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DORRIS A. FRY  
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NORTH CAROLINA, DARE COUNTY

AMENDED DECLARATION OF UNIT OWNERSHIP  
THE BANKS CONDOMINIUMS PHASE I AND PHASE II  
KILL DEVIL HILLS, NORTH CAROLINA

Leonard J. Assante and Lois McDaniels, President and Secretary, respectively, of The Banks Condominiums Phase I and Phase II, Inc., a corporation organized by merger of the corporations under this the State of North Carolina, and pursuant to Chapter 47A of the North Carolina General Statutes entitled "Unit Ownership Act" do hereby state and declare:

SECTION 1. Statement of Submission.

Leonard J. Assante and Lois McDaniels, President and Secretary, respectively, of The Banks Condominiums Phase I and Phase II, Inc., a corporation organized and existing under the laws of the State of North Carolina, which corporation is the survivor by merger of The Banks Condominiums Association, Inc. and The Banks Condominiums Phase II Association, Inc., and on behalf of the unit owners of all condominiums therein, the said Leonard J. Assante and Lois McDaniels being duly authorized to execute all documents therefore, specifically the consolidation of the Bylaws and the Amended Declaration of the corporation, and do represent all record owners of the condominiums born of ownership in the land hereinafter described and do hereby declare and submit the same to the condominium form of ownership and use in accordance with Chapter 47A of the General Statutes of North Carolina entitled "Unit Ownership Act".

1. The name of which the condominium is to be identified is "The Banks Condominiums Phase I and Phase II" located in the Town of Kill Devil Hills, Dare County, North Carolina.

2. The legal description of the land which is included in and submitted to condominium ownership is located in the Town of Kill Devil Hills, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

PHASE I

BEGINNING at a concrete post or other marker located and being in the East margin of the right of way of Wrightsville Avenue said Avenue having a right of way width of 60 feet at the point of beginning, at the intersection thereof with the North boundary of the lands of the Ebb Tide Motel property; thence from the beginning point along the East margin of the right of way of Wrightsville Avenue North 18 deg. 17 min. West 122.70 feet to an iron pipe or other marker located and being at the intersection of the South boundary of the lands of Allredge Corp. with the East margin of the right of way of Wrightsville Avenue; thence along the Allredge Corp. South boundary North 60 deg. 46 min. 57 sec. East 255.90 feet to an iron pipe or other marker; thence cornering South 18 deg. 17 min. East 171.63 feet to an iron pipe or other marker located and being in the Ebb Tide Motel property North boundary; thence cornering and running along the North boundary of the Ebb Tide Motel property South 71 deg. 43 min. West 252.24 feet to the point of beginning.

BK 38680911

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 2

PHASE II

BEGINNING at an iron pin or other marker located and being in the North boundary of the lands of the Ebb Tide Motel property at the intersection thereof with the East boundary of the lands of The Banks Condominiums Phase I, the said beginning point being located on a course of South 71 deg. 43 min. 00 sec. West 252.24 feet from a concrete post located and being in the East margin of the right of way of Wrightsville Avenue, which said concrete post is located at the intersection of The Banks Condominiums Phase I South boundary and the Ebb Tide Motel North boundary with said right of way; thence from the beginning point and along the Ebb Tide Motel North boundary, South 71 deg. 43 min. 00 sec. West 282.46 feet to a concrete post located and being at the intersection of the Ebb Tide Motel North boundary with the Whitfield tract West boundary; thence along the Whitfield West boundary, North 18 deg. 19 min. 18 sec. West 60 feet to an iron pin; thence cornering South 71 deg. 43 min. 00 sec. West 64.78 feet to an iron pipe; thence cornering North 18 deg. 17 min. 00 sec. West 153.86 feet to an iron pipe located and being in the Allredge Corp. South boundary; thence cornering and along the Allredge Corp. South boundary, North 60 deg. 46 min. 57 sec. East 221.67 feet to an iron pin located and being at the intersection of The Banks Condominiums Phase I East boundary with the Allredge Corp. South boundary; thence cornering South 18 deg. 17 min. 00 sec. East 171.63 feet along The Banks Condominiums Phase I East boundary to the point of beginning.

There is also submitted to condominium ownership a non-exclusive easement of right of way for access, egress and ingress to and from the property hereinabove described from Wrightsville Avenue along the North boundary of said property twenty (20) feet in width, said easement being more particularly described as follows:

BEGINNING at an iron pipe located and being on the East margin of the right of way of Wrightsville Avenue at the intersection thereof with the Allredge Corp. South boundary; thence along the Allredge Corp. South boundary, North 60 deg. 46 min. 57 sec. East 256.90 feet to an hereinabove described; thence cornering South 18 deg. 17 min. East 20 feet to a point; thence cornering South 60 deg. 46 min. 57 sec. West 256.90 feet to a point located and being in the East margin of the right of way of Wrightsville Avenue; thence cornering North 18 deg. 17 min. East 20 feet to the point of beginning.

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 3

SECTION 2. Definitions.

