, campers, R/V, wagons, or trucks that exceed three (3) tons or other commercial-type vehicles shall be parked on the Property, except such vehicles loading and unloading in a designated loading area. No repair work on motor vehicles shall be carried out in the parking spaces except emergency repairs. Automobiles or other allowed motor vehicles may only be washed in designated car wash areas. Any vehicle located on the Property shall have a current inspection sticker and license plate.

The Association shall be authorized to remove any vehicle violating this provision from the Property at the costs of the owner thereof without notice.

5.15 Noises. No Owner or Occupant shall make or permit any disturbing noise in the Common Elements and/or his Unit by himself, his family, servants, employees, agents, visitors, guests, invitees, licensees, tenants, or lessees, nor do or permit to be done by such persons, anything that will interfere with the rights, comfort, or convenience of the remaining Owners or Occupants. No Owner or Occupant shall play any musical instrument, phonograph, radio, television, or sound amplifier in such a manner or volume so as to disturb or annoy any other Owner or Occupant.

5.16 Pets. Pets shall be kept or maintained in or about the Units only if the Owner is granted a conditional license to maintain one (1) pet by the Association. Such a license will be granted subject to the following conditions and reservations:

a. Acceptable Pets. The only pets to be permitted at the Condominium shall be dogs under ninety (90) pounds when fully grown, cats, and small birds and fish. The following dog breeds shall be specifically prohibited: Rottweiler, Doberman, German Shepard, Mastiff, Boxer, Bulldog, Pit Bulls, Chows and wolf hybrids. In addition, the Association shall specifically have the power and responsibility to designate, based upon temperament, size and/or nature or tendencies, from time to time a list of breeds of animals which shall be prohibited.

b. It shall be the responsibility of the Owner to pay for any and all costs involved in restoring to the original condition any damage caused to the Condominium by the Owner's pet.

c. An Owner shall be financially responsible for personal injury or personal property damage caused to any Owner, tenant, guest, employee of the Association, or to any member of the public as a result of the Owner's maintenance of a pet.

d. Pets must be carried in arms or on a leash when taken in and out of the Owner's Unit.

e. Guests, tenants and visitors of an Owner shall not be permitted to bring any pets onto the Property.

f. The Board may, upon their sole determination, revoke or terminate the above conditional license if an Owner violated the terms of the conditional license, his pet is determined to be vicious, is annoying to other Owners or Occupants, or is otherwise a nuisance.

5.17 Temporary Structures. No temporary structures of any kind shall be permitted on the property at any time, excepting such structures as may be required during major repair and maintenance and have been approved by the Board of Directors.

5.18 Open Fires. No open fires, including outdoor cooking activities, shall be permitted anywhere on the condominium property except in such areas as may be designated for such purposes, from time to time by the Board of Directors.

5.19 Hazardous Use and Waste. No Unit Owner or Occupant shall permit anything to be done to or kept in a Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction), to or in his Unit or the Common Elements.

5.20 Alterations of Common Elements or Exterior Portions of Unit. No Unit Owner or Occupant, shall alter, construct anything upon, or remove anything from the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board. Likewise, no Unit Owner or Occupant (except as may otherwise be provided herein) shall alter, construct anything upon, or remove anything from the exterior portions of the Unit (for example: exterior windows, doors and related trim on both), or paint, decorate, landscape or adorn any portion of the exterior portions of a Unit, without first obtaining the written consent of the Board.

5.21 Rentals. Owners shall be entitled to rent or lease their Unit; however, each lease must be in writing and may not be for a period shorter than one (1) month. Additionally, the Association is specifically granted and reserved the right to promulgate rules and regulations which may include but not be limited to, notice and information to be provided to Association, and the requirement that standard rental or property terms

and provisions relating to compliance with the terms of this Declaration, By-Laws and the rules and regulations adopted by the Board from time to time be included in such leases.

Regardless of the above, no Owner shall be entitled to lease or rent his Unit to a person convicted of a Class E or higher felony or any crime involving the abuse of children.

5.22 Common Use Facilities. The Board on behalf of the Association is specifically authorized to restrict or prohibit mailboxes, newspaper boxes or such other amenities. The Board is authorized to require that mail be collected at a post office box, or, if the Board so determines, that mail be collected in uniformly approved or jointly used mail collection locations and facilities.

5.23 Satellite Dishes; Antennas. No Owner shall install a satellite dish or transmitting antenna to his Unit or any part of the Common Elements at any given time except in accordance with rules and regulations adopted by the Association. It shall be permissible for the Association to not allow such items.

5.24 Flags; Banners. No Owner shall display flags or decorative banners from his Unit at any given time except in accordance with rules and regulations adopted by the Association. It shall be permissible for the Association to not allow the display of such items.

5.25 Noxious, Offensive Activity. No noxious or offensive activities shall be carried on, in or upon any Unit or in the Common Elements, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance or nuisance to other Owners, or to endanger their persons and property

5.26 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning use of the Condominium, reasonable rules and regulations may be promulgated and amended from time to time by the Board or the Association which may include the levying of fines in accordance with the Act.

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

## ARTICLE VI ASSESSMENTS

6.1 General Assessments. Each Owner, by acceptance of the deed thereto, whether or not it shall be so expressed in such deed, is deemed to, and does thereby, covenant and agree to pay assessments in a pro-rata share equivalent to his Unit's ownership interest in the Common Elements (said ownership interest being defined in **Exhibit C** attached hereto) for the common expenses of the upkeep, maintenance and improvement of the Common Elements and for the following services which are to be provided to all Owners in the Project: water, sewer, CATV and trash collection. The Board of Directors shall prepare an annual budget and may amend the assessment at such times as provided by Paragraph 6.2 below. Each Owner shall make all payments of assessment directly to the Association.

6.2 Change in Assessments. The Association shall have the right, by a vote of its Board of Directors, to increase said assessments in any given year without the approval of the membership by an amount not to exceed fifteen per cent (15%) of the assessment of the previous year. The assessment may be increased without limit by a vote of two-thirds ( $2/3^{\text{rds}}$ ) of the membership in attendance, in person or by proxy, at the regular annual meeting or at a meeting duly called for this purpose. Notwithstanding the above, the cost for insurance required under this Declaration to be maintained by the Association shall not be limited or restricted by this Paragraph in any way.

