

Filed Book: 1671 Page: 451  
02/02/2006 09:01AM

Doc Id: 6189946  
Receipt #: 159416  
Doc Code: DECL  
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC



6189946

Page: 1 of 38  
02/02/2006 09:01A

DECLARATION OF  
HC DEVELOPMENT CONDOMINIUM

BERMUDA BAY, L.L.C.,  
a North Carolina Limited Liability Company  
Developer and Declarant



6189946

Page: 2 of 38  
02/02/2006 09:01A

## TABLE OF CONTENTS

ARTICLE 1	ESTABLISHMENT OF CONDOMINIUM .....	2
ARTICLE 2	SURVEY AND DESCRIPTION OF IMPROVEMENTS .....	2
ARTICLE 3	DEFINITIONS .....	2
Section 3.1	Association .....	2
Section 3.2	Common Elements .....	2
Section 3.3	Common Expenses .....	2
Section 3.4	Condominium .....	3
Section 3.5	Condominium Units .....	3
Section 3.6	Declarant .....	3
Section 3.7	Declaration .....	3
Section 3.8	Development Period .....	3
Section 3.9	Development Rights .....	3
Section 3.10	Director .....	3
Section 3.11	Person .....	3
Section 3.12	Property .....	3
Section 3.13	Unit Owner .....	4
ARTICLE 4	OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT ALLOCATED INTERESTS .....	4
Section 4.1	Common Elements .....	4
Section 4.2	Common Expense Allocation .....	4
ARTICLE 5	ALTERATION OF UNITS, RELOCATION OF UNIT BOUNDARIES, SUBDIVISION OF UNITS AND REALLOCATION OF LIMITED COMMON ELEMENTS; SEPARATE CONVEYANCE OF APPURTENANT COMMON PROPERTY PROHIBITED .....	4
Section 5.1	Alteration of Units .....	4
Section 5.2	Common Elements Appurtenant to Units .....	4
ARTICLE 6	CONDOMINIUM SUBJECT TO RESTRICTIONS .....	5
Section 6.1	Non-Residential Use .....	5
Section 6.2	Common Elements .....	5



6189946

Page: 3 of 38  
02/02/2006 09:01A

ARTICLE 7	PERPETUAL EASEMENT IN COMMON ELEMENTS .....	6
Section 7.1	Easements-Common Areas .....	6
ARTICLE 8	RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS .....	6
ARTICLE 9	ADMINISTRATION OF THE CONDOMINIUM BY THE HC DEVELOPMENT ASSOCIATION, AN ASSOCIATION OF UNIT OWNERS .....	6
ARTICLE 10	USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION.....	7
Section 10.1	Use of Common Elements by Owners .....	7
Section 10.2	Use of Limited Common Elements by Owners .....	7
ARTICLE 11	RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES .....	7
ARTICLE 12	RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS OR OTHER CONDOMINIUM UNITS .....	8
ARTICLE 13	ARCHITECTURAL CONTROL OF IMPROVEMENTS WITHIN UNITS; NO RIGHT TO ALTER COMMON ELEMENTS .....	8
Section 13.1	Architectural Control.....	8
Section 13.2	Modification of Common Elements .....	8
Section 13.3	Indemnification-Unit Improvements .....	9
ARTICLE 14	RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR.....	9
ARTICLE 15	MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS .....	9
Section 15.1	Owner Maintenance of Units.....	9
Section 15.2	Maintenance-Insurance Proceeds.....	9
ARTICLE 16	MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION .....	10
ARTICLE 17	AUTHORITY TO PURCHASE INSURANCE.....	10



6189946

Page: 4 of 38  
02/02/2006 09:01A

ARTICLE 18	INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE PROCEEDS.....	11
Section 18.1	Insurance Coverages.....	11
Section 18.2	Premiums-Common Expenses .....	11
Section 18.3	Insurance-Claim Adjustment .....	12
Section 18.4	Mortgagee-Insurance Proceeds .....	12
Section 18.5	Use of Insurance Proceeds.....	12
Section 18.6	Reimbursement of Initial Insurance Premiums.....	12
Section 18.7	Insurance Policy Requirements.....	12
Section 18.8	Insurance Coverage-Betterments .....	13
Section 18.9	Fidelity Insurance .....	13
ARTICLE 19	RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE .....	13
Section 19.1	Reconstruction - Costs.....	13
Section 19.2	Estimates of Replacement Costs .....	13
Section 19.3	Priority of Repair.....	13
Section 19.4	Association Right to Insurance Adjustments.....	13
ARTICLE 20	ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES .....	14
ARTICLE 21	ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT .....	14
Section 21.1	Levy of Assessments .....	14
Section 21.2	Payment of Assessments.....	15
Section 21.3	Association Budget.....	15
Section 21.4	Assessments - Association Property.....	15
Section 21.5	Delinquent Assessments .....	16
Section 21.6	Liability for Assessments.....	16
Section 21.7	Lien for Assessments.....	16
Section 21.8	Foreclosure/Assessment Obligation .....	17
Section 21.9	Statement of Assessment Status.....	18
Section 21.10	Election of Collection Remedies.....	18
ARTICLE 22	COMMON SURPLUS.....	18
ARTICLE 23	TERMINATION .....	18
ARTICLE 24	AMENDMENT OF DECLARATION OF CONDOMINIUM .....	19
Section 24.1	Amendments by Declarant.....	19
Section 24.2	Amendments Proposed by Association .....	19
Section 24.3	Amendments Requiring Declarant Consent.....	20