All terms shall have the meaning as set out in Chapter 47A of the General Statutes of North Carolina and in addition thereto and for clarification, the following terms shall have the following meanings:

- A. "Apartment Unit" means "condominium unit" or "unit" and is synonymous therewith as defined in N.C.G.S. 47A-3 (12).
- B. "Association" or "Association of Unit Owners" means all of the unit owners acting as a group in accordance with the consolidated ByLaws and Amended Declaration. As to The Banks Condominiums Phase I and Phase II, this term means The Banks Condominiums Phase I and Phase II, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina by merger of two existing corporations.
- C. "Articles" means the Articles of Incorporation of The Banks Condominiums Association, Inc. and the Articles of Incorporation of the Banks Condominium Phase II Association, Inc.
- D. "Building" means a building, or a group of buildings, each building containing one or more units, and comprising a part of the property; provided that the property shall contain not less than two (2) units.
- E. "Common Areas" or "Common Elements" means all that portion of the condominium property which is not included in the individual condominium units and as further defined in N.C.G.S. 47A-3 (2), except those items listed in paragraphs 'h' therein, unless specifically set out in this section.
- F. "Common Expenses" means expenses for which the condominium unit owners are liable to the Association as defined in the North Carolina Unit Ownership Act and in the condominium documents and includes:
  - 1. All sums lawfully assessed against the unit owners by the association of unit owners;
  - 2. Expenses of administration, maintenance, repair or replacement of the common areas and facilities, and association owned property;
  - 3. Expenses agreed upon as common expenses by the association of unit owners;
  - 4. Expenses declared common expenses by the provisions of Chapter 47A of the General Statutes, or by the Declaration or the By-Laws;
  - 5. Hazard insurance premiums, if required.

BK 39670913

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 4

G. "ByLaws" means the consolidation of the Bylaws of The Banks Condominiums Association, Inc. and the Bylaws of The Banks Condominiums Phase II Association, Inc.

H. "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

I. "Condominium" means the ownership of single units as a multi-unit structure with common areas and facilities.

J. "Declaration" means the instrument, duly recorded, by which the property is submitted to the provisions of Chapter 47A of the General Statutes, as hereinafter provided, and as such declaration from time to time may be lawfully amended.

K. "Limited common areas and facilities" means and includes those common areas and facilities which are agreed upon by all the unit owners to be reserved for the use of a certain number of units to the exclusion of the other units, such as special corridors, stairways and elevators, sanitary services common to the units of a particular floor, and the like.

L. "Majority" or "majority of unit owners" means the owners of more than fifty percent (50%) of the aggregate interests in the common areas and facilities as established by the declaration, assembled at a duly called meeting of the unit owners.

M. "Person" means individual, corporation, partnership, association, trustee, or other legal entity.

N. "Property" means and includes the land, the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended to be submitted to the provisions of this chapter.

O. "Owners" means the record owners of units 1-A through and including unit 4-H of The Banks Condominiums Phase I and Phase II.

P. "Recordation" means to file of record in the office of the county register of deeds in the county where the land is situated, in the manner provided by law for recordation of instruments affecting real estate.

Q. "Unit" or "condominium unit" means an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of its designated use and shall include such accessory spaces and areas as may be described in the declaration, such as garage space, storage space, balcony, terrace or patio, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

R. "Unit designation" means the number, letter, or combination thereof designating the unit in the declaration.

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 6

Each condominium unit shall include the exclusive right to all space and facilities located with the area above described for each such unit including, but not limited to, partitions, doors, windows, plumbing, heating, electric and other facilities located within that condominium unit, except such elements hereinafter described as general common elements.

Each apartment unit shall have access over a common area walkway leading to a stairwell.

SECTION 5. Common Elements, Areas and Expenses Related Thereto.

A. The general common elements or areas located in The Banks Condominiums shall be as follows:

1. All of the land and the premises above described in Section 1 hereof, including all appurtenant rights thereto, shall be general common elements. All facilities located underground shall be general common elements, including any septic tank installation and associated pumps, pipes, tanks, drainfields and lines, and waste treatment facilities and systems associated therewith.
2. At the ground level and extending thereupwards, all of the area of said premises not included in the condominium units as described in Section 4 hereof and all facilities not located in said condominium areas, shall be general common elements.
3. Any lighting facilities, equipment and wiring installed to illuminate the above general common elements and all electric lines, both primary and secondary, leading to but exclusive of any individual unit electric meter, shall also be general common elements.
4. In addition, those items set out in N.C.G.S. 47-3 (2), except as herein reserved or excepted, shall be general common elements.
5. Also included as general common elements are water supply lines to the individual common units, vent lines, plumbing facilities, sanitary sewerage lines, waste pipes and vents, located outside the individual condominium units.
6. Also included as general common elements are such easements for recreation facilities located on property located outside of the Phase II property described in Section 1, A. 2. and easements for access, egress and ingress and for the construction, maintenance and installation of water, sewer, cable television, and other utilities which said easements are conveyed to and are owned by the condominium association.

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The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 5

S. "Unit owner" means a person, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns a unit within the building.

SECTION 3. Building Description.