6.3 Special Assessments. In addition to the regular assessments specified above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Elements, including fixtures and personal property related thereto or other expense related to the Common Elements and/or the maintenance of the Condominium; provided that such assessment shall have the assent of two-thirds ( $2/3^{\text{rds}}$ ) of the membership in attendance, in person or by proxy, at the regular annual meeting or at a meeting duly called for this purpose.

6.4 Payment of Assessments. The Assessments provided for in this Article shall be payable as directed by the Board of the Association but no more frequently than quarterly. Such assessments shall commence upon closing of the first Unit by a purchaser other than a Declarant.

6.5 Acceleration of Assessments Payable by Installment. In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire remaining balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

6.6 Creation of Lien and Personal Obligation of Assessments. The assessments called for hereinabove, together with interest and cost of collection, including court costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Personal obligations for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen per cent (18%) per annum. The Association may bring action at law against the owner or owners personally obligated to pay the same or may foreclose the lien against the property, and the Association is hereby granted a power of sale to conduct said foreclosure; and interest, costs and reasonable attorneys' fees of the action of foreclosure shall be added to the amount of such assessment. In the conduct of such foreclose and sale, it shall be sufficient to satisfy the requirements of due process if the Board of Directors shall satisfy the then existing requirements of the North Carolina General Statutes for notice and hearing applicable to foreclosures under a power of sale. No Owner or owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements and facilities. The Board of Directors shall also have the power, in its discretion, to assess a late payment penalty of five per cent (5%) of the assessment or the maximum amount allowed by law, whichever is higher, against any owner whose assessment shall be unpaid on due dates.

6.7 Mortgagee Liability. Where a mortgagee, or other person claiming through such mortgage, pursuant to the remedies provided in a mortgage or deed of trust, or by foreclosure, or by deed in lieu of foreclosure, obtains title to a Unit, the liability of such mortgagee, or such other person, for assessments shall be only for the assessments, or installments thereof, that would become delinquent if not paid after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

Without releasing the transferor from any liability therefor, any unpaid portion of assessments resulting, as provided in above, from the exercise of remedies in a mortgage or deed of trust, or by foreclosure thereof, or by deed in lieu of such foreclosure, shall be considered a Common Expense collectible from all Unit Owners, including the Mortgagee or such other person above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

6.8 Prohibition Of Exemption From Liability For Contribution Toward Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

6.9 Capital Reserves. The Board of the Association, in adopting its budget for the operation, management and maintenance of the Condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements, which capital improvement and replacement



fund ("Capital Improvement Fund") shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a portion of the Common Elements, as well as, the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount so collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to the Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board, be expended for current operations and maintenance.

6.10 Assessments and Reserves are Separate Property. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Bylaws of the Association or the Act. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by other Owners. Although all funds held by the Association shall be for the benefit of the Members of the Association, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit. When the Owner of a Unit shall cease to be a Member of the Association by reason of his divestment of ownership to such Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.

6.11 Statements: Election of Remedies. Whenever any Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association for such Unit. Such statement shall be executed by an officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owed to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owed to the Association.

BOOK 1221 PAGE 458

ARTICLE VII  
MANAGEMENT, MAINTENANCE, REPAIRS, REPLACEMENTS  
ALTERATIONS AND IMPROVEMENTS

7.1 Common Expenses.

a. By the Association. Subject to Paragraph 4.5, the management, replacement, maintenance, repair, alteration and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provisions of Paragraph 7.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to (b) below. All damage to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense. Notwithstanding the above, the Association may charge to any Unit Owner, the cost of any repairs or maintenance required because of the negligence of the Unit Owner, his agents, employees, or invitees, with the same being collectible as an assessment under Article VI hereof.

b. By Unit Owners. Each Unit Owner shall pay all cost to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional or negligent acts or omission to act or the intentional or negligent or omission to act of any Occupant of his Unit. Such payment shall be made upon demand by the Association and be subject to the same collection rights provided to the Association herein.

c. Common Utilities. The Association shall provide and bear the cost for utility service and charges, such as electric, water, utilized in the Common Elements, and shall repair and maintain any signage on the Common Elements, except as otherwise provided herein.

7.2 Expenses Associated With Limited Common Elements Or Benefiting Less Than All Units.

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

b. In addition, the Association may assess any Common Expense benefiting less than all of the Units against the Units benefited proportionally if more than one based on their respective interest in the Common Elements.

7.3 Units. Each Unit Owner shall (i) maintain his Unit at all times in a good and clean condition, including the repair and replacement at Owner's expense of all portions of this Unit, (ii) perform his responsibilities in such a manner as not to unreasonably disturb other Owners, (iii) promptly report to the Board, or its agents, any defect or need for repairs, the responsibility for which is that of the Association, and (iv) to the extent that such expense is not covered by the proceeds of insurance carried by the Association,

shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owner(s) of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of their rights of subrogation.

7.4 Waiver of Claims. Except as may otherwise be specifically provided for in this Declaration, the Association agrees that it shall make no claim against the Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, members of the Board, officers of the Association, or its employees or agents thereof, or against any manager retained by the Board or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a unit or personal property located therein, even if caused by the omission or neglect of any one or more of such persons named above and all such claims are hereby waived and released; provided, however, that this waiver shall not apply to any such loss or damage due to the intentional acts; provided, further, this waiver is void if application of the same will result in loss of insurance coverage by the party suffering the damage.

