

THE GABLES CONDOMINIUM

DECLARATION

THIS DECLARATION, made this ~~28th~~ 1st day of ~~September~~ May 2001, by Lorimer, Inc., a North Carolina corporation, ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

WITNESSETH:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the Town of Kitty Hawk, County of Dare, and State of North Carolina, legally described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Developer desires to submit all of said property to the Act.

NOW, THEREFORE, Developer, as owner of said property, hereby declares as follows:

ARTICLE I.

Definitions

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

1.1. Act. The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

1.2. Association. The Gables Owners Association, Inc., a nonprofit corporation organized under Chapter 55A, North Carolina General Statutes.

1.3. Board. The Board of Directors of the Association.

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

1.5. Common Elements. All portions of the Condominiums except the Units. Limited Common Elements are Common Elements.

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

1.7. Condominium. The condominium created by this Declaration.

1.8. Declarant. Developer and (i) any other persons who have executed this Declaration, or who hereafter execute an amendment to this Declaration, except Security Holders and except persons whose interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights pursuant to Section 47C-3-104 of the Act.

1.9. Declarant Control Period. The period commencing on the date hereof and defined in Section 47C-3-103 of the Act. During the Declarant control period, Declarant shall have all rights of Declarant under the provisions of Chapter 47C of the North Carolina General Statutes.

1.10. First Mortgage and First Mortgagee. A First Mortgage is 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 Units described therein. A first Mortgagee is a holder, from time to time, of a First Mortgage as shown by the records of the office of 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 Mortgagee for all purposes under this Declaration and the Bylaws.

1.11. Floor Plan. The floor plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended.

1.12. Limited Common Elements. Those portions of the Common Elements allocated by operation of Section 47C-2-102(2) or (4) of the Act for exclusive use of one but fewer than all of the Units and also any Limited Common Elements specifically allocated to Units on Exhibit B.

1.13. Occupant. 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, guests and invitees of such lessees.

1.14. Person. A natural person, corporation, partnership, trust or other entity, or any combination thereof.

1.15. Property. The real estate described on Exhibit A, together with all buildings and improvements now or hereafter contracted or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.16. Security for an Obligation. The vendor's interest in a contract for 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.

become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

VII.4. Waiver of Claims. Except only as provided in Section 7.5(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided that this waiver shall not apply to any such loss or damage due to intentional acts.

VII.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 power under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 7.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(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 Unit of, or performing the duties and obligations under the Act, this Declaration or the Bylaws 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 Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of any emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 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.

1.17. Security Holder. Any person owning a Security for an Obligation in a Unit.

1.18. Special Declarant Rights. The rights reserved herein and in the Bylaws for the benefit of a Declarant, as follows: to complete the improvements indicated on the Floor Plans; to maintain sales offices, management offices, models and signs advertising the Condominiums; and to use easements through Common Elements; to elect, appoint or remove members of the Board during the Declarant Control Period. Declarant shall have no right to subdivide or convert Units owned by Declarant.

1.19. Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit C. Each Unit is designated and delineated on the Floor Plans.

1.20. Unit Boundaries. The boundaries of each Unit, both as to vertical or horizontal planes, as shown on the Floor Plans, are undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

1.21. Unit Owner. The person or persons, including the Declarant, owning a Unit in fee simple, including contract-for-deed purchasers of a Unit, but excluding contract-for-deed purchasers of a Unit who are Security Holders, and also excluding all other Security Holders.

ARTICLE II.

Submission of Property to the Act

II.1. Submission. Developer hereby submits the Property to the Act.

II.2. Name. The Property shall hereafter be known as The Gables Condominium.

II.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 two (32) Units, provided that 32 units are constructed. If less than 32 units are constructed the property shall be divided into the number of units actually constructed and Declarant does hereby designate all such Units for separate ownership, subject, however, to the provisions of Section 2.4 hereof.

II.4. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-113(a) and (b) of the Act.

II.5. Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section 1.13, Limited Common Elements include those set forth on Exhibit B and are hereby allocated to Units as shown in Exhibit B.

II.6. Unit Allocations. The allocations of each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and a percentage of the Common Expenses, are as stated on Exhibit C. The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the area of each Unit to the area of all Units. The votes in the Association are equally allocated to all Units.

II.7. Encumbrances. The liens, defects and encumbrances on the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit D.

II.8. Condominium Ordinances. The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

II.9. Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights.

ARTICLE III.

Additional Property

All of the property upon which the Condominium is constructed is set forth and described in Exhibit A to this Declaration. There are no other areas or properties available for expansion and there are no additional properties which will be added to the Condominium under the provisions of this Declaration. All units are not being built at one time and additional units will be added to the Declaration by a Supplemental Declaration as additional buildings are completed.

ARTICLE IV.

Easements

IV.1. Encroachments. In the event that, by reason of the construction, reconstruction, 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 so encroached upon.

IV.2. 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, conduits 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.

IV.3. Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws 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.

IV.4. Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purposes.

IV.5. Easements to Run With Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article IV 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 IV, whether or not specifically mentioned in any such conveyance or encumbrance.

IV.6. Cable Television Easement. Declarant is presently negotiating a cable television wiring agreement with Charter Communications which would provide such company with an easement for installing and maintaining a line connecting the cable television wire located in the building to the cable system. Any such agreement would be entered into by the Declarant, the cable television company and the Association.

ARTICLE V.

Restrictions, Conditions and Covenants

V.1. Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. 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.

V.2. Administration of Condominium. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

V.3. Use Restricted; Use by Declarants.

(a) The Units shall be occupied and used by Unit Owners and Occupants for residential purposes only.

(b) No "For Sale" or "For Rent" sign or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board.

(c) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant may maintain sales offices for sales of Units in the Condominium and models and to display signs or other advertisements until all units have been conveyed to a Unit Owner other than Declarant. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models. The total number of such offices or models maintained at any time by Declarant shall not exceed the number set out above, and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.

(d) Declarant also may maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

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

V.4. Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the board.

ARTICLE VI.

Assessments

VI.1. Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the person liable therefore, all as set forth in the Bylaws. The Board shall be authorized to charge the Unit Owner making an initial purchase directly from the Declarant, an initial fee of not greater than \$500.00, in addition to any other assessments or fees, such sum to be used to establish the initial fund balance of the Association, such fee to be collected at closing on the purchase of a unit.

VI.2. Personal Liability of Transferees; State Liability of First Mortgagee

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to Section 8.11 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.

(c) Where a mortgagee or the beneficiary of a deed of trust, or other person claiming through such deed of trust, pursuant to the remedies provided in a deed of trust, or by foreclosures or by a deed, or assignment, 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.

(d) Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under (b) above or, resulting as provided in (c) above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed, or by assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the

transferee under (b) above and the purchaser at foreclosure or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

VI.3. 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.

ARTICLE VII.

Management, Maintenance, Repairs, Replacements, Alterations and Improvements

VII.1. Common Elements.

(a) By the Association. 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 Section 7.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by the Unit Owners pursuant to Section 7.1(b) hereof. All damage caused 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.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

VII.2. Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units.

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

(b) In addition, the Association may assess any Common Expense benefitting less than all of the units against the Units benefitted in proportion to their Common Expense liability.

VII.3. Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of this Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has