The condominium buildings constructed on the hereinabove described real property consist of two (2) floors in each of four (4) buildings with each floor in each building containing four (4) units for a total of thirty-two (32) condominium units. The buildings themselves are constructed upon foundations consisting of 8" x 8" wood piles placed eight (8) feet on center throughout each foundation. Each row of piles supports three (3) 2" x 12" girders which support the load bearing walls and floors. The floors consist of 2" x 8" joists located sixteen (16) feet on center with a 1/2" plywood subfloor located underneath a 5/8" particle board on which the carpet pad and carpet inside each unit is installed. The floors have 6" insulation with the ceiling consisting of 1/2" drywall on the first floor and 2" x 6" tongue and groove with 2 1/4" thermax on the second floor. The exterior walls are constructed by 2" x 4" studs located 16" on center with R-11 insulation, 1/2" drywall inside and 1/2" temlock and 5/8" exterior cedar plywood or 5/8" x 6" beveled cedar lap siding outside. The interior walls are of 2" x 4" studs located 16" on center with 1/2" drywall on each side. In addition the walls locate between apartment units contained R-11 insulation in each wall and 5/8" sheetrock. The roofs consist of 235 lb. sealab asphalt shingles over 15 lb. felt which is located on top of 1/2" sheathing on top of 2 1/4" thermax support by 4" x 6" rafters located 4 feet on center.

SECTION 4. Apartment Unit Designation and Description.

There are thirty-two (32) condominium unit apartments, four (4) on each floor of each of the four (4) condominium buildings, each apartment being designated by an alpha numerical figure. The first number being the building number and the second digit being a letter designating the apartment unit within each building. The buildings are designated "1", "2", "3" and "4". Building 3 is located on the North and adjacent to the land now or formerly owned by Allred Corp. while Building 4 is the Southernmost of the four (4) condominium buildings. The first floor apartments in each building are designated A through D and the second floor apartments are designated E through H. Apartment units A and D each have approximately 592 square feet of floor space while Apartments E through H contain approximately 736 square feet of floor space.

Each of the condominium living units shall be known and designated by the number shown for each unit on the Foundation Plan, Floor Plans (Sheet A-2). Each unit shall consist of an enclosed space designated as a dwelling occupying part of a floor in a building as shown on the plats recorded in the Dare County Registry and lying between the unfinished surface of the floor and the unfinished surface of the ceiling of each floor or story of the building and between the interior finished surface on the inside of each unit. The balcony adjoining each unit shall be a part thereof and shall be bounded horizontally by vertical planes coinciding with the interior surface of the railings, and the exterior surface of the wall of the building, and extending vertically from the top of the unfinished floor of the balcony to a horizontal plane in an extension of the bottom of the unfinished ceiling of the unit.

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 7

B. Each condominium unit or apartment owner shall own a share in the common elements and in any surplus funds possessed by The Banks Condominiums Phase II Association, Inc., and shall be liable for the common expenses as follows:

<u>UNIT</u>	<u>PROPORTIONATE SHARE</u>	<u>UNIT</u>	<u>PROPORTIONATE SHARE</u>
1-A	1/32 (0.03%)	3-A	1/32 (0.03%)
1-B	1/32 (0.03%)	3-B	1/32 (0.03%)
1-C	1/32 (0.03%)	3-C	1/32 (0.03%)
1-D	1/32 (0.03%)	3-D	1/32 (0.03%)
1-E	1/32 (0.03%)	3-E	1/32 (0.03%)
1-F	1/32 (0.03%)	3-F	1/32 (0.03%)
1-G	1/32 (0.03%)	3-G	1/32 (0.03%)
1-H	1/32 (0.03%)	3-H	1/32 (0.03%)
2-A	1/32 (0.03%)	4-A	1/32 (0.03%)
2-B	1/32 (0.03%)	4-B	1/32 (0.03%)
2-C	1/32 (0.03%)	4-C	1/32 (0.03%)
2-D	1/32 (0.03%)	4-D	1/32 (0.03%)
2-E	1/32 (0.03%)	4-E	1/32 (0.03%)
2-F	1/32 (0.03%)	4-F	1/32 (0.03%)
2-G	1/32 (0.03%)	4-G	1/32 (0.03%)
2-H	1/32 (0.03%)	4-H	1/32 (0.03%)

SECTION 6. Limited Common Elements or Areas.

There are no limited common elements or areas in The Banks Condominiums Phase I and Phase II.

SECTION 7. Easements.

A. Perpetual Non-Exclusive Easement in Common Areas. The common elements or areas shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement which easement is hereby created, in favor of all of the apartment or unit owners in the condominium for their use and for the use of their families, guests, invitees and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Developer, the condominium association, and all unit owners, and may be used for ingress and egress, for the providing of electric power, telephone, sewer, water and other utility services and lighting facilities, including services, and facilities connected therewith. The Owners, for themselves, their heirs and assigns and the association herein described reserve the right to impose upon the common elements henceforth and from time to time such easements and cross easements for any of the foregoing purposes as they deem to be in the best interest of and necessary and proper for, the owners of apartments and units in The Banks Condominiums Phase I and Phase II.