7.5 Right of Entry.

a. *By the Association.* The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purpose of performing any of the Association's duties or obligations, or exercising any of the Association's powers under the Act, this Declaration, or the By-Laws, with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Paragraph 7.4, the Association shall be responsible for any damage caused by the Association, or its authorized persons, to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as reasonably possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

b. *By Unit Owners.* Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing, or replacing the requesting Owner or Occupant's Unit, or performing the duties and obligations under the Act, this Declaration, or the By-Laws of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Paragraph 7.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

## ARTICLE VIII INSURANCE

8.1 Casualty Insurance. The Association shall maintain casualty insurance upon the Property in the name of, and the proceeds thereof shall be payable to the Association, as Trustee for all Unit Owners and Security Holders as their interest may appear, and such proceeds shall be disbursed pursuant to the Act. Such insurance shall be in an amount equal to the full replacement costs of the Property at the time such policy is purchased or renewed, to include the deductible amount, if any, exclusive of land, excavations, foundations and other items normally excluded from property policies. The Board of Directors shall determine the appropriate deductible amount under such policy but in no event shall such deductible be more than ten percent (10%) of the replacement costs. Such policy shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to the Act.

8.2 Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of all Unit Owners, Occupants and holders of a vendor's interest in a contract for a deed on a Unit, the Association, the Board, the Manager, if any, the Declarant and all of their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that, the public liability insurance shall be for at least \$1,000,000.00 per occurrence for death, bodily injury and property damage. Limits on liability and deductibles may be altered from time to time by the Board. Said insurance shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership, or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

8.3 Other Insurance. The Association may procure such other insurance as it may from time to time deem appropriate to protect the Association or the Unit Owners.

8.4 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense to be assessed and collected from all of the Owners of Units.

Declarant shall procure and pay the premium(s) for the initial insurance policies required by this Article and shall be reimbursed for the pro rata portion of the cost thereof by each Owner at the time each Unit is conveyed to a Person other than the Declarant.

BOOK

1221

PAGE

458

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

8.6 Individual Policy For Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, person liability, and any other coverage obtainable, to the extent and in the amount such Unit Owner deems necessary to protect his own interest; provided, that any such insurance shall contain waivers pursuant to Paragraph 7.4 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of the insurance purchased by a Unit Owner under this Paragraph, then such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

#### ARTICLE IX CASUALTY DAMAGE

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and the proceeds of insurance shall be used and applied in accordance with the provisions of N.C.G.S. § 47C-3-113.

#### ARTICLE X CONDEMNATION

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with the provisions of N.C.G.S. § 47C-1-107.

#### ARTICLE XI TERMINATION

The Condominium may be terminated only in strict accordance with the provisions of N.C.G.S. § 47C-2-118.

#### ARTICLE XII REMEDIES FOR DEFAULT

The Owner or Owners of each Unit shall be governed by and shall comply with the provisions of the Declaration. A default by an Owner shall entitle the Association or any Owner of a Unit to the following relief:

BOOK 1221 PAGE 458

A. Failure to comply with any of the terms of this Declaration, rules and regulations or the By-laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, fines, actions to recover sums for damages, injunctive relief, foreclosure of lien, or any combination thereof. Assessments in the form of fines for the violation of this Declaration shall be subject to the provisions of N.C.G.S. Chapter 47C. Such relief may be sought by the Association or, if appropriate, by an aggrieved Owner.

B. Each Owners 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, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances. Assessments for such liability shall be subject to the provisions of N.C.G.S. §47C-3-107(d). Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys fees as may be determined by the Court, but in no event shall any Owner be entitled to such attorneys fees except as otherwise provided in N.C.G.S. §47C-3-116(e).

D. The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or the Owner to enforce such right, provision, covenant or condition in the future.

E. The violation of the rules and regulations adopted by the Board or the breach of any provision of this Declaration shall give the Board the right, in addition to any other rights set forth herein or in the Act: (i) to enter a Unit or the portion of the Property on which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions thereof, and the Board shall not thereby be deemed guilty in any manner of trespass; (ii) to use self-help to remove or cure any violation of this Declaration; or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted.

F. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

G. The failure of a Security Holder to enforce any right, provision, privilege, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

### ARTICLE XIII AMENDMENT

This Declaration may be amended only in strict compliance with the Act, including without limitation, N.C.G.S. § 47C-2-117. Notwithstanding the above or anything to the contrary stated herein, no amendment to this Declaration shall change, modify or alter the rights reserved to the Declarant as provided for herein without first obtaining the written consent to the Declarant which consent shall be attached to and recorded with any such amendment.

### ARTICLE XIV ASSOCIATION AND DECLARANT RESERVATIONS

14.1 **OPTION TO PURCHASE.** No Unit shall be transferred, assigned, sold, pledged, hypothecated, or otherwise disposed of voluntarily except as permitted under Subparagraph (a) and (b) or except for transfers by an Owner of his Unit by deed, gift or devise to a person related to him in the first-degree by blood or marriage without restriction; however, this Paragraph shall continue to apply to all subsequent transferees requiring their compliance herewith.

a. Transfer to Third Party. Upon the receipt of a written, bona fide offer ("Third Party Offer") to purchase his Unit, any Owner intending to transfer his Unit (the "Offeror") pursuant to such offer shall first be required to offer the same for purchase to the Association at the same purchase price and upon the same terms as are indicated in the Third Party Offer. Owner shall be required to notify the Association in writing of his intention to accept the Third Party Offer. The notice shall be accompanied with a complete copy of such Third Party Offer, including any exhibits or other documents referred to therein. The Association shall have a period of ten (10) days measured from the date of delivery of such notice in which to notify the Owner in writing of its intention to purchase said Unit. Failure to provide notice to the Owner within said ten (10) day period shall be considered a release or waiver of the right to purchase said Unit. In the event, the Association does exercise its rights hereunder to purchase said Unit, closing shall be held within forty-five (45) days of its election at a place within Carteret County, North Carolina selected by Association, but otherwise in accordance with the terms of the Third Party Offer.

b. Involuntary Transfer. The Association shall have the option to purchase at the Unit's fair market value as of the date of the purported transfer, any Unit that is purported to be transferred involuntarily, including without limitation, any purported transfer by or pursuant to bankruptcy, death (only if Unit passes to other than a related party as defined under paragraph (a) above), attachment, or operation of law. The Association may exercise this option by giving written notice to the Owner and to the

BOOK 1221 PAGE 458

purported transferee at any time within thirty (30) days after the Association receives notice of such purported transfer. The Owner hereby covenants to give the Association prompt written notice of any purported involuntary transfer and the name and address of the purported transferee.