ARTICLE 25	REMEDIES IN EVENT OF DEFAULT .....	20
Section 25.1	General Default Remedies .....	20
Section 25.2	Liability for Damage by Owners.....	20
Section 25.3	Attorneys' Fees .....	21
Section 25.4	No Waiver .....	21
Section 25.5	Cumulative Remedies for Default .....	21
Section 25.6	No Waiver by Declarant .....	21
Section 25.7	No Waiver by Mortgagee .....	21
ARTICLE 26	SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS RESERVED UNTO DECLARANT.....	22
Section 26.1	Special Declarant Rights Reserved by Declarant.....	22
Section 26.2	Limitation on Special Declarant Rights.....	22
Section 26.3	Interference with Special Declarant Rights .....	23
Section 26.4	Development Rights Reserved by Declarant .....	23
Section 26.5	Limitation on Exercise of Development Rights.....	23
Section 26.6	Assignment of Special Declarant Rights and Development Rights.....	23
ARTICLE 27	SEVERABILITY .....	24
ARTICLE 28	LIBERAL CONSTRUCTION .....	24
ARTICLE 29	DECLARATION BINDING ON ASSIGNS AND SUBSEQUENT OWNERS .....	24
ARTICLE 30	CONDEMNATION.....	24
ARTICLE 31	TAXES.....	25



6189946

Page: 6 of 38  
02/02/2006 09:01A

THIS DECLARATION OF HC DEVELOPMENT CONDOMINIUM (hereinafter referred to as the "Declaration"), made this the 31 day of January, 2006, by BERMUDA BAY, L.L.C., a North Carolina limited liability company (hereinafter referred to as "Declarant") pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina (sometimes hereinafter referred to as the "Condominium Act" or the "Act"), with the joinder and consent of TRSTE, INC., as Trustee and WACHOVIA BANK, National Association, as Beneficiary, as hereinafter set forth in the Consent of Lienholder attached, to ALL PROSPECTIVE PURCHASERS OR OWNERS of property described herein;

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate located in the Town of Kill Devil Hills, Dare County, North Carolina, said real estate being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, it is the desire of the Declarant to submit the property described on Exhibit "A" to the provisions of the Condominium Act to provide for the condominium form of ownership; and,

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of Condominium Units and the co-ownership by individual and separate owners thereof, as tenants in common, of all of the remaining property in the Condominium (all portions of the Condominium except the Units hereinafter being referred to as "Common Elements").

NOW, THEREFORE, Declarant does hereby declare that the property described on Exhibit "A" attached hereto and incorporated herein by reference shall be held, conveyed, encumbered, used, occupied, improved, sold, mortgaged, and otherwise conveyed subject to the rules, regulations, restrictions, covenants, conditions, uses and obligations set forth in this Declaration. All such rules, regulations, restrictions, covenants, conditions, uses and obligations are declared and agreed to be in furtherance of a plan for the improvement of the Condominium and the creation thereon of Condominium Units and shall be deemed to run with the land and be a burden on and a benefit to the Declarant, its successors and assigns, and on and to any person acquiring or owning any interest in the real property in the Condominium and any improvements thereto, and such parties' grantees, successors, heirs, assigns, executors, administrators and devisees. Individual Unit Owners, their employees, guests, tenants and all persons using or possessing any property within the Condominium are subject to the provisions of this Declaration.



## ARTICLE 1

### ESTABLISHMENT OF CONDOMINIUM

The Condominium will contain, initially, seven (7) separate Units identified on Exhibit "B." The maximum number of Condominium Units which may be created pursuant to the exercise of Development Rights, hereinafter defined, shall be twenty (20). Declarant does hereby submit the above-described property and improvements lying within the land area described on Exhibit "A" to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (Condominium Act), and hereby declares the same to be a condominium to be known and identified as "HC Development Condominium."

## ARTICLE 2

### SURVEY AND DESCRIPTION OF IMPROVEMENTS

A survey and plat of the land constituting the Condominium, identifying the Condominium Units and the Common Elements, as said terms are herein defined, and containing the information required by N.C.G.S. 47C-2-109(b) and (c) is recorded in the Unit Ownership File as specified in Exhibit "B," said survey and plat and plans being incorporated herein by reference. Said survey and plat are sometimes collectively referred to herein as Exhibit "B." Each Condominium Unit is identified by a specific number on said Exhibit "B," and no Condominium Unit bears the same number as any other Condominium Unit. The Condominium Units are numbered 1 through 7 as shown on Exhibit B.

## ARTICLE 3

### DEFINITIONS

As used in this Declaration, the Bylaws and the exhibits attached hereto, and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

Section 3.1 Association. "Association" shall mean the Unit Owners association organized pursuant to the Condominium Act and shall be HC Development Association, an association of Unit Owners incorporated under Chapter 55A of the General Statutes of North Carolina, and its successor.