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 8

B. Encroachment Easement. The entire condominium property, including common areas and individual condominium units or apartments shall be subject to easements for encroachments which now exist or hereafter may exist, caused by the settlement or movement of the building, or caused by minor inaccuracies in construction or reconstruction, which encroachments shall be permitted to remain undisturbed and which said easement shall run in favor of each individual condominium unit owner, the association, and the Developer.

C. Easement for Recreation, Parking, Access, Egress and Ingress. There is hereby conveyed and reserved a non-exclusive easement of access, egress and ingress to and from the condominium buildings and Wrightsville Avenue and for other purposes herein expressed over, upon and across all of the lands dedicated to unit ownership and described in Section 1 of this declaration.

The herein conveyed easement shall be subject to such regulations and rules as to the use thereof as may be promulgated by the association from time to time, which said regulations may control and regulate, parking, assignment of parking spaces, walkways, driveways and passageways. The aforesaid easement is also subject to the right of the association and the owners to construct, build or place thereon such recreational facilities as, but not limited to, swimming pools, tennis courts, shuffleboard and badminton courts, as in the discretion of the owners or the association may seem desirable.

D. Easement for Utilities, Sewerage and Waste Treatment Facilities. There is conveyed hereby an easement of right of way in and to the lands described in paragraph C. of this Section, for the benefit of the condominium unit owners and the association, for the construction, operation and maintenance of all utility lines, and pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines and facilities related thereto, which said easement shall also inure to the benefit of the owners, and all future property owners located or to be located in the tract owned by the owners.

SECTION 8. Statement of Purpose, and Restrictions as to Use.

A. The Banks Condominiums Phase I and Phase II are residence type condominiums and shall be used for single family residences, vacation or resort living units by the unit owner, his family, servants and guests, or tenants and lessees, their servants and guests, and for no other purposes. No condominium unit may be used for a commercial, professional, or home business enterprise or as a hotel or motel, provided, however, that this section will not prevent any unit owner from renting or leasing his condominium unit either himself or through his agent.

B. Each condominium unit is subject to alienation, mortgage or transfer as is any other real property located within the State of North Carolina, however, no condominium unit owner may mortgage or convey by deed of trust his apartment or condominium unit or convey the same as collateral, to any person, firm or corporation except as said conveyance, mortgage or deed of trust shall be a first lien deed of trust or first mortgage or a purchase money mortgage or deed of trust on the condominium unit, unless prior approval is obtained from the association.

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 9

C. The space within any of the condominium units and common elements shall not be further subdivided and any instrument, whether a conveyance, mortgage, deed of trust or other wise, which describes only a portion of the space within any apartment shall be deemed to describe the entire apartment unit owned by the person, firm or corporation executing such instrument.

D. No condominium unit owner shall show any sign, advertisement or notice on any of the common elements, windows, porches or balconies, or upon his condominium unit and shall erect no exterior antenna or antenna upon any portion or any part of his apartment or on any of the common elements.

E. An individual condominium unit owner may keep a pet or pets in his unit, but only under the regulations as promulgated by the association from time to time, and no person may keep any other animals, livestock or poultry nor may any of the same be raised, bred or kept upon any portion of the condominium property, including the common elements, balconies and terraces. The association shall have the authority to declare any pet or pets a nuisance and may cause the owner thereof to remove the same from the condominium property.

F. No apartment or unit owner shall permit or suffer anything to be done or kept in his unit which will increase the insurance rates on his unit or the common elements, or which will obstruct or interfere with the rights of other unit owners or the association, by unreasonable noises, odors or otherwise; nor shall an individual unit owner commit or permit any nuisance, immoral or illegal act in his unit, or on the common elements.

G. No trailer, tent, storage shed, garage or other similar outbuilding or structure shall be placed on the property at any time, either temporarily or permanently, excepting that individual boat trailers, not exceeding the size of one parking space, may be permitted provided said parking space or area is properly assigned to the individual unit owner who owns the said boat trailer or with the express written consent of any other unit owner for the use of his assigned parking space therefor. This restriction shall not apply to the owners, their contractor, subcontractors, laborers or materialmen until such time as all apartment or condominium units have been constructed and sold in The Banks Condominiums Phase I and Phase II.

H. No condominium unit owner shall make structural modifications or alterations in his unit or the permanent fixtures therein unless he has previously obtained approval therefore, in writing from the Board of Directors of The Banks Condominiums Phase I and Phase II, Inc.

I. Unit owners shall abide by and be subject to such rules and regulations as may be adopted by the association and as may be set out herein or in the Bylaws of the association as the same from time to time may be amended.

**SECTION 9. Use and Transfer of Parking Spaces.**

A. The Owners shall assign the use of two (2) particular parking spaces to a particular condominium unit at the time the unit is originally acquired from the Owners. The assignment of use shall be made by describing the particular parking space by reference thereto in a book entitled "Parking Space Assignments" which book shall be maintained by the Owners and at

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 10

such time as the Owners transfer all authority to the association, the association, which said book shall be for the purpose of listing each assignee of each parking space and the transfer thereof. Each transfer shall be recorded in the book and the owner of the unit to which its use is assigned shall have the exclusive right to the use thereof. Upon a conveyance of or the passing of title to the condominium unit to which said parking space is assigned; the owner of the said unit making the conveyance shall deliver cause to be executed a new assignment in the assignment book.