If the Association does not elect to exercise its option pursuant to this Subparagraph (b), the transferee of the Unit shall be deemed to be an Owner hereunder and bound by the provisions hereof.

At the closing of any purchase of Unit pursuant to this Subparagraph (b), which closing shall occur within sixty (60) days after the exercise of Association's option referenced herein, the purchase price shall be paid in full in cash to the Owner and transferee as their interests appear.

c. Applicability. Foreclosures. This Paragraph 14.1 shall have no application to transfers occurring as a result of foreclosure of a monetary obligation secured by a Unit.

d. Notices. Any notice which is required or permitted under this Paragraph 14.1 shall be in writing and shall be deemed properly given only if delivered personally or sent by registered or certified mail or by Federal Express or other overnight mail service, postage prepaid, with written confirmation to follow, as follows:

If to Association: The principal office address of the Association or its registered agent.

If to Owner: The address appearing on the Association's books and records.

Notice provided using overnight mail or certified or registered mail shall be deemed received on the day after depositing the same with overnight carrier or the U.S. Mail as the case may be.

d. Violation. Any purported transfer in violation of the provisions of this Paragraph shall be void.

#### 14.2 Reservation of Development Rights.

a. All Development Rights, as that term is defined in the Act, together with any and all other development rights as are set forth in the Act and this Declaration;

b. The right to construct utility lines, pipes, wires, ducts, conduits, and other facilities across the land, Common Elements and Limited Common Elements in the Condominium not occupied by improvements and/or Units for the purpose of furnishing utility and other services to other properties of Declarant adjacent or

1221 458



contiguous thereto. Declarant also reserves the right to withdraw and grant easements and construct other utility improvements within those easement areas anywhere in the Condominium not occupied by buildings and/or Units, for the above mentioned purpose.

c. The right to withdraw and to grant such easements for utility services, drainage, pedestrian and vehicular traffic, or otherwise, across, under or through the Common Elements as may be considered by Declarant desirable to provide such utility service, drainage, pedestrian and vehicle access to other properties of Declarant adjacent or contiguous thereto.

d. The Development Rights reserved hereunder by Declarant may be exercised with respect to different portions of the Property at different times, and Declarant makes no assurances as to the boundaries of those portions or the order in which those portions of the Property may be subjected to the exercise of the Development Rights. If a Development Right is exercised with respect to any portion of the Property, Declarant may, but is not obligated to, exercise any Development Right with respect to any other portion of the Property.

e. The Development Rights reserved by Declarant must be exercised within ten (10) years from the date of recording of this Declaration in the Office of the Register of Deeds of Carteret County, North Carolina.

f. The exercise of any or all of the Development Rights reserved by Declarant shall be pursuant to, and subject to, the provisions of the Act, and subject to all easements granted to the Association.

#### 14.3 Reservation of Special Declarant Rights.

a. All Special Declarant Rights, as that term is defined in the Act, and any other Special Declarant Rights as are set forth in the Act and this Declaration.

b. The right to use any portion or all of the Common Elements for the purpose of aiding in the sale of Units, including the right to use portions of the Condominium for parking of prospective purchasers and other such parties as Declarant determines. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit the same and to distribute audio and visual promotional materials upon the Common Elements.

c. The right to use easements through the Common Elements for utility services, drainage, pedestrian and vehicular traffic, or otherwise, across, under or through the Common Elements as may be considered by Declarant desirable for the purpose of making improvements within the Condominium or improvements to be added to the Condominium.

d. The right to complete improvements indicated on the Plat and Plans and any areas reserved for future development by Declarant;

e. The right to exercise any and/or all of the Development Rights of Declarant;

f. The right to perform warranty work and repairs and construction work, and to store materials in secure areas, and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of the Board. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's Development Rights and Special Declarant Rights, whether arising under the Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities and other entities to fulfill the plan of development.

#### 14.4 Limitation on Development Rights and Special Declarant Rights.

The Development Rights and Special Declarant Rights reserved in this Declaration are limited as follows:

a. The Development Rights and Special Declarant Rights may be exercised at any time, but not later than ten (10) years from the date of the recording of the Declaration in the Office of the Register of Deeds of Carteret County. All Development Rights and Special Declarant Rights shall terminate on the date which is ten (10) years after the date of the recording of this Declaration in the Office of the Register of Deeds of Carteret County.

b. No Development Rights and/or Special Declarant Rights may be abandoned or terminated by Declarant unless all persons holding security interests in the Development Rights and/or Special Declarant Rights consent to such abandonment or termination.

14.5 Phasing of Development Rights. Declarant reserves the right to exercise any of Declarant's Development Rights with respect to the Property at different times. No assurances are made by the Declarant regarding the areas or any portions of the areas as to the portions where Declarant will exercise its Development Rights or the order in which such portions will be developed. No assurances are made by Declarant regarding whether all or portions of the areas described on the Plat and Plans as "reserved for future development" will be developed. The exercise of any Development Rights in part does not obligate Declarant to exercise all of its Declarant's Development Rights in the future. Declarant reserves the right to exercise any of Declarant's Development Rights as to portions but not all of the property described in Plat and Plans.

#### 14.6 Interference with Special Declarant Rights and Development Rights.

a. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right or Development Right without the prior written consent of Declarant.

BOOK 1221 PAGE 458

b. In relation to Declarant's exercise of any Special Declarant Right or Development Right, the provisions of this Declaration which prohibit or require approval by the Association or Owners of additions, alterations, or any improvements shall not be applicable.

14.7 Assignment of Declarant's Rights and Duties. Any and/or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person which will assume any and/or all of the duties of Declarant hereunder, and upon any such person evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations, and duties hereunder. Declarant may limit and restrict the rights and powers which are assigned to any person in the instrument which assigns such rights. The term "Declarant" as used herein includes all such assignees and their successors and assigns, subject to such restrictions or limitations as may be imposed in the instrument assigning such rights.

#### ARTICLE XV

#### RIGHTS OF FIRST MORTGAGEE; VA, FNMA, AND FHLMC PROVISIONS

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

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

15.3 Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners and any aggrieved Unit Owners shall have a right of action against the Association for failure to comply with the provisions of this Declaration, the By-Laws and the rules, regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the By-Laws. The succeeding party shall be entitled to a recovery of all of its costs and expenses incurred in prosecuting such an action, including their reasonable attorneys fees.