Section 3.2 Common Elements. "Common Elements" shall mean and comprise all of the real property, improvements and facilities of the Condominium, including all personal property held and maintained for the joint use and enjoyment of all the Owners of Condominium Units, excluding however the Condominium Units as herein defined.

Section 3.3 Common Expenses. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.



Section 3.4 Condominium. "Condominium" shall mean the property described on Exhibit "A" which is hereby submitted to condominium ownership.

Section 3.5 Condominium Units. "Condominium Units" or "Units," as such terms are used herein, shall mean a physical portion of the Condominium designated for separate ownership, the boundaries of which are hereinafter defined. There are seven (7) Condominium Units in the Condominium which are the separate numbered Units designated as 1 through 7 on Exhibit "B."

The vertical boundaries of each Unit are the vertical planes represented by the perimetric boundaries identified for each Unit on Exhibit "B." The Units have no horizontal boundaries.

Section 3.6 Declarant. "Declarant" shall mean Bermuda Bay, L.L.C. and any person or entity succeeding to any Special Declarant Rights as provided herein or pursuant to the Condominium Act.

Section 3.7 Declaration. "Declaration" means this instrument and any amendments thereto.

Section 3.8 Development Period. "Development Period" means the period of time during which the Declarant may exercise Development Rights set forth in this Declaration.

Section 3.9 Development Rights. "Development Rights" means the rights or combination of rights to add real estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium; to subdivide Units or convert Units into Common Elements; and to withdraw real estate from the Condominium.

Section 3.10 Director. "Director" means a member of the Executive Board of the Association.

Section 3.11 Person. "Person" shall mean a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity or any combination thereof.

Section 3.12 Property. "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.





Section 3.13 Unit Owner. "Unit Owner" or "Owner" shall mean any Person owning one or more Units, but shall not include a mortgagee unless such mortgagee has acquired title pursuant to foreclosure or some other process in lieu of foreclosure.

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.

ARTICLE 4  
OWNERSHIP OF CONDOMINIUM UNITS  
AND  
APPURTENANT ALLOCATED INTERESTS

Section 4.1 Common Elements. Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit also shall own, as an appurtenance to the ownership of said Condominium Unit, an undivided interest in the Common Elements. The undivided interest in the Common Elements appurtenant to each of the Condominium Units shall be as set out in Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Elements that is appurtenant to each Condominium Unit is equal as to all Units.

Section 4.2 Common Expense Allocation. The portion of the Common Expenses of the Association and the votes in the Association allocated to each Unit shall be as set out in Exhibit "C" attached hereto and made a part hereof. The portion of the Common Expenses of the Association and the votes in the Association allocated to each Unit are equal as to all Units.

ARTICLE 5  
ALTERATION OF UNITS, RELOCATION OF UNIT BOUNDARIES,  
SUBDIVISION OF UNITS AND REALLOCATION OF LIMITED  
COMMON ELEMENTS; SEPARATE CONVEYANCE  
OF APPURTENANT COMMON PROPERTY PROHIBITED

Section 5.1 Alteration of Units. Subject to 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 XIV 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.

Section 5.2 Common Elements Appurtenant to Units. The undivided interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Elements appurtenant to each Condominium Unit shall be



6189946

Page: 10 of 38  
02/02/2006 09:01A

deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Condominium Unit, which describes said Condominium Unit by the number designation assigned thereto by the map recorded as aforesaid without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium 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.

#### ARTICLE 6 CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units and Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Elements, and said Condominium Units and Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium and those hereinafter set forth:

Section 6.1 Non-Residential Use. No Unit shall be occupied or utilized by any Person for living quarters or any residential uses or purposes.

Section 6.2 Nuisances. No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed.

No Owner of any Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Elements.



6189946

Page: 11 of 38  
02/02/2006 09:01A

## ARTICLE 7

### PERPETUAL EASEMENT IN COMMON ELEMENTS

Section 7.1 Easements-Common Areas. Subject to the Special Declarant Rights reserved to Declarant in this Declaration 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 Condominium Units in the Condominium for their use and the use of their tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units. Subject to the Special Declarant Rights, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his tenants, guests, invitees and customers, may be entitled to use the Common Elements and to establish regulations concerning the use of said Common Elements.

## ARTICLE 8

### RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Elements appurtenant to each Condominium Unit, shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division of the Common Elements.

## ARTICLE 9

### ADMINISTRATION OF THE CONDOMINIUM BY THE HC DEVELOPMENT ASSOCIATION, AN ASSOCIATION OF UNIT OWNERS

To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, an association of all Unit Owners has been incorporated under Chapter 55A of the General Statutes of North Carolina known and designated as "HC Development Association" (herein sometimes called the "Association") has been organized, 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 terms of its Bylaws. The Owner or Owners of each Condominium Unit automatically shall become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Elements, and



6189946

Page: 12 of 38  
02/02/2006 09:01A

the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person, firm or association holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, 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 of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C.G.S. 47C-3-102, including the right to assign future income and common expense assessments pursuant to N.C.G.S. 47C-3-102(14).

#### ARTICLE 10

##### USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION

Section 10.1 Use of Common Elements by Owners. The use of Common Elements by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

Section 10.2 Use of Limited Common Elements by Owners. Limited Common Elements, if any, are allocated to the Unit or Units and set forth in this Declaration and/or as depicted on Exhibit "B." The use of Limited Common Elements is restricted to the Owners and Owners' tenants, guests, invitees and customers, of the Unit and/or Units to which the Limited Common Elements are allocated.