B. Parking spaces may be transferred upon the following conditions:

1. At anytime a parking space may be surrendered or transferred by a unit owner to the association.
2. The use of a parking space may be transferred by a unit owner to any other unit owner within the condominium provided that written notice thereof, executed by the transferor and the transferee shall be submitted to the association which shall record such transfer in the assignment book.
3. The association shall have the absolute right to assign parking spaces assigned or transferred to the association and requests for the assignment of parking spaces held by the association shall be considered by the association on a first come first served basis or on such other terms and conditions as may be adopted by the association.

C. No trucks used for commercial purposes, or trucks over one-half ton capacity may be parked overnight. Only vehicles bearing current license and registration tags may be parked overnight. The association shall have the right to authorize the towing away of any violating vehicles with costs to be borne by the owner or operator thereof.

SECTION 10. Maintenance and Alteration of Apartments.

A. The Association shall maintain, repair and replace all portions of the condominium building, except interior surfaces and walls, contributing to the support of the apartment building, which portions shall include but not be limited to the outside walls of the apartment building and all fixtures, including plumbing and electrical fixtures, on the exterior thereof; boundary walls of apartments; floor slabs and roofs; and load-bearing piers and load-bearing walls.

B. The responsibility of the apartment unit owner shall be:

1. To maintain, repair and replace at his expense all portions of his apartment unit except the portions to be maintained, repaired and replaced by the association.
2. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the condominium building.

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The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 11

3. To repair any frozen pipes, repair any stopped sewer and sink lines, to repair any heating and air conditioning equipment, whether located within an apartment unit or on a limited common element, and to replace any broken window panes or doors that serve an individual apartment unit.
4. To promptly report to the association any defect or need for repairs, the responsibility for which is that of the association.

C. Neither a unit owner nor the association shall make any alteration in the portions of an apartment unit or the building which is to be maintained by the association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval in writing of owners of all apartment units in the condominium building.

SECTION 11. Maintenance and Alterations of Common Elements and Association Property.

- A. The maintenance and operation of the common elements, and property, real and personal, owned by the association shall be the responsibility and the expense of the association
- B. There shall be no alteration or further improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than seventy-five percent (75%) of the common elements and any such alteration or improvement shall not directly interfere with the rights of any unit owner, without first obtaining his written consent. There shall be no change in the shares and rights of any unit owner in the common elements which are altered or further improved, whether or not such unit owner contributes to the cost thereof, except by an Amended Declaration.

SECTION 12. Assessments.

- A. Assessments against apartment unit owners for common expenses shall be made pursuant to North Carolina General Statutes Section 47A-12 and the Bylaws of the association and shall be allocated as set forth in Section 5, paragraph B of this Declaration.
- B. Any sums assessed by the Association for the share of the common expenses chargeable to any unit, and remaining unpaid for a period of thirty (30) days or longer, shall constitute a lien on such apartment unit when filed for record in the Office of the Clerk of Superior Court of Dare County by the association under the provisions of Article 8 of Chapter 44 of the North Carolina General Statutes and any amendments or supplements thereto. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, (b) all sums unpaid on deeds of trust and other encumbrances recorded against the unit prior to the docketing of this lien, and (c) materialmen's and mechanics liens.
- C. A lien created pursuant to paragraph B above may be foreclosed by suit by the Board of Directors of the Association, acting on behalf of the apartment unit owners, in like manner as a foreclosure of a deed of trust or mortgage of real property. The Board of Directors of the Association, acting on behalf of the apartment unit owners, may maintain a suit to recover a money judgment for unpaid common expenses without foreclosing or waiving the lien securing

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 12

said common expenses. The unit owner shall be responsible for all court costs, interest and reasonable attorney's fees incurred in the collection, by foreclosure or otherwise, of said lien for common expenses. Except for purchasing at foreclosure as herein stated, the association shall not purchase or own a condominium unit.

D. Any sum assessed by the association for the share of the common expenses due prior to the acquisition of title to an apartment unit pursuant to a foreclosure proceeding of a mortgage or deed of trust shall not be assessed against the mortgagee of the mortgage or deed of trust of record who forecloses said mortgage or other purchaser of the apartment unit as a result of the foreclosure of a mortgage. Any sums assessed against the apartment unit which is the subject of a foreclosure of a mortgage shall be collectible, from all apartment unit owners, including the purchaser at the foreclosure sale, in the proportions which their shares in the common elements bear to each other.

E. No apartment unit owner may exempt himself from contributing toward the common expenses by waiver of the use or enjoyment of the common elements and facilities or by abandonment of the apartment unit belonging to him.

SECTION 13. Association.

The operation of the condominium shall be by The Banks Condominiums Phase I and Phase II, Inc., hereinafter called the Association, a non-profit corporation under the laws of North Carolina which shall be organized and shall fulfill its functions pursuant to the following provisions.