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

15.5 Consent of Security Holders. This Paragraph shall be effective only if, at the time this Paragraph would apply, at least one Unit is subject to financing. Any decision to: (i) terminate this Condominium for reasons other than substantial destruction or condemnation of the Property or (ii) use hazard insurance proceeds for losses to any part of the Condominium (whether to Units or Common Elements) for other than repair, replacement or reconstruction thereof, shall require under either the prior written consent of Security Holders of First Mortgages representing 67% of the votes allocated to Units which are subject to First Mortgages.

15.6 Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its mortgage held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires the consent of a specified percentage of First Mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its First Mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under the Declaration or By-Laws by said Unit Owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible Security Holders shall be considered an "eligible Security Holder". With respect to the consent required under Paragraph 15.5, any First Mortgagee who receives a written request by the Association, or any Unit Owner, who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

15.7 Assessments. Assessments shall be due and payable in monthly installments or as the Board directs. As legally required by N.C.G.S. § 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against the Unit upon the giving of notice by the Board to a Member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

15.8 Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards. With respect to First Mortgages held by or for the benefit of any person, no provision of this Declaration or the By-Laws shall be deemed to give a Unit Owner, or any other person,

priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

## ARTICLE XVI GENERAL PROVISIONS

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

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

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

16.4 Exhibits. Exhibits "A", "B", "C", and "D" are attached hereto and made a part hereof.

16.5 Authority of Association. Unless specifically limited by a provision of this Declaration or the By-Laws, any action allowed or required to be taken by the Association may be taken by a majority vote of the Board, without joinder or approval of the Members of the Association.

16.6 Allocations. Each Unit shall be allocated its pro-rata interest in the Common Elements based on square footage, and like-wise its pro-rata share of the Common Expenses and vote based on said interest. There shall be no differentiation as to allocations of Common Expenses on particular matters except as otherwise specifically provided for herein.

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

SHORES DEVELOPMENT, INC.

By:

James H. P. Bailey, Jr.  
James H.P. Bailey, Jr., President

STATE OF NORTH CAROLINA

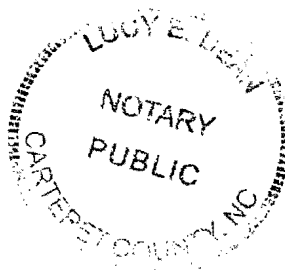
COUNTY OF CARTERET

I, a Notary Public of the County and State above, do hereby certify that JAMES H.P. BAILEY, JR., personally came before me this day and acknowledged that he is President of SHORES DEVELOPMENT, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him as its President.

This the 1<sup>st</sup> day of May, 2007.

Lucy E. Dean  
Notary Public

My commission expires: 9/21/08



BOOK 1221 PAGE 458

EXHIBIT A  
[Property]

Being all of Lot 20 and 20-A depicted on that certain plat entitled "Physical Survey of Spooners Creek Marina Condominiums" prepared by Stroud Engineering, P.A., dated May 1, 2007 and recorded in Map Book 107, Page 193, Carteret County Registry.

EXHIBIT B  
[Limited Common Elements]

The following areas are limited common elements for Units as depicted in the Plat and Plans:

Balconies adjacent to each Unit;  
Storage areas in parking level of each of the Buildings Aqua, Breakers and Coral;  
HVAC systems adjacent to each of the Buildings Aqua, Breakers and Coral;

BOOK 1221 PAGE 458

## EXHIBIT C

Unit Designation	Percentage of Undivided Interest	Percentage of Common Expenses
Building A:		
A-11	3.045%	3.045%
A-12	2.792%	2.792%
A-13	2.792%	2.792%
A-14	3.045%	3.045%
A-21	3.045%	3.045%
A-22	2.792%	2.792%
A-23	2.792%	2.792%
A-24	3.045%	3.045%
A-31	3.045%	3.045%
A-32	2.792%	2.792%
A-33	2.792%	2.792%
A-34	3.045%	3.045%
A-41	3.045%	3.045%
A-42	2.798%	2.798%
A-43	2.798%	2.798%
A-44	3.045%	3.045%
Building B:		
B-11	3.045%	3.045%
B-12	2.792%	2.792%
B-13	3.045%	3.045%
B-21	3.045%	3.045%
B-22	2.792%	2.792%
B-23	3.045%	3.045%
B-31	3.045%	3.045%
B-32	2.792%	2.792%
B-33	3.045%	3.045%
Building C:		
C-11	3.045%	3.045%
C-12	2.792%	2.792%
C-13	3.045%	3.045%
C-21	3.045%	3.045%
C-22	2.792%	2.792%
C-23	3.045%	3.045%
C-31	3.045%	3.045%
C-32	2.792%	2.792%
C-33	3.045%	3.045%

Total: 100.00% 100.00%

Note: Units A-42 and A-43 have a higher percentage interest than the typical "A" or "AR" unit

BOOK 1221 PAGE 458



EXHIBIT D  
[By-Laws]

**BY-LAWS  
OF  
THE SHORES AT SPOONERS CREEK MARINA CONDOMINIUM OWNERS'  
ASSOCIATION, INC.**

ARTICLE I - OFFICES

The principal office of the Association shall be located at such place as the Board of Directors may fix from time to time. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

ARTICLE II - MEMBERS

The Members of the Association shall be those persons or entities which meet the requirements for membership in the Association as set out in the Declaration of Unit Ownership recorded in Deed Book 1221, Page 458, Carteret County Registry, as amended (hereinafter referred to as the "Declaration").

ARTICLE III - MEETING OF MEMBERS

SECTION 1 - Annual Meetings

The annual meeting of the Members of the Association shall be held on the last Saturday of the month of September each year at such place and time as may be fixed by the Board of Directors to be included in the notice thereof. The Directors may change the date and time of the annual meeting from time to time by resolution but in no event later than thirty (30) days from the anniversary date of the prior annual meeting. The Annual Meeting shall be for the purposes of electing directors and transacting such other business as may properly come before the meeting.

