

AND ESTABLISHING BY-LAWS, RESTRICTIONS, COVENANTS AND CONDITIONS FOR SCRIMSHAW CONDOMINIUMS
DARE COUNTY, N.C.

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 19th day of December, 1984, by SMITHFIELD MANAGEMENT GROUP, INC., hereinafter called the "Declarant", for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Unit Ownership Act.

ARTICLE I

STATEMENT OF SUBMISSION

Declarant is the Owner of certain real property in Atlantic Township, Dare County, North Carolina, and more particularly described and defined in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference. The Declarant is also the owner of all that property more particularly described and defined in Exhibit B, which Exhibit B is also attached hereto and incorporated herein by reference. It is the intention of Declarant to submit by this Declaration only that property described in Exhibit A in accordance with Chapter 47A of the General Statutes of North Carolina, entitled Unit Ownership Act (hereinafter referred to as the "Act") thereby creating a condominium known as Scrimshaw, thereafter reserving the right to add the balance, or certain portions of the balance, of the property described in Exhibit B to such condominium; and further, whereas, Declarant is the Owner of certain multi-unit buildings and certain other improvements heretofore constructed on the property described on Exhibit A, which is attached hereto and incorporated herein by reference; and it is the desire and the intention of the Declarant to divide the property into condominium units as those terms are defined under the "Act," and to sell and convey the same to various purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved to be kept and observed with the maximum land that may be included in this Declaration being that described in Exhibit B, and the minimum land being subject to this Declaration being that described in Exhibit A.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described in Exhibit A identified as Phase I and all property described in Supplementary Declarations hereinafter recorded as herein provided and made subject to this Declaration is held, and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following restrictions, covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of the place for the improvement of such property and the division thereof into condominium units, and shall be deemed to run with the land, shall be a burden and benefit to the Declarant, its successors and assigns and any person acquiring and owning an interest in the real property and improvements, their grantees, successors, heirs, administrators, devisees and assigns. Every grantee of any interest in such property by the acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in writing, shall take subject to provisions of the "Act," and this Declaration or Supplementary Declarations or Amended Declarations, and shall be deemed to have assented to the same.

At such time as any additional Phase is hereinafter subjected to this Declaration and the Act by an Amended Declaration, the total combined property shall continue to be known as Scrimshaw and all owners in both Phases shall be subject to the Declaration and shall have the

prepared by &
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STATUTORY PROVISIONS AND DEFINITIONS

2.1 Statutory Provisions. This Declaration is made pursuant to Chapter 47A of the North Carolina General Statutes, as amended, in effect as of the time of recording this Declaration.

2.2 Definitions. Unless defined herein, or unless the context requires otherwise, the words defined in Section 3 of the Act, when used in this Declaration or any amendment hereto, shall have the meaning provided therein. The following words, when used in this Declaration or any Supplement or Amendment hereto, unless the context requires otherwise, shall have the following meanings:

(1) "Act" means the Unit Ownership Act of North Carolina, North Carolina General Statute Chapter 47A, as amended.

(2) "Additional Land" means that land shown in Exhibit B other than Phase I which Declarant has retained rights to add to Scrimshaw without the consent of any Unit Owner.

(3) "Assessment" means an owner's share of the common expenses assessed against such owner and his unit from time to time by the Scrimshaw Homeowners Association, Inc., in the manner hereinafter provided.

(4) "Board" or "Board of Directors" means the Board of Directors of the Scrimshaw Homeowners Association, Inc., a corporation not for profit under the laws of the State of North Carolina, created hereunder the "Director" or "Directors" means a member or members of the Board.

(5) "By-Laws" means the By-Laws for the administration of the Scrimshaw Homeowners Association, Inc., contained in Exhibit D, attached hereto and made a part hereof by this reference.

(6) "Common Areas and Facilities" or "Common Area" means all of the condominium property and every part thereof, excluding the units, but including Limited Common Areas and Facilities.

(7) "Common Expenses" means all or any of:

(a) All expenses incident to the administration, maintenance, and repair or replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities.

(b) Expenses determined by the Scrimshaw Homeowners Association, Inc., to be common expenses and which are lawfully assessed against the Unit Owner.

(c) Expenses declared to be common expenses by the Unit Ownership Act or the Condominium Documents.