A. The members of the association shall be the condominium unit owners.

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

C. Whenever the decision of an apartment unit owner is required upon any matter, whether or not the subject of an association meeting, such decision shall be expressed by the same person, in person or by proxy who would cast the vote of such owner if in an association meeting. Where any unit is owned as a tenancy in common or as a tenancy by the entirety, said tenants may determine between themselves how the vote to which they are entitled shall be cast, but the chairman of the meeting of the association shall not accept any division of a vote that said owners would otherwise be entitled to cast if said tenants do not unanimously agree between or among themselves as how their vote would be cast.

SECTION 14. Insurance.

A. Insurance policies upon the condominium property covering the items described in Paragraph B of this Section shall be purchased by the association for the benefit of the association and the apartment unit owners and their mortgagees as their interests may appear. Such policies and endorsements shall be issued in the name of and deposited with the Board of

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 13

directors of the association as trustee for each of the apartment unit owners in the percentages of interest of each apartment unit owner established in this Declaration in Section 5.

B. Insurance shall cover the following:

1. All buildings and improvements upon the land and all personal property included in the common elements shall be insured in an amount equal to the maximum insurable replacement value without deduction for depreciation, as determined annually by the Board of Directors of the association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, including flood insurance and such other risks as are customarily covered with respect to buildings similar to the building on the land, such as vandalism and malicious mischief.
2. Public liability insurance in such amounts and with such coverages as shall be required by the Board of Directors of the association, and with a cross liability endorsement to cover liabilities of the apartment unit owners as a group to an apartment unit owner.
3. Workmen's compensation as required by law.
4. Such other insurance as the Board of Directors of the association may determine from time to time to be desirable.

C. Premiums upon insurance policies purchased by the association shall be paid by the association as a common expense.

D. The Board of Directors of the association, acting on behalf of the apartment unit owners, is hereby irrevocably appointed agent for each apartment owner to adjust all claims arising under insurance policies purchased by the association, and to execute and deliver releases upon the payment of claims.

E. All apartment unit owners and mortgagees of apartment unit owners shall be furnished copies of each insurance policy purchased by the association, showing the name of the insurance trustee, the name of the insurance company, the policy number, the effective date and the expiration date of the policy, the total amount of the policy and the name and address of the insurance agent issuing the policy. The copy shall also provide that the apartment unit owner and the mortgagee of each apartment unit owner shall be furnished notice of any change in or cancellation of the policy within thirty (30) days prior to the effective date of said change or cancellation.

F. Each apartment unit owner shall have the right to insure his own apartment unit for his own benefit, though his provision will not alter or vary the requirement that the association purchase insurance on the building and improvements in the condominium. Any apartment unit owner that has made, or does make, permanent improvements within his apartment unit that have become or will become affixed to the realty, and who desires additional specific contingent insurance on such improvements, may request the association's insurance trustee to include this coverage to be paid in advance by the apartment unit owner so requesting

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 14

the coverage at his own expense and said premiums shall not be a portion of the common expenses of the association. The association's insurance trustee may not unreasonably deny such a request, but it shall not be liable for failure to see that such additional insurance is properly issued.

G. The association will not purchase or obtain insurance to cover the personal property of an apartment unit owner, nor will the association purchase or obtain insurance to cover the individual liability of an apartment unit owner for injuries and damages suffered by anyone or anything within an apartment unit if said injuries or damages are not a liability of the association.

SECTION 15. Repair and Replacement of Destroyed Property.

A. Damage to or destruction of the building and improvements shall be promptly repaired and restored by the Board of Directors of the association using the proceeds of insurance for that purpose. If there is a deficiency in the proceeds of the insurance policies, the apartment unit owners shall be assessed, as a common expense, the difference between the amount of the insurance proceeds and the amount necessary to repair, rebuild or replace the damaged building or improvement to its original condition.

B. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures or buildings, which plans are attached hereto as Exhibit "A".

C. If the building shall be more than two-thirds (2/3) destroyed by fire or other disaster and the owners of three-fourth (3/4) of the units duly resolve not to proceed with repair or restoration, then and in that event:

1. The property shall be deemed to be owned as a tenancy in common by the unit owners;
2. The undivided interests in the property owned by the unit owners as tenants in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;
3. Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the unit owner in the property as provided herein;
4. The property shall be subject to an action for sale for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective undivided ownership of the common areas and facilities, after first paying out of the respective shares of unit owners, to the extent sufficient for that purpose, all liens on the unit of each unit owner; and
5. All real property owned by the association itself shall be transferred by recordable instrument to the individual unit owners in the same proportions as their ownership in the common areas appears.

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 15

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

E. If damage occurs only to those parts of an apartment unit for which the responsibility of maintenance and repair is that of the apartment unit owner as provided in Section 10, then the apartment unit owner shall be responsible for construction and repair after casualty.

**SECTION 16. Compliance and Default.**

A. Each apartment unit owner shall be governed by and shall comply with the terms of this Amended Declaration, the Consolidated Bylaws of the association and the regulations adopted pursuant thereto, and by such documents and regulations as the same may be amended from time to time. A violation or default shall entitle the association, or other apartment unit owners, to the relief described in Paragraph D of this Section in addition to the remedies provided by the Unit Ownership Act.

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

C. The failure of the association or any apartment unit owner to enforce any covenant, restriction or other provisions of this Amended Declaration, the Consolidated Bylaws of the association or the regulations adopted thereto, shall not constitute a waiver of the right to do so thereafter.