#### ARTICLE 11

##### RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES

In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the managing agent, if any, shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.



6189946

Page: 13 of 38  
02/02/2006 09:01A

## ARTICLE 12

RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS  
OR OTHER CONDOMINIUM UNITS

Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements or adjacent Condominium Units, the Owner of each Condominium Unit shall permit other Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

## ARTICLE 13

ARCHITECTURAL CONTROL OF IMPROVEMENTS WITHIN UNITS; NO  
RIGHT TO ALTER COMMON ELEMENTS

Section 13.1 Architectural Control. To assure that improvements within the Condominium shall be initially constructed and, thereafter, maintained at all times in a manner (a) providing for visual harmony; (b) avoiding activities, improvements and structures deleterious to the aesthetic or property values of the Condominium and other Units; and (c) promoting the general welfare and safety of the Owners, during the Development Period no Owner of a Unit shall permit the placement of or construction of any improvements either above ground or below ground, within a Unit without first obtaining the written consent of Declarant, which consent may be withheld in its sole discretion.

Declarant, from time to time, may establish requirements regarding the form and content of plans and specifications to be submitted for proposed improvements to be constructed within a Unit. Declarant shall act upon all matters properly before it in consideration of the approval of any proposed plans within forty-five (45) days from submittal to Declarant; failure to do so within such stipulated time shall constitute an automatic approval of the proposed plans so submitted.

Any Person obtaining approval of plans for the construction of improvements with a Unit shall not materially deviate from the plans and specifications approved without the additional prior written consent of Declarant. Any Owner shall notify the Declarant when the construction of improvements are complete.

Section 13.2 Modification of Common Elements. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, no Unit Owner shall cause any object to be affixed to the Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Association being first obtained.



6189946

Page: 14 of 38  
02/02/2006 09:01A

Section 13.3 Indemnification-Unit Improvements. Subject to the Special Declarant Rights reserved to Declarant in this Declaration, the Board of Directors of the Association, in its sole discretion, may require a Unit Owner desiring to add betterments or improvements within his Unit to indemnify the other Unit Owners and the Association against any and all loss, cost and expense that may be occasioned by the construction of such betterments or improvements and further may require such Unit Owner to obtain liability insurance naming the other Unit Owners and the Association as additional insureds in such amounts and upon such terms as the Board of Directors shall determine.

#### ARTICLE 14

##### RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR

Subject to Declarant's Special Declarant Rights, the Association shall have the right to make or cause to be made such alterations or improvements to the Common Elements which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

#### ARTICLE 15

##### MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

Section 15.1 Owner-Maintenance of Units. Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, and every Owner shall be expressly responsible for the damages and liability which his failure to do so may engender.

Section 15.2 Maintenance-Insurance Proceeds. Whenever the maintenance, repair and replacement of any item for which the Owner of a Condominium is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement



6189946

Page: 15 of 38  
02/02/2006 09:01A

as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. Other than maintenance, repair and replacement arising from a casualty loss, Unit Owners shall be responsible and liable for the maintenance, repair and replacement of the glass surfaces of doors and windows, and door and window screens constituting a portion of the Limited Common Elements appurtenant to said Owner's Unit.

#### ARTICLE 16

##### MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION

Subject to Declarant's Special Declarant Rights, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements or in a Condominium Unit for the furnishing of utility and/or other services to the Common Elements or other Condominium Units. If any incidental damage is caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair or replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair or replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. Whenever the maintenance, repair or replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Unit Owner, his tenants, guests or invitees, and such loss or damage is not covered by any insurance maintained in force by the Association, the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay the cost of such maintenance, repair or replacement. Establishment of liability for damage caused by the Owner of a Unit or the Association is subject to the provisions of N.C.G.S. 47C-3-107(d).

#### ARTICLE 17

##### AUTHORITY TO PURCHASE INSURANCE

All required or permitted insurance policies (other than title insurance and insurance on betterments and improvements to the Limited Common Elements, if any) upon the Property (other than the personal property of the Unit Owners) shall be purchased by the



Association in the name of the Association, as Trustees for the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or memoranda of insurance to the Association and to any Unit Owner, mortgagee, or beneficiary of a deed of trust. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability as may be permitted or required by law, and such insurance shall, if available, contain a waiver of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests.

## ARTICLE 18

### INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE PROCEEDS

Section 18.1 Insurance Coverages. To the extent reasonably available, the following insurance coverage shall be maintained in full force and effect by the Association:

(a) Casualty insurance covering the Common Elements, including all buildings and all improvements within the Common Elements, shall be procured in an amount equal to at least eighty percent (80%) of the maximum insurable replacement value thereof (exclusive of land, excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and, (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Public liability and property damage insurance in such reasonable amounts and covering all occurrences commonly insured against including, death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, and in such forms as shall be required by the Association, including, but not limited to, legal liability, hired automobiles, non-owned automobile and off-premises employee coverage. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners, as a group, to a Condominium Unit Owner.

If the insurance described in Subsection (i) or (ii) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners.