(d) All sums lawfully assessed against the Unit Owners by the Scrimshaw Homeowners Association, Inc.

(e) Hazard Insurance Premiums and other insurance premiums, if required.

Articles of Incorporation of Scrimshaw Homeowners Association, I attached as Exhibit C incorporated herein by reference, By-Laws of Scrimshaw Homeowners Association, Inc., attached as Exhibit D to this document and incorporated herein by reference, and Rules and Regulations as may be created pursuant to Article V, Section 5.1, and Article VII of the By-Laws governing the use of the condominium property, and Supplementary Declarations adding property to the condominium, all as may be amended from time to time.

(9) "Condominium Property" or "Property" means all of the property submitted to the Unit Ownership Act by this Declaration or by Supplementary Declarations, or by Amended Declarations, being the property described in Exhibit A as attached to this document incorporated herein by reference, or so much of that property shown on Exhibit A as shall be submitted from time to time; the buildings and all other improvements situated thereon, whether the same be common areas, facilities or units or any part thereof, and all easements and rights appurtenant thereto.

(10) "Convertible Land" refers to those parts of the common areas which the Declarant may, by exercising certain retained rights, convert into units, common elements, and limited common elements, and has no application to Exhibit A.

(11) "Convertible Space" represents a type of unit which the Declarant may convert in whole or in part to smaller units, common elements, limited common elements, or a combination thereof, and does not apply to Exhibit A.

(12) "Declarant" means SMITHFIELD MANAGEMENT GROUP, INC., a North Carolina Corporation or its successors and interests.

(13) "Declarant Control Period" means the period prior to the earlier of: (i) the date units to which 75% or more of the aggregate percentage interest appertain have been conveyed to Unit Owners other than the Declarant using the aggregate figure 52 units as shown on Exhibit B, or (ii) the date five years after the first condominium unit has been conveyed to a Unit Owner other than the Declarant, or (iii) the date specified in a notice from the Declarant to the Unit Owners by which the Declarant relinquishes the rights reserved herein.

(14) "Declaration" means this Declaration Creating Unit Ownership and Establishing By-Laws with Covenants, Conditions and Restrictions for Scrimshaw Homeowners Association, Inc.

(15) "Limited Common Areas and Facilities" or "Limited Common Area" means those areas so designated on the Plans filed in Unit Ownership Book, Sheets 1 through 12, Dare County Registry.

(16) "Limited Common Expenses" means expenses separately assessed against more than one but less than all the condominium units generally in accordance with use and said services.

(17) "Majority" or "Majority of Unit Owners" means the owners of more than fifty percent (50%) of the aggregate interest in the Common Areas and Facilities as established by the Declaration assembled at a duly called meeting of the Unit Owners. All percentage interests stated herein for voting purposes means the owners of that percent of the Common Areas and Facilities as determined by the percentage interest stated in this Declaration.

(19) "Mortgage" means any deed of trust, mortgage, security agreement, and financing statement of any and all other similar instruments given to secure the payment of a debt, by granting a security interest in a unit, its fixtures or contents.

(20) "Mortgagee" means any secured party under a security agreement or mortgage, and the beneficiary under or a holder of a deed of trust.

(21) "Percentage Interest" means the percentage of undivided interest each owner owns in the Common Areas and Facilities and Limited Common Areas and facilities as set forth in Section 6.3 of Article VI of this Declaration.

(22) "Person" means any individual, corporation, partnership, association, trustee, fiduciary, or other legal entity, and shall mean the plural or combination of the same where applicable.

(23) "Phase I" means a part of the land described in Exhibit B and all of the lands described in Exhibit A, said exhibits being attached to this document incorporated herein by reference. Phase II makes up the balance of the maximum amount of land which may be subjected to this Declaration as depicted in Exhibit B. Phase I is fully described and identified in Exhibit A. Exhibit B is for illustration purposes only.

(24) "Plans" means the plans of the buildings and units by Grant, Architect, North Carolina License Number 4402.

(25) "Scrimshaw Homeowners Association, Inc.", means the incorporated association of Unit Owners limited to and consisting of all owners of condominium units of Scrimshaw including Declarant.

(26) "Supplementary Declaration" or "Amended Declaration" means the document filed by Declarant to include Phase II within the Condominium Property, in the manner provided hereinafter.