SECTION 2 - Special Meetings

Special meetings of the members may be called at any time by the Board of Directors or by the President, and special meetings shall be called by the President or the Secretary at the written request of Members representing at least twenty percent (20%) of membership, or as otherwise required under the provisions of the laws of the State of North Carolina ("Corporation Law").

BOOK 1221 PAGE 458

### SECTION 3 – Place of Meetings

All meetings of the members shall be held at the principal office of the Association or at such other places as shall be designated in the notices or waivers of notice of such meetings.

### SECTION 4 – Notice of Meetings

(a) Written notice of each meeting of the Members, whether annual or special, stating the time and place where it is to be held, shall be served either personally or by mail, not less than fifteen (15) or more than sixty (60) days before the meeting, upon each member of record as of the date of notice entitled to vote at such meeting and to any other person to whom the giving of notice may be required by law. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. If mailed, such notice shall be directed to each such Member at his address as it appears on the membership records of the Association, unless he shall have previously filed with the Secretary of the Association a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request.

(b) Notice of any meeting need not be given to (i) any person who may become a Member of record after the mailing of such notice and prior to the meeting, (ii) any Member who attends such meeting, in person or by proxy, or (iii) any Member who, in person or by proxy submits a signed waiver of notice either before or after such meeting. Notice of any adjourned meeting of members need not be given, unless otherwise required by statute.

### SECTION 5 – Quorum

(a) Except as otherwise provided herein, by statute or in the Articles of Corporation (such Articles and any amendments thereof being hereinafter collectively referred to as the "Articles of Corporation"), at all meetings of the Members of the Association, the presence at the commencement of such meetings in person or by proxy of Members representing one-third ( $1/3$ ) of the votes of the Association, in good standing and entitled to vote, shall be necessary and sufficient to constitute a quorum for the transaction of any business. The withdrawal of any Member after the commencement of a meeting shall have no effect of the existence of a quorum after a quorum has been established at such meeting.

(b) Despite the absence of a quorum at any annual or special meeting of the members, those in attendance and entitled to vote thereon may, by majority vote, adjourn the meeting. At any such reconvened meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been present. No meeting may be adjourned for longer than forty-eight (48) hours.

## SECTION 6 – Voting

- (a) Except as otherwise provided by statute, the Articles of Corporation or in these By-Laws, any corporate action, other than the election of directors shall be taken by vote of the members and shall be authorized by a majority of votes cast at a meeting of members entitled to vote thereon.
- (b) Except as otherwise provided by statute, the Articles of Corporation or in these By-Laws, a Member shall be entitled to vote his percentage ownership in the Common Elements as the same is set forth in the Declaration; provided, however, when more than one person holds an interest in a Unit, all such persons shall be members and the vote for such Unit shall be exercised as they, among themselves determine, but in no event shall more than the interest in the Common Elements allocated to said Unit be cast.
- (c) Each member entitled to vote or to express consent or dissent without a meeting may do so by proxy; provided, however, that the instrument authorizing such proxy to act shall have been executed in writing by the member himself or by his Attorney-in-fact thereunto duly authorized in writing. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless the person(s) executing it shall have specified therein the length of time it is to continue in force. Such instrument shall be exhibited to the Secretary at the meeting and shall be filed with the records of the Association.
- (d) Any resolution in writing signed by all of the members entitled to vote thereon shall be and constitute action by such members to the effect therein expressed, with the same force and effect as if the same had been duly passed by unanimous vote at a duly called meeting of members, and such resolutions so signed shall be inserted in the Minute Book of the Association under its proper date.

## ARTICLE IV – BOARD OF DIRECTORS

### SECTION 1 – Number, Election and Term of Office

- (a) The number directors of the Association shall be not less than three (3), nor more than five (5) directors. It shall be a qualification to be a Director that such person also be a Member of the Association.

The directors shall be divided into three (3) classes, as nearly equal in number as may be, to serve in the first instance for terms of one, two and three years, respectively, and thereafter the successors in each class of directors shall be elected to serve for terms of three years. In the event of any increase or decrease in the number of directors, the additional or eliminated directorships shall be so classified or chosen that all classes of directors shall remain or become as nearly equal in number as may be possible.

(b) Except as may otherwise be provided herein or in the Articles of Corporation, the members of the Board of Directors of the Association, shall be elected by a plurality of the votes cast at a meeting of the Members entitled to vote thereon. The election of directors shall be by secret written ballot.

(c) Nominations for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors at least ninety (90) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but no less than the number of vacancies that are to be filled. Such nominations shall be contained in the Notice of the Annual Meeting provided to the Members. The Nominating Committee shall endeavor to present a slate of nominees to the Board of Directors that is representative of each building within the Condominium.

## SECTION 2 – Duties and Powers

The Board of Directors shall be responsible for the control and management of the affairs, property and interests of the Association and may exercise all powers of the Association, except as are in the Declaration, Articles of Corporation or by statute expressly conferred upon or reserved to the Members.

By way of illustration, but not limitation, the powers of the Board of Directors shall include:

i. Adopt rules and regulations governing the use of the Common Elements and amenities, the personal conduct of Members and their guests thereon, and establish penalties for the infraction thereof not to exceed \$150.00 per incident;

ii. Suspend a Member's voting rights and right of use of the recreational facilities during any period in which such Member shall be in default in the payment of any assessment levied by the Association; and to suspend such rights, after notice and hearing, for infraction of published rules and regulations for a period no longer than forty-five (45) days;

iii. Declare the office of a Member of the Board of Directors to be vacant in the event such Member of the Board shall be absent from three (3) consecutive regular meetings of the Board;

iv. To employ a manager, an independent contractor, or other employees as is deemed necessary, and prescribe their duties; provided, that any contract for professional management must contain a clause requiring not more than ninety (90) days termination notice;

v. Procure, maintain, and pay premiums on, insurance policy(s) and equitably assess the members the same for their pro rata portion of such expense;

vi. Impose and receive any payments, fees, or charges for the maintenance, use, or operation of the Common Elements and recreational facilities from the Members as provided in the Declaration;

vii. Exercise any other powers necessary and proper for the governance and operation of the Association;

viii. To have an to exercise any and all powers, rights and privileges, whether implicit or explicit, provided: (1) to owners' associations under Chapter 47C of the North Carolina General Statutes, (2) to a Association organized under the Non-Profit Corporation Law of the State of North Carolina existing now or as may hereafter be provided and (3) to the Association under the Declaration;.