D. Any unit owner, the manager, Board of Directors of the association or a combination of unit owners may invoke any appropriate civil remedy to enforce the terms of this Declaration, or the Bylaws of the association.

**SECTION 17. Amendments.**

This Declaration may be amended by the association in the following manner:

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

B. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by any member of the association. Directors and members not present in person or by proxy at any meeting considering the amendment may

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 16

express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by not less than 75% of the entire membership of the association.

C. No amendment shall discriminate against any apartment unit owner or against any apartment unit or class or group of apartment units unless the apartment unit owners so affected shall consent. No amendment shall change any apartment unit owner's share in the common elements appurtenant to his unit, nor increase the apartment unit owner's share of the common expenses, unless the record owner of the apartment unit and all record owners of liens thereon shall join in the execution of the amendment.

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

SECTION 18. Agent for the Service of Process.

A. Harvey O. Lowe, whose address is P. O. Box 534, Nags Head, North Carolina 27959, is hereby designated as the agent upon whom service of process may be made in any action or proceeding brought against the Condominium.

SECTION 19. Termination.

A. This condominium may be terminated by all of the apartment unit owners executing an instrument for that purpose to be recorded in the Dare County Registry. Said instrument must also include the consent of all holders of liens on apartment units that his or its lien may be transferred to the percentage of the undivided interest of the apartment unit owner subsequent to termination.

B. When a termination has been effected as herein provided, all the property previously subject to the Unit Ownership Act shall be deemed to be owned by all of the apartment unit owners as tenants in common, including those parcels of land over which an apartment unit is situated. And further, the association, prior to dissolution, shall convey to all the unit owners, as tenants in common, all real property owned by the association by a duly executed deed of conveyance. Each tenant's undivided interest shall be that percentage of the undivided interest previously owned by such apartment unit owner in the common elements and facilities.

IN WITNESS WHEREOF, Leonard J. Assante and Lois McDaniels hereunto set their hands and seals, and have caused this instrument to be executed in its name and behalf by its President and attested by its Secretary and its seal affixed hereto.

BK 396 PG 0926

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 17

This the 11 day of December, 1984.

THE BANKS CONDOMINIUMS PHASE I  
AND PHASE II, INC.

By: Leonard J. Assante (SEAL)  
Leonard J. Assante,  
President

ATTEST:

Lois McDaniels, Secretary

(Corporation Seal)

STATE OF NEW YORK  
City/County of Rockland, to-wit:

I, Richard Ferrari, a Notary Public in and for the aforesaid State and County, do hereby certify that Leonard J. Assante, President on behalf of The Banks Condominiums Phase I and Phase II, Inc., personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 11 day of December, 1984.

Richard Ferrari  
Notary Public

My Commission expires:

RICHARD FERRARI  
Notary Public, State of New York  
No. 44-4766822  
Residing in Rockland County  
My Commission Expires March 30, 1985



BK 39670927

Lois McDaniels, Secretary  
Lois McDaniels, Secretary

The Banks Condominiums Phase I and Phase II, Inc.  
Amended Declaration - Page 18

STATE OF VIRGINIA

City/County of Va. Beach, to-wit:

I, James D. Crockett, a Notary Public in and for the aforesaid State and County, do hereby certify that Lois McDaniels, Secretary on behalf of The Banks Condominiums Phase I and Phase II, Inc., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

WITNESS my hand and notarial seal, this 13th day of March, 1985

James D. Crockett  
Notary Public

My Commission expires:

NORTH CAROLINA, DARE COUNTY

The foregoing certificates of Robert W. Bennett and James D. Crockett, both being Notaries Public, are certified to be correct.

This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Doris C. G.  
REGISTER OF DEEDS

By: Doris C. G.  
ASSISTANT REGISTER OF DEEDS  
Register

RECORDED: APR. 1, 1985

ATTACHMENT 1

AMENDMENT TO AMENDED DECLARATION OF UNIT OWNERSHIP  
THE BANKS CONDOMINIUMS PHASE I AND PHASE II  
KILL DEVIL HILLS, NORTH CAROLINA

David S. Sanderson and Lois S. McDaniel, President and Secretary, respectively, of The Banks Condominiums Phase I and Phase II, Inc., a North Carolina corporation organized pursuant to Chapter 47A of the North Carolina General Statutes entitled "Unit Ownership Act" do hereby amend the Amended Declaration of Unit Ownership, The Banks Condominiums Phase I and Phase II, Kill Devil Hills, North Carolina, recorded in Deed Book 396 at Page 910 of the Dare County, North Carolina, Registry of Deeds, as follows:

The By-laws of The Banks Condominiums Phase I and Phase II, Inc., are amended by adding Article XII as set out in "Exhibit A," which is attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, David S. Sanderson and Lois S. McDaniel hereto set their hands and have caused this instrument to be executed by The Banks Condominiums Phase I and Phase II, Inc., in its name and behalf by its President and attested to by its Secretary and its seal is affixed hereto.

THE BANKS CONDOMINIUMS PHASE I AND  
PHASE II, INC.