Section 18.2 Premiums-Common Expenses. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.





6189946

Page: 17 of 38  
02/02/2006 09:01A

Section 18.3 Insurance Claim Adjustment. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear.

Section 18.4 Mortgagee-Insurance Proceeds. In the event a mortgage endorsement has been issued for a Condominium Unit, the share of any insurance proceeds of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

Section 18.5 Use of Insurance Proceeds. Proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated except as specified in Article 23.

Section 18.6 Reimbursement of Initial Insurance Premiums. Declarant shall furnish the initial insurance policy required by this Article 18 and shall be reimbursed for the pro rata portion of the cost thereof by each Unit Owner at the time each Unit is conveyed to a Person other than Declarant.

Section 18.7 Insurance Policy Requirements. Insurance policies carried pursuant to this Article 18 shall provide that:

- (a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household, if applicable;
- (c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;
- (d) If, at the time of any loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and



6189946

Page: 18 of 38  
02/02/2006 09:01A

(e) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or endorsements have been issued at their respective last known addresses.

Section 18.8 Insurance Coverage-Betterments. The Association shall not be required to maintain insurance coverage for any betterments or improvements to the Units and/or Limited Common Elements added by any Unit Owner and a Unit Owner may be required to maintain such liability coverage as is otherwise provided herein.

Section 18.9 Fidelity Insurance. If desired, the Association may maintain fidelity insurance.

## ARTICLE 19

### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

Section 19.1 Reconstruction - Costs. Reconstruction of the Condominium following loss or damage shall be as set forth in N.C.G.S. § 47C-3-113. Notwithstanding the provisions of this Article, N.C.G.S. 47C-2-118, shall govern the distribution of insurance proceeds if the Condominium is terminated.

Section 19.2 Estimates of Replacement Costs. Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.

Section 19.3 Priority of Repair. When the damage is to both Common Elements and Condominium Units, the insurance proceeds shall be applied first to the costs of repairing the Common Elements and the balance to the Condominium Units.

Section 19.4 Association Right to Insurance Adjustments. Each Condominium Unit Owner shall be deemed to have delegated to the Association his right to adjust with insurance companies all losses under policies purchased by the Association.



## ARTICLE 20

### ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of the Owners of all of the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Condominium Unit. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any Condominium Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

## ARTICLE 21

### ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses (not including the payment of real estate and personal property taxes) which are sometimes herein referred to as "Common Expenses." To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management and improvement of the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

Section 21.1 Levy of Assessments. Unless specifically otherwise provided for in this Declaration, all assessments levied by the Association shall be levied pursuant to the allocation of Common Expenses set forth in Exhibit "C," as same shall be amended from time to time. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate



interests of the Common Expenses exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

Section 21.2 Payment of Assessments. Assessments provided for herein may be payable in monthly installments or as otherwise directed by the Board of Directors of the Association. Such assessments shall commence upon closing of the sale of the first Unit.

Section 21.3 Association Budget. Pursuant to the Bylaws of the Association, the Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the fiscal year set forth in the Bylaws). Such Budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph D hereof, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of such Annual Budget by the Board of Directors of the Association, copies of said Annual Budget or summaries thereof shall be delivered to each Owner of a Condominium Unit. Within thirty (30) days after adoption of any proposed Budget, the Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the Annual Budget which date shall be not less than fourteen (14) nor more than thirty (30) days after the mailing of copies of such Annual Budget or summary thereof to the Unit Owners. There shall be no requirement that a quorum be present at the meeting. The Annual Budget is ratified unless at that meeting a majority of all the Unit Owners reject the Annual Budget. In the event the proposed Annual Budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify (i.e. fail to reject by a majority of all Unit Owners) a subsequent budget proposed by the Board of Directors. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

Section 21.4 Assessments - Association 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, and the Bylaws of the Association. As monies for any assessment are paid into the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by other Owners of Condominium Units. Although all funds and Common Surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to



6189946

Page: 21 of 38  
02/02/2006 09:01A

be a member of the Association by reason of his divestment of ownership of such Condominium 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.

Section 21.5 Delinquent Assessments. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. Additionally, the Association may elect to impose a late charge for assessments remaining unpaid after a period of thirty (30) days or longer in an amount not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid. All monies owing to the Association shall be due and payable at the office of the Association.

Section 21.6 Liability for Assessments. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners personally shall be liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys' fee, whether suit be brought or not.

No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the use of enjoyment of any of the Common Elements, or by abandonment of the Condominium Unit or in any other way.

Section 21.7 Lien for Assessments. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted the right to place a lien upon each Condominium Unit and its appurtenant undivided interest in the Common Elements for nonpayment of any assessment levied against a Unit remaining unpaid for thirty (30) days or longer, which lien also shall secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien also shall secure all costs and



6189946

Page: 22 of 38  
02/02/2006 09:01A

expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien provided for herein. The lien granted to the Association may be foreclosed as provided in the Act. The Association shall be entitled to bid at any foreclosure sale and may apply as cash credit against its bid all sums due as provided herein. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or may acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the office of the Clerk of Superior Court of Dare County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due, the date when due and shall comply with any other requirements under N.C.G.S. 47C-3-116. The claim of lien shall be recordable at any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid, but shall be extinguished unless a proceeding to enforce the lien is instituted within three (3) years after the docketing thereof. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided and all fees, charges, late charges, fines and interest as set forth in N.C.G.S. 47C-3-116. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be prior to all liens and encumbrances on a Unit except (1) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the office of the Clerk of Superior Court, and (2) liens for real estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

**Section 21.8 Foreclosure/Assessment Obligation.** If the holder of a first mortgage or first deed of trust of record, or other purchaser of the Unit, obtains title to the Unit as a result of foreclosure or deed in lieu of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners including such purchaser, and its heirs, successors and assigns although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment



from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Section 21.9 Statement of Assessment Status. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owner and upon payment of a reasonable charge therefor, 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 any 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.