### SECTION 3 – Annual and Regular Meetings; Notice

(a) A regular annual meeting of the Board of directors shall be held immediately following the annual meeting of the Members, which shall be at the place of such annual meeting of Members.

(b) The Board of Directors from time to time may provide by resolution for the holding of such other regular meetings of the Board of Directors and may fix the time and place thereof.

(c) Notice of any regular meeting of the Board of Directors shall not be required to be given and, if given, need not specify the purpose of the meeting; provided, however, that in case the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each director who shall not have been present at the meeting at which such action was taken within the time limited, which notice shall be given in the manner set forth in paragraph (b) of Section 4 of this Article III with respect to special meetings, unless such notice shall be waived in the manner set forth in paragraph (c) of such Section 4.

### SECTION 4 – Special Meetings; Notice

(a) Special meetings of the Board of Directors shall be held whenever called by the President or by one of the directors at such time and place as may be specified in the respective notices or waivers of notice thereof.

(b) Notice of special meetings shall be mailed directly to each director, shall be addressed to him at his residence or usual place of business at least three (3) days before the day on which the meeting is to be held, or shall be sent to him at such place by telegram, radio or cable, or shall be delivered to him personally or given to him orally,

1321 458

not later than the day before the day on which the meeting is to be held. A notice or waiver of notice, except as required in Section 8 or Section 10 of this Article III, need not specify the purpose of the meeting.

(c) Notice of any special meeting shall not be required to be given to any director who shall attend such meeting without protesting prior thereto or at its commencement the lack of notice to him, or to any director who submits a signed waiver of notice, whether before or after the meeting. Notice of any adjourned meeting shall not be required to be given.

#### SECTION 5 – Chairman

At all meetings of the Board of Directors, the Chairman of the Board, if any and if present, shall preside. If there shall be no Chairman or if he shall be absent, the President shall preside, and in his absence, a Chairman chosen by the Directors present shall preside.

#### SECTION 6 – Quorum and Adjournments

(a) At all meetings of the Board of Directors, the presence of a majority of the entire Board shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise provided by law, by the Articles of Corporation or by these By-Laws.

(b) A majority of the directors present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice until a quorum shall be present.

#### SECTION 7 – Manner of Acting

(a) At all meetings of the Board of Directors, each director present shall have one (1) vote.

(b) Except as otherwise provided by statute, by the Articles of Corporation or by these By-Laws, the action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any action authorized in writing by all or the directors entitled to vote thereon and filed with the minutes of the Association shall be the act of the Board of Directors, with the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the Board.

#### SECTION 8 – Vacancies

Any vacancy in the Board of Directors occurring by reason of an increase in the number of directors or by reason of the death, resignation, disqualification, removal (unless a vacancy be filled by the members at the meeting at which the removal was effected) or

inability to act of any director, or otherwise, shall be filled for the unexpired portion of the term by a majority vote of the remaining directors even if less than a quorum, at any regular meeting or special meeting of the Board of Directors called for that purpose.

#### SECTION 9 – Resignation

Any director may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or such officer, and the acceptance of such resignation shall not be necessary to make it effective.

#### SECTION 10 – Removal

Any director may be removed with or without cause at any time by the Members of the Association at a special meeting called for that purpose. Additionally, a director may be removed for cause by action of the Board of Directors, including a member of the Board missing more than three (3) consecutive meetings, regular and/or special.

#### SECTION 11 – Salary

No stated salary shall be paid to directors, as such, for their services unless otherwise approved by a vote of two-thirds (2/3rds) of the members, voting in person or by proxy, at a meeting called for such purpose. Notwithstanding the above, the Board may, by resolution, fix a sum for reimbursement of the cost and expense of attendance at each regular or special meeting of the Board; and provided further, however, that nothing herein contained shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation therefor.

#### SECTION 12 – Contracts

(a) No contract or other transaction between this Association and any other Association shall be impaired, affected or invalidated, nor shall any director be liable in any way, by reason of the fact that any one or more of the directors of this Association is or are interested in, or is a director or officer, or are directors or officers of, such other Association, provided that such facts are disclosed or made known to the Board of Directors.

(b) Any director, personally and individually, may be a party to or may be interested in any contract or transaction of this Association, and no director shall be liable in any way by reason of such interest, provided that the fact of such interest be disclosed or made known to the Board of Directors, and provided further that the Board of Directors shall authorize, approve or ratify such contract or transaction by the vote (not counting the vote of any such director) of a majority of a quorum, notwithstanding the presence of any such director at the meeting at which the action is taken. Such director or directors may be counted in determining the presence of a quorum at such meeting. This Section

12 shall not be construed to impair or invalidate or in any way affect any contract or other transaction which would otherwise be valid under the law (common, statutory, or otherwise) applicable thereto.

### SECTION 13 – Committees

The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate from among its members an executive committee and such other committees (examples are Architectural, Publicity, Recreational, Finance) and alternate members thereof as they deem desirable, each consisting of three or more members, which committees shall have such powers and authority (to the extent permitted by law) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board.

## ARTICLE V – OFFICERS

### SECTION 1 – Number, Qualification, Election and Term of Office

(a) The officers of the Association shall consist of a President, Secretary, Treasurer and such other officers, including a Chairman of the Board of Directors and one or more Vice-Presidents, as the Board of Directors may from time to time deem advisable. The Chairman of the Board of Directors is required to be a director of the Association. Any other officer may be, but is not required to be, a director of the Association. Any two or more offices may be held by the same person, except for the offices of President and Secretary.

(b) The Board of Directors shall elect the officers of the Association at the regular annual meeting of the Board following the annual meeting of the members.

(c) Each officer shall hold office until the annual meeting of the Board of Directors next succeeding his election and until his successor shall have been elected and qualified, or until his death, resignation or removal.