(27) "Unit" means those parts of the condominium property described in Section 4.3 of Article IV hereof, which are subject to the Declaration from time to time and which are shown and designated on the Plans as units.

(28) "Unit Owner" means the record legal fee owner or owners of a unit, excluding any lender, trustee or creditor whose interest in the unit is merely as security for the performance of an obligation.

ARTICLE III

NAME AND ADDRESS OF REGISTERED AGENT

3.1 Name and Address. The name of the property is Scrimshaw and is located in Atlantic Township, Dare County North Carolina.

3.2 Registered Agent. Daniel D. Khoury, Post Office Box 1584, Kill Devil Hills, North Carolina 27948, hereby is designated to receive service of process in any action which may be brought against or in relation to the Condominium. In the event of such agent's death, resignation or removal, his successors shall be appointed by the Board of Directors, and shall so indicate by recording an instrument to that effect with the Register of Deeds of Dare County, North Carolina.

4.1 Description of Land. It is the intent of Declarant to create hereby what is referred to as an "expandable condominium," with the maximum land that may be included in this Declaration being that tract of land lying and being in Atlantic Township, Dare County, and more fully described in Exhibit B, together with rights, easements and appurtenances thereunto belonging. The property which is hereby submitted to the Act by this Declaration is the land on which the buildings and improvements are located in Atlantic Township, Dare County, North Carolina, being more fully described in Exhibit A identified as Phase I, attached hereto and made a part hereof, together with rights, easements and appurtenances thereunto belonging. By Supplementary Declaration, in the manner hereinafter provided, Declarant may add Phase II described in Exhibit B and subject such land and buildings and improvements thereon to this Declaration, and thereafter such land therein described shall be and become subject to the Act and this Declaration as if included from the beginning. By acceptance of a deed to a condominium unit created hereby or by Supplementary Declaration, or by an Amended Declaration, each unit owner agrees that such additional Phase and the Units therein may be added to the condominium property and that the percentage interest of Common Elements will be reduced as set out in Article VI hereof.

4.2 Description of Building. Phase I of Scrimshaw shall contain one (1) multi-unit building, designated as building shown on the Plans. This building contains five types of condominium units.

The building is principally constructed with wood frame consisting of 4-inch exterior walls of western red cedar channel rustic, gypsum dry walls and cedar shake shingle roofs. All units are on driven 10" pilings. For a more particular description of the principle materials of which such buildings are constructed, reference is made to the Plans of record in the Dare County Registry.

4.3 Description and Designation of Units.

(a) Nature of Ownership. Every Condominium Unit, together with undivided interest in the Common Areas and Facilities, and Limited Common Areas and Facilities, or Limited Common Area, shall for all purposes be, and is hereby declared to be and to constitute, a separate parcel of real estate and the unit owner thereof shall be entitled to the exclusive ownership and possession of his condominium unit, subject only to the covenants, restrictions, and easements contained herein and the Articles of Incorporation, By-Laws and the minutes of the Board of Directors of the Scrimshaw Homeowners Association, Inc. The percentage undivided interest in the Common Areas and Facilities and the Limited Common Areas and Facilities, or Limited Common Area, of each unit shall not be separate from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with such unit, even though such interest is not expressly mentioned or described in the conveyance or other instrument. A unit owner shall automatically become a member of the Scrimshaw Homeowners Association, Inc., and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor in interest. By acceptance of a deed of a unit, the unit owner agrees to abide by this Declaration, Articles of Incorporation, and By-Laws of Scrimshaw Homeowners Association, Inc., and duly adopted rules and regulations of the Association and the Board.

(b) Nature, Type, and Description of Unit. Phase I contains six one-story units connected to one another by common walls, floors and/or ceilings. Each unit is designated on the Plans which are incorporated

Units 1 and 2 are located on the north side of the building on the first and second levels, respectively, and each unit contains approximately 1452 square feet. Each unit has a living and dining area, kitchen, two baths, two bedrooms, a study and a private deck.

Unit 3 is located on the north side of the building on the third level. This unit contains approximately 1278 square feet. It has a living and dining area, kitchen, two baths, two bedrooms and a private deck.

Unit 4 is located on the south side of the building on the first level. It contains approximately 1184 square feet. It has a living and dining area, kitchen, two baths, two bedrooms and a study.