BY: *David S. Sanderson*  
President

ATTESTED BY:

*Lois S. McDaniel*  
Secretary

(CORPORATE SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, a Notary Public of the County and State aforesaid, certify that Lois S. McDaniel personally appeared before me this day and acknowledged that he/she is Secretary of THE BANKS CONDOMINIUMS PHASE I AND PHASE II, 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 its President, sealed with its Corporate Seal, and attested by himself/herself as its Secretary.

WITNESS my hand and notarial seal this 10<sup>th</sup> day of October, 1992.

11-26-94  
MY COMMISSION EXPIRES

*Paula Sue Douglas*  
NOTARY PUBLIC-SEAL/STAMP

EXHIBIT A

AMENDMENT TO BY-LAWS  
THE BANKS CONDOMINIUMS PHASE I AND PHASE II, INC.

The Consolidation of the By-Laws of The Banks Condominiums Phase I and Phase II, Inc., is hereby amended by adding Article XII, which shall be set out as follows:

ARTICLE XII

WASHING MACHINES

No washing machine or other power-driven machine for washing clothes and household linen shall be used in, placed in, stored in or hooked up in any condominium unit subject to the Amended Declaration of Unit Ownership The Banks Condominiums Phase I and Phase II Kill Devil Hills, North Carolina, which is recorded in Deed Book 396 at Page 910 of the Dare County, North Carolina, Registry of Deeds.

Filed Book: 1866 Page: 448 Doc Id: 6187390  
12/22/2005 03:59PM Receipt #: 157149  
Doc Code: ADMT  
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC

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Page: 1 of 3  
12/22/2005 03:59PM

Prepared by and return to: John G. Trimpi, 200 N. Water St. #2A, Elizabeth City, NC

**SECOND AMENDMENT  
TO AMENDED DECLARATION OF UNIT OWNERSHIP  
THE BANKS CONDOMINIUMS PHASE I AND PHASE II  
KILL DEVIL HILLS, NORTH CAROLINA**

Willard Hunt and Ruth Balf

President and Secretary, respectively, of The Banks Condominiums Phase I and Phase II, Inc., a North Carolina corporation organized pursuant to Chapter 47A of the North Carolina General Statutes entitled "Unit Ownership Act" and consistent with Section 17 entitled "Amendments" of the Amended Declaration recorded in Deed Book 396, Page 910, Dare County Registry, certify that proper notice of the subject matter of the amendment specified below was included in the notice of meeting of the members of the Association after a resolution adopting the proposed amendment had been proposed by the Board of Directors and that seventy-five percent (75%) or more of the entire membership of the Association approved the amendment in manner and form set forth as follows:

By adding new paragraph F to Section 12 of the Amended Declaration. New subsection F reads as follows:

In addition to the other remedies specified herein, a unit owner who has failed to pay assessments for common expenses and is in arrears for more than sixty (60) days shall not be entitled to use the common areas consisting of the swimming pool, the picnic area or the parking area until such assessments are paid in full. In the event an owner makes use of the swimming pool, picnic area or parking area after having been warned against said use, a fine in the amount of \$150.00 shall be levied against the owner for each such violation, provided the fine does not exceed \$150.00 per day. This provision shall apply to any guest, family member or individual renting from the owner in default. The owner in default shall be responsible for the actions of his or her guests, family members or tenants in



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Page: 2 of 3  
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making use of these common areas while the defaulting owner has an outstanding arrearage more than sixty (60) days old. The \$150.00 fine shall be assessed by the Board of Directors or an adjudicatory panel established by the Board of Directors pursuant to its bylaws after notice of an opportunity to be heard is given to the defaulting owner.

This provision is made consistent with the power of the Association under G.S. 47C-3-102(11), G.S. 47C-3-107.1, and G.S. 47C-116. As provided in G.S. 47C-4-117, reasonable attorney fees may be awarded to the Association in the event that it is successful in levying the fine against the defaulting owner or otherwise enforcing the remedies available to the Association for violation of the declaration documents as amended.

IN WITNESS WHEREOF, Willard Hunt and Ruth Balf have hereunto set their hands and have caused this instrument to be executed by The Banks Condominiums Phase I and Phase II, Inc., in its name and behalf by its President and attested to by its Secretary and its seal is affixed hereto.

THE BANKS CONDOMINIUMS  
PHASE I AND PHASE II, INC.

By: Willard Hunt  
President

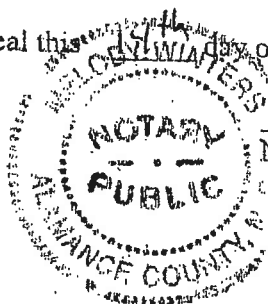
ATTEST:  
Ruth E. Balf  
Secretary

STATE OF North Carolina  
COUNTY OF Alamance

I, a Notary Public of the County and State aforesaid, certify that Ruth E. Balf personally appeared before me this day and acknowledged that he/she is Secretary of The Banks Condominiums Phase I and Phase II, 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 its President and attested by himself/herself as its Secretary.

Witness my hand and seal this 22nd day of December, 2005.

My Comm. Exp.:  
12/21/07



Melody Winters  
Notary Public  
MELADY WINTERS