### SECTION 2 – Resignation

Any officer may resign at any time by giving written notice of such resignation to the Board of Directors, the President or the Secretary of the Association. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or by such officer, and the acceptance of such resignation shall not be necessary to make it effective.

### SECTION 3 – Removal

Any officer may be removed, either with or without cause, and a successor elected by the Board of Directors at any time.



#### SECTION 4 – Vacancies

A vacancy in any office by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by the Board of Directors.

#### SECTION 5 – Duties of Officers

Officers of the Association shall, unless otherwise provided by the Board of Directors, each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may be set forth in these By-Laws or as may from time to time be specifically conferred or imposed by the Board of Directors.

- |                |  |
|----------------|--|
| President.     | The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members. He shall sign, with the Secretary (or Assistant Secretary), or any other proper officer of the Association thereunto authorized by the Board of Directors, any deeds, mortgages, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. |
| Vice-President | In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President; and shall perform such other duties as from time to time may be prescribed by the President or Board of Directors.   |
| Secretary.     | The Secretary shall: (a) keep the minutes of the meetings of the Members, of the Board of Directors and of all committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) maintain and authenticate the records of the Association and be custodian of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association is under its seal is duly authorized; (d) sign with the President, or Vice-President, any deeds, mortgages, contracts or other instruments which shall  |

have been authorized by resolution of the Board of Directors; (e) prepare or cause to be prepared membership lists prior to each meeting of the Members as required by law; (f) attest the signature or certify the incumbency or signature of any officer of the Association; and (g) in general perform all duties incident to the office of secretary and such other duties as from time to time may be prescribed by the President or the Board of Directors.

**Treasurer.**

The Treasurer shall: (a) have charge and custody of and be responsible for all funds of the Association; receive and give receipts for moneys due and payable to the Association for any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected by the Board of Directors; (b) maintain appropriate accounting records as required by law and the Declaration; (c) prepare, or cause to be prepared, annual financial statements of the Association that include a balance sheet as of the end of the fiscal year and an income and cash flow statement for that year, which statements, or a written notice of their availability, shall be mailed to each Member within one hundred twenty (120) days after the end of such fiscal year; and (d) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be prescribed by the President or the Board of Directors.

**SECTION 6 – Sureties and Bonds**

In case the Board of Directors shall so require, any officer, employee or agent of the Association shall execute to the Association a bond in such sum, and with such surety or sureties as the Board of Directors may direct, conditioned upon the faithful performance of his duties to the Association, including responsibility for negligence and for the accounting for all property, funds or securities of the Association which may come into his hands.

**ARTICLE VI - BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be available and subject to inspection by any Member upon request made in accordance with G.S. §55A-16-01 et seq. and G.S. §47C-3-118. The Declaration, Articles of Corporation and By-Laws of the Association shall additionally be available for inspection at the principal office of the Association, where copies may be procured for a reasonable administrative fee to be set by the Board of Directors.

BOOK 1221 PAGE 458

### ARTICLE VII – FISCAL YEAR

The fiscal year of the Association shall be based upon the calendar year i.e. January 1 through December 31; however, subject to applicable law

### ARTICLE VIII – CORPORATE SEAL

The corporate seal, if any, shall be in such form as shall be approved from time to time by the Board of Directors.

### ARTICLE IX – INDEMNIFICATION

Any person who at any time serves or has served as a director, officer, employee or agent of the Association, or in such capacity at the request of the Association for any other Association, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Association to the fullest extent permitted by law against (a) reasonable expenses, including attorneys fees, actually and necessarily incurred by him in connection with any threatened or pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he may become liable in any such action, suit or proceeding, subject to the exceptions set forth in G.S. §55A-2-02(b)(4).

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this By-Law, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and giving notice to, and obtaining approval of, the members of the Association.

Any person who at any time after the adoption of these By-Laws serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this By-Law.

### ARTICLE X – AMENDMENTS

#### SECTION 1 – By Members

All By-Laws of the Association shall be subject to amendment, alteration or repeal, upon a two-thirds (2/3rds) vote of the Members entitled to vote, in person or by proxy, at a meeting called for such purpose.

BOOK 1221 PAGE 458

## SECTION 2 – By Directors

The Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time, the By-Laws of the Association; provided, however, that the Members of the Association may alter, amend or repeal any By-Laws made by the Board of Directors. Notwithstanding the above, the Board of Directors shall have no power to change the quorum for meetings of Members or of the Board of Directors or to change any provisions of the By-Laws with respect to the amount of votes required for action (majority/two-thirds), the removal of Directors or the filling of vacancies in the Board resulting from a removal by the Members. If any By-Law regulating an impending election of Directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of Members for the election of Directors, the By-Law(s) so adopted, amended or repealed, together with a concise statement of the changes made.

## ARTICLE XI – PROHIBITION AGAINST SHARING IN CORPORATE EARNINGS

No Director, Officer or employee of or member of a committee of or person connected with the Association, or any other private individual, shall receive at any time any of the earnings or pecuniary profit from the operations of the Association. This shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Association in effecting any of its purposes as shall be fixed by a vote of two-thirds (2/3rds) of the members at a meeting called for such purpose or the reimbursement for the costs and expense of attending Board of Directors meetings as may be fixed by the Board from time to time; and no such person or persons shall be entitled to share in the distribution or winding up of the affairs of the Association, whether voluntary or involuntary. The assets of the Association, after all debts have been satisfied, shall be distributed, transferred, conveyed, delivered and paid over, in such amounts as the Board may determine or as may be determined by a Court of competent jurisdiction, exclusively to charitable, religious, scientific, literary, or educational organizations that would then qualify under the applicable provisions of the Internal Revenue Code and its Regulations as they now exist or may hereafter be amended, relating to Charitable Organizations

## ARTICLE XII - MISCELLANEOUS

Capitalized terms and words used in these By-Laws shall have the same meaning as attached to them in the Declaration unless the context clearly requires otherwise and then in such case the meaning shall be their common and ordinary meaning or, in alternate thereto, as the context would otherwise require in order to give meaning and effect to such terms and words.