Unit 5 is located on the south side of the building on the second level. It contains approximately 1204 square feet. It has a living and dining area, kitchen, two baths, two bedrooms and a study.

Unit 6 is located on the south side of the building on the third level. It contains approximately 1064 square feet. It has a living and dining area, kitchen, two baths and two bedrooms.

(c) Unit Dimensions. Each unit shall include all the space within the boundaries thereof. Each unit is bounded as to the horizontal boundaries by the unexposed facing of drywall applied to the 2" x 4" stud walls either common to an adjacent unit or on the exterior of the unit. Units 1 and 4 are bounded on a vertical plane by the unexposed face of the 3/4" tongue and groove plywood sub-floor to the unexposed facing of the drywall on the ceilings. Units 2 and 5 are bounded on a vertical plane by the unexposed face of the 3/4" tongue and groove plywood sub-floor to either the unexposed face of the drywall on the ceilings where there is another unit located above or to the exposed side of the roof rafters where there is not another unit located above. Units 3 and 6 are bounded on a vertical plane by the unexposed side of the 3/4" tongue and groove plywood sub-floor to either the exposed side of the roof rafter where the ceilings are not vaulted or to the unexposed side of the tongue and groove juniper on the ceilings where the ceilings are vaulted. Units 1, 2 and 3 also have private decks that are bounded as to the horizontal boundaries on the north, south and west by the exposed face of channel rustic siding and on the east by the eastern side of the handrail system. The private decks are bounded on the vertical plane from the top side of the floor joist below to the bottom side of the floor joist above, except that the private deck for Unit 3 does not have a floor joist above, but is open. It is the intent hereof that the unit will include all interior drywall, panelling and moulding, and any surface finish, or wallpaper, and all finished flooring, such as vinyl or ceramic tile floor covering, matting and carpeting, and ceiling joists. Each unit shall be deemed to include all doors, windows, and other closures.

(d) Units as Built. For a more particular description of the units as built, see that filing in the Unit Ownership Act, Book 2, Sheets 1 through 12, Dare County Registry, North Carolina, which description is controlling over any discrepancies with the units as described herein.

4.4 Common Areas and Facilities.

(a) Description. The general common areas and facilities consist of the entire property other than condominium units, including, without limitation:

time to time subject to this declaration, and every part of the common areas and property other than the condominium units;

(2) All installations designed and intended for common use or to serve more than one unit such as, but not limited to, electrical service, gas and plumbing, whether located in common areas or in condominium units, excluding from such installations all parts thereof, and all items affixed or connected thereto not designed or intended for common use or use by more than one unit;

(3) Easements for access, maintenance, repair, reconstruction, or replacement of the above-mentioned common areas and facilities and all other services necessary or convenient to the existence, maintenance, safety and use of the property;

(4) The yards, landscaping, all roads, parking areas, walks, any amenities such as tennis court, paved areas and trash receptacles and enclosures.

(5) All maintenance and recreational areas; and

(6) Any portion of the property shown and designed on the Plans as Common Area or Limited Common Area.

(b) Percentage Interest. The unit owners shall own the Common Areas and Facilities as tenants in common, with each unit having appurtenant thereto the percentage interest in said Common Areas and Facilities and Limited Common Areas and Facilities as set forth in Article VI hereof; provided, however, the use of the Limited Common Areas and Facilities shall be restricted as set forth in Section 4.5 of this Article IV. The percentage interest appurtenant to each unit has been determined as required by law and is based on estimated fair market value as of the date of this Declaration.

(c) Inseparability of Percentage Interest. Percentage interest in Common Areas and Facilities and the Limited Common Areas and Facilities cannot be separated from the unit to which it appertains and shall automatically be conveyed or encumbered with the unit, even though such interest is not expressly mentioned or described in the deed or other instrument.

(d) No Partition. The Common Areas and Facilities and the Limited Common Areas and Facilities shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Act, this Declaration and the By-Laws. Nothing contained herein, however, shall be deemed to prevent ownership of a condominium unit by more than one person, either as tenants by the entireties, or as tenants in common, or in any other form by law permitted. Nothing contained herein, however, shall prevent the Board from creating additional Limited Common Areas and Facilities for a unit, as provided in Section 6 of this Article II.