Section 21.10 Election of Collection Remedies. 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 owing 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 owing to the Association.

## ARTICLE 22

### COMMON SURPLUS

"Common Surplus," meaning all funds and other assets of the Association remaining after the payment of or the provision for Common Expenses, including reserves, shall be owned by the Owners of all Condominium Units in the same proportion as their Common Expense liabilities. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in Common Surplus as declared herein. All Common Surplus remaining after payment of or provision for Common Expenses, including prepayment of reserves, must be paid to the Unit Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense liabilities.

## ARTICLE 23

### TERMINATION

The Condominium may be terminated only by an agreement of Owners of Units to which at least sixty percent (60%) of the votes in the Association are allocated. Termination shall be pursuant to the provisions of the Act.



6189946

Page: 24 of 38  
02/02/2006 09:01A

## ARTICLE 24

### AMENDMENT OF DECLARATION OF CONDOMINIUM

This Declaration may be amended as follows:

Section 24.1 Amendments by Declarant. The Declaration may be amended by Declarant, without the consent of any Owner or any other Person, to exercise Development Rights.

Section 24.2 Amendments Proposed by Association. An amendment or amendments to this Declaration may be executed as set forth in other provisions of this Declaration (such provisions deal with specific and limited reasons for amendment);

(1) An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not later than sixty (60) days from receipt by him of the proposed amendment or amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than fourteen (14) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the Meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of at least sixty-seven percent (67%) of the votes in the Association which are allocated to Unit Owners in the Condominium in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the Register of Deeds Office of Dare County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the





6189946

Page: 25 of 38  
02/02/2006 09:01A

effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting; and,

(2) As an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. To be effective, the written agreement must be executed and delivered to the Board within the period of time stated by the Board by Unit Owners of Units to which at least sixty-seven percent (67%) of the votes of the Association are allocated. Once approved, the amendment or amendments shall be transcribed, certified, executed, recorded and a copy sent to all Owners as specified in Paragraph 2 above.

Section 24.3 Amendments Requiring Declarant Consent. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant. Except to the extent expressly permitted or required by other provisions of this Declaration (in compliance with the Act), no amendment may create or increase special declarant rights, create or increase development rights, increase the number of Units, change the boundaries of any Unit, change the allocated interest of any Unit, or change the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

## ARTICLE 25

### REMEDIES IN EVENT OF DEFAULT

The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration, and the Bylaws of the Association, as any of the same are now constituted or as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owner of other Condominium Units to the following relief:

Section 25.1 General Default Remedies. Failure to comply with any of the terms of this Declaration or other rules and regulations contained in the Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, fines, actions to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Assessments in the form of fines for the violation of the Declaration, Bylaws, or rules and regulations of the Association shall be subject to the provisions of N.C.G.S. 47C-3-107.1. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

Section 25.2 Liability for Damage by Owners. Each 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, employees, agents



6189946

Page: 26 of 38  
02/02/2006 09:01A

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 Condominium 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.

Section 25.3 Attorneys' Fees. In any proceeding arising because of an alleged default by a Unit 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 and as provided in N.C.G.S. 47C-3-116(e) and N.C.G.S. 47C-4-117.

Section 25.4 No Waiver. The failure of the Association or any Unit 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 Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 25.5 Cumulative Remedies for Default - Self-Help. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit pursuant to any terms, provisions, covenants or conditions of this Declaration or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

Section 25.6 No Waiver by Declarant. 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.

Section 25.7 No Waiver by Mortgagee. The failure of a first mortgagee 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 26

### SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS RESERVED UNTO DECLARANT

In addition to each and every right of Declarant as set forth in this Declaration, Declarant, its successors and assigns, specifically reserves the Special Declarant Rights and Development Rights hereinafter set forth below.

#### Section 26.1 Special Declarant Rights Reserved by Declarant.

(a) All Special Declarant Rights, as that term is defined in the Act, and in the other Special Declarant Rights as are set forth in the Act, the Declaration, the Articles of Incorporation and the Bylaws of the Association.

(b) The right to use any portion or all of the Common Elements for the purpose of aiding in the sale of any portion of the Condominium. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit same and to distribute audio and visual promotional materials upon the Common Elements.

(c) The right to maintain sales offices, management offices and models upon the Common Elements and in any and/or all of the Units owned by Declarant. Any Units owned by Declarant may be used by Declarant for such purposes, and such offices and models may be relocated as Units are sold.

(d) The right to use easements through the Common Elements for utility services, drainage and pedestrian 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 exercising any Development Right.