(e) Use of Common Areas and Facilities. Each unit owner shall have the right to the Common Areas and Facilities in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other unit owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Areas and Facilities is intended for use. The Board shall have the right to promulgate rules and regulations limiting the use of Common Areas and Facilities to unit owners and their guests as well as provide for the exclusive use of a part of the Common Areas and Facilities by a unit owner and his guests for special occasions, which exclusive use may be

conditioned upon, among other things, payment of a fee. Any unit owner may delegate, in accordance with the provisions of this Declaration and By-Laws and reasonable rules and regulations of the Board, his right to use Common Areas and Facilities to the immediate members of his family living in the unit, to a limited number of guests or to tenants who reside in his condominium unit.

4.5 Limited Common Areas and Facilities. Ownership of a unit shall entitle the owner thereof to the exclusive use or use with others necessarily served thereby of the Limited Common Areas and Facilities appurtenant to such unit and so designated in the Plans. Limited Common Areas and Facilities shall not be construed or interpreted to be separate and apart from the Common Areas and Facilities in general, being limited only with respect to the reserved use thereof by the unit or units served. Limited Common Areas and Facilities shall include, if appropriate, all balconies, patios (concrete slabs), stairways, entrance areas, all septic tank installations and associated pumps, pipes, tanks, drain fields, lines, and waste treatment facilities, and systems associated therewith, all roofs, cedar shake siding, brick walks, any lighting facilities, equipment and wiring installed to illuminate the general common elements exclusive of any individual unit electric meter, any parking facilities which may hereafter be so designated and which are appurtenant to each particular Phase, and all masonry walls, and any area designated on the Plans as a Limited Common Area, or set out by the Board of Directors as Limited Common Area for a unit.

Exclusive use of the Limited Common Area may be delegated by an owner to the immediate members of his family, his guests, or tenants who reside in his unit. Owners may place plans, furniture, or other similar items within the Limited Common Areas and Facilities adjacent or appurtenant to the unit, subject to reasonable rules and regulations duly adopted by the Board with respect thereto. No owners shall build or construct any type storage or workshop facility or similar type of structure within the Limited Common Areas and Facilities unless prior approval is obtained from the Board of Directors.

4.6 Additional Limited Common Areas and Facilities. The Board shall have the right to approve, from time to time, changes in existing Limited Common Areas and Facilities, to approve additional or new Limited Common Areas and Facilities for the exclusive use of the unit to which such Limited Common Areas and Facilities shall appertain; provided, that such additional Limited Common Areas and Facilities shall be immediately adjacent to the unit to which it shall appertain.

ARTICLE V

EASEMENTS

5.1 Use and Enjoyment. Every unit owner, his family living in his unit, his tenants, and permitted guests, shall have a right and easement of use and enjoyment in and to the Common Areas and Facilities, except Limited Common Areas and Facilities (including the right of access, ingress, and egress to and from his unit over those portions of the property designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions;

(a) The right of the Board of Directors to control the use and enjoyment thereof as provided in this Declaration, and in the duly-adopted Rules and Regulations of the Association, which shall include, but not be limited to, the right of the Board to limit use and enjoyment thereof to the unit owners, and their respective families living in the unit,

(b) The right of the Board of Directors to limit the number of guests of unit owners; and

(c) The right of the Board to suspend the voting rights and rights to use of the recreational facilities by a unit owner, his tenants and guests, for any period of time during which an assessment against his unit remains unpaid or any separate charge incurred by such unit owner for use of the recreational facilities remains unpaid, or for infraction of its published Rules and Regulations.

5.2 Maintenance and Repair. There shall be an easement through the units and the Common Areas and Facilities for the installation, maintenance, repair and replacement of units and the Common Areas and Facilities. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

5.3 Structural Support. Every portion of a unit or the Common Areas and Facilities which contributes to the structural support of another unit shall be burdened with an easement of structural support.