(e) The right to exercise Development Rights.

(f) The right to exercise the veto over actions of the Executive Board as more particularly set forth in the Bylaws of the Association.

#### Section 26.2 Limitation on Special Declarant Rights.

The Special Declarant Rights shall terminate upon the earlier of (i) five (5) years from the date of recording of this Declaration in the office of the Register of Deeds of Dare County or (ii) upon the recording by Declarant of an instrument in the office of the Register of Deeds of Dare County terminating the Special Declarant Rights.



Section 26.3 Interference with Special Declarant Rights.

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

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

Section 26.4 Development Rights Reserved by Declarant.

(a) All Development Rights as the same are defined in this Declaration and in the Act.

(b) The Development Rights may be exercised at different times, and Declarant makes no assurances as to the boundaries of Units and Common Elements which may be created pursuant to the exercise of Development Rights.

Section 26.5 Limitation on Exercise of Development Rights.

The Development Rights reserved hereunder shall terminate no later than the earlier of (i) five (5) years from the date of the recording of this Declaration in the office of the Register of Deeds of Dare County or (ii) upon the recording by Declarant of an instrument in the office of the Register of Deeds of Dare County terminating the Development Rights.

Section 26.6 Assignment of Special Declarant Rights and Development Rights.

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, corporation or association's 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, corporation, or association 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 27

### SEVERABILITY

In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

## ARTICLE 28

### LIBERAL CONSTRUCTION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender shall include the feminine or neuter. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

## ARTICLE 29

### DECLARATION BINDING ON ASSIGNS AND SUBSEQUENT OWNERS

The restrictions and burdens imposed by the covenants of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Condominium Unit and its appurtenant undivided interest in the Common Elements, and this Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who subsequently may become Owners of Condominium Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

## ARTICLE 30

### 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/or the awards paid on account thereof shall be used and applied in accordance with N.C.G.S. 47C-1-107.



6189946

Page: 30 of 38  
02/02/2006 09:01A

## ARTICLE 31

TAXES


Pursuant to the provisions of N.C.G.S. 47C-1-105, each Unit and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. Neither any building, the Property nor any of the Common Elements shall be deemed to be a parcel. Provided, however, pursuant to the provisions of N.C.G.S. 47C-1-105, any areas in which Declarant has Development Rights shall be separately taxed and assessed against Declarant until Declarant exercises Declarant's Development Rights therein or Declarant's Development Rights expire, terminate or are released by Declarant.

IN TESTIMONY WHEREOF, Bermuda Bay, L.L.C. has caused this instrument to be executed under seal and in such form as to be binding, all by authority duly given, this the day and year first above written.

BERMUDA BAY, L.L.C.  
A Limited Liability Company

(SEAL)

By:

  
David Russotto, Manager

See attached Consent of Lienholder



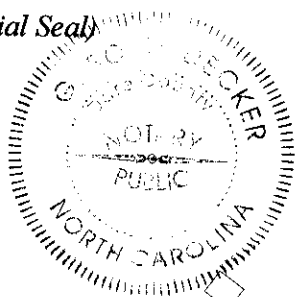
6189946

Page: 31 of 38  
02/02/2006 09:01ASTATE OF NORTH CAROLINA  
COUNTY OF DARE

I, G. Sofia Decker, a Notary Public in and for said County and State, do hereby certify that DAVID RUSSOTTO, before me this day personally appeared, who being by me first duly sworn, says that he is a manager of BERMUDA BAY, L.L.C., the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date January 5, 2006

(Official Seal)

G. Sofia Decker  
Signature of Notary PublicG. Sofia Decker, Notary Public  
Printed or typed nameMy commission expires: Nov. 19, 2009040845-00001-001  
WLMAIN\135719\1



6189946

Page: 32 of 38  
02/02/2006 09:01A

EXHIBIT A  
(LEGAL DESCRIPTION)

Condominium Property

That certain tract or parcel of land lying and being situate in Kill Devil Hills, Atlantic Township, Dare County, North Carolina, beginning at a point in the southern right-of-way line of Ocean Bay Boulevard, which point is located South  $61^{\circ} 30' 33''$  West 1749.09 feet from Control Corner "A" designating the northwestern corner of PARCEL B and the northeastern corner of PARCEL C as shown on that map or plat entitled "SUNSET BAY," said map or plat being recorded in Plat Cabinet F, at Slide 247 in the office of the Register of Deeds of Dare County, North Carolina. THENCE, FROM SAID POINT OF BEGINNING, SO LOCATED, South  $28^{\circ} 29' 27''$  East 515.40 feet to a point; thence, along and with a curve to the right, said curve having a tangent length of 65.26 feet and a delta angle of  $23^{\circ} 46' 37''$ , a chord bearing and distance of South  $49^{\circ} 59' 48''$  West 127.72 feet to the point of tangency of said curve; thence, South  $61^{\circ} 53' 07''$  West 104.39 feet to a point; thence, along and with a curve to the left, said curve having a tangent length of 16.92 feet and a delta angle of  $34^{\circ} 11' 57''$ , a chord bearing and distance of North  $61^{\circ} 02' 28''$  West 32.34 feet to the point of curvature of another curve to the left; thence, along and with said curve to the left, said curve having a tangent length of 36.72 feet and a delta angle of  $67^{\circ} 27' 45''$ , a chord bearing and distance of South  $68^{\circ} 07' 42''$  West 61.08 feet to the point of curvature of another curve to the left; thence along and with said curve to the left, said curve having a tangent length of 85.90 feet and a delta angle of  $114^{\circ} 44' 25''$ , a chord bearing and distance of South  $22^{\circ} 58' 23''$  East 92.64 feet; to the point of curvature of another curve to the left; and thence along and with said curve to the left; said curve having a tangent length of 15.52 feet and a delta angle of  $31^{\circ} 30' 31''$ , a chord bearing and distance of North  $83^{\circ} 54' 09''$  East 29.87 feet to the point of curvature of another curve to the left; thence, along and with said curve to the left, said curve having a tangent length of 46.51 feet and a delta angle of  $80^{\circ} 26' 11''$ , a chord bearing and distance of North  $27^{\circ} 55' 48''$  East 71.03 feet to a point; thence, North  $61^{\circ} 53' 07''$  East 53.57 feet to a point; thence, South  $28^{\circ} 30' 02''$  East 265.78 feet to a point in the southern boundary of PARCEL C as shown on the map of Sunset Bay identified above; thence, along and with the southern boundary of PARCEL C, South  $61^{\circ} 29' 58''$  West 525.07 feet to a point; thence, North  $28^{\circ} 30' 02''$  West 365.59 feet to a point;





6189946

Page: 33 of 38  
02/02/2006 09:01A

thence, North 28° 30' 02" West 91.64 feet to a point; thence, North 16° 54' 49" East 27.91 feet to a point; thence, North 49° 32' 56" West 55.25 feet to a point; thence, North 32° 23' 15" East 55.48 feet to a point; thence, North 15° 48' 32" West 32.89 feet to a point; thence, North 13° 17' 31" East 185.07 feet to a point; thence, North 28° 30' 02" West 37.09 feet to a point; thence, North 19° 38' 09" East 40.38 feet to a point; thence, North 12° 35' 41" West 34.84 feet to a point; thence, South 38° 09' 13" West 43.15 feet to a point; thence, North 28° 30' 02" West 30.50 feet to a point in the southern right-of-way line of Ocean Bay Boulevard; thence, along and with the southern right-of-way of Ocean Bay Boulevard, North 61° 30' 33" East 522.28 feet to the point or place of beginning.



6189946

Page: 34 of 38  
02/02/2006 09:01A

EXHIBIT B

For survey and plat see Unit Ownership File 6, at 157 in the office of the Register of Deeds of Dare County.

Unofficial Copy



6189946

Page: 35 of 38  
02/02/2006 09:01A

EXHIBIT C

UNITS								
<u>Unit #</u>	#1	#2	#3	#4	#5	#6	#7	<u>TOTALS</u>
Undivided Interest in Common Elements Appurtenant to each Unit	1/7	1/7	1/7	1/7	1/7	1/7	1/7	1
Portion of Common Expenses allocated to each Unit	1/7	1/7	1/7	1/7	1/7	1/7	1/7	1
Votes allocated to each Unit	1	1	1	1	1	1	1	7

## CONSENT OF LIENHOLDER

TRSTE, Inc., Trustee and Wachovia Bank, National Association, Beneficiary pursuant to the Deed of Trust recorded in Book 1578, at Page 353 in the office of the Register of Deeds of Dare County, North Carolina, hereby execute this Consent of Lienholder to consent to the imposition of the condominium regime on the property described at the Exhibit "A," and any subsequent amendments thereto pursuant to the exercise of Development Rights, to the Declaration of HC Development Condominium.

IN TESTIMONY WHEREOF, Trustee and Beneficiary have properly executed this Consent of Lienholder, this 9th day of January, 2006.

~~TRSTE, INC., TRUSTEE~~

**By:**

**President**

~~WACHOVIA BANK, NATIONAL ASSOCIATION~~

By: \_\_\_\_\_

S. V. President



6189946

Page: 37 of 38  
02/02/2006 09:01A

STATE OF NORTH CAROLINA

COUNTY OF Richmond

City

I, Matthew MARTIN, a Notary Public in and

for said County and State, do hereby certify that T. MARK Smith personally came  
before me this day and acknowledged that he is S.V. President of WACHOVIA BANK,  
NATIONAL ASSOCIATION, a corporation, and that he, as S.V. President being  
authorized to do so, executed the foregoing on behalf of the corporation.

Date 01/09/06

(Official Seal)

  
Signature of Notary PublicMatthew MARTIN, Notary Public

Printed or typed name

My commission expires: 03/31/09

Unofficial



STATE OF NORTH CAROLINA  
COUNTY OF Richmond  
City

I, Matthew MARTIN, a Notary Public in and  
for said County and State, do hereby certify that F. ARNOLD Blackmon personally came  
before me this day and acknowledged that he is Vice President of TRSTE, INC., TRUSTEE,  
a corporation, and that he, as Vice President being authorized to do so, executed the  
foregoing on behalf of the corporation.

Date 01/09/06

(Official Seal)

[Signature]  
Signature of Notary Public

Matthew Martin, Notary Public  
Printed or typed name  
My commission expires: 03/31/09



Unofficial