5.4 Encroachments. If any portion of the Common Areas and Facilities encroaches upon any unit or any unit encroaches upon any other unit or upon any portion of the Common Areas and Facilities or the Limited Common Areas and Facilities as a result of settling or shifting of a building, or as the result of survey error or error in description, an easement for the encroachment and for the maintenance of the same so long as the building stands, shall exist. If any building, any unit, any adjoining unit or any adjoining part of the Common Areas and Facilities or the Limited Common Areas shall be partially or totally destroyed as a result of fire or other casualty or as a result of eminent domain proceedings, and then rebuilt upon the original site and upon the same Plans as the original building, encroachments of parts of the Common Areas and Facilities or the Limited Common Areas and Facilities upon any unit or of any unit upon any other unit or upon any portion of the Common Areas and Facilities or the Limited Common Areas and Facilities, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the subject building shall stand.

5.5 Utilities. There shall be a general easement upon, across, above and under all the property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, the construction, operation and maintenance of all utility lines, pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines, and facilities related thereto, water, telephone, electricity, cable television, which said shall inure to the benefit of all unit owners, and all future owners located or to be located upon the properties described in Exhibit B. Should any party furnishing any service covered by this general easement require a specific easement by separate, recordable document, Declarant, or the Board of Directors of Scrimshaw Homeowners Association, Inc., as the case may be, shall have the right to grant such easement under the terms hereof.

5.6 Easement to Facilitate Sales. Declarant reserves the right to use any Units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys the title thereto to Unit Owners. Declarant reserves the right to relocate the same from time to

advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant. The reservation of this easement to facilitate sales is expressly made applicable to the Additional Land.

7 Declarant's Right to Grant Easements. The Declarant shall have the right, prior to the termination of the Declarant Control Period, to grant and reserve easements and rights-of-way through, under, over and across the property shown on Exhibit A and Exhibit B for construction purposes and for the installation, maintenance and inspection of the lines and appurtenances of public water, sewer, drainage, electricity, telephone, cable television, and other utilities. Declarant also reserves the right, prior to the termination of the Declarant Control Period to grant and reserve any other easements and rights-of-way required to facilitate sharing of services between the condominium and any portion of the Property not then part of the condominium; provided, however, that the owners of such other portions bear a pro-rata share of the cost thereof in proportion to the relative number of dwelling units on such portion and on the condominium. Declarant expressly reserves the right-of-way and easement across all properties, roads, common areas, the right-of-way and easement across all properties, roads, common areas, facilities, limited common areas and facilities necessary for the construction of Phase II of Scrimshaw.

ARTICLE VI

ADDITION OF LAND AND UNITS PERCENTAGE INTEREST FOR COMMON ELEMENTS

6.1 Supplementary Declaration. Declarant hereby expressly reserves an option until the seventh anniversary of the recordation of the Declaration to expand the condominium from time to time without the consent of any unit owner prior to such anniversary only upon the filing by Declarant of an amendment to the Declaration. Declarant expressly reserves the right to add any or all portions of the additional land at any time, at different times, and in any order, without limitation; provided, however, that the Additional Land shall not exceed the area described on Exhibit B hereto. There are no other limitations on the option to expand. Upon such recording, the property described in the Supplementary Declaration will become part of Scrimshaw as if such property had been included in this Declaration; and by accepting a deed subject to this Declaration and any applicable Supplementary Declaration, unit owners agree to such additions to Scrimshaw.

6.2 Assurances. Declarant makes no assurances as to location of improvements on the Additional Land. At such time as Scrimshaw is expanded, the maximum number of units on the Additional Land will not exceed six. Declarant makes no assurances as to what improvements may be constructed on the Additional Land but such improvements will be reasonably compatible in quality and materials with the improvements on the Land. No assurances are made by Declarant as to the size or type of units that may be created in the future on the Additional Land. Declarant expressly reserves the right to designate common elements therein which may be subsequently assigned as limited common elements. Declarant makes no assurances as to type, size, or maximum number of such common elements or limited common elements. The allocation of percentage interest in the Additional Land shall be computed as set forth in Section 6.3 of Article VI herein.

approximate fair market value of the subject unit as of the date of this Declaration as the same bears to the approximate aggregate fair market value of all units on said date, all of which are set forth immediately below:

<u>UNIT TYPE</u>	<u>ASSIGNED VALUE</u>	<u>% OF INTEREST</u>
Unit 1	140,000	16.67
Unit 2	140,000	16.67
Unit 3	140,000	16.67
Unit 4	140,000	16.67
Unit 5	140,000	16.67
Unit 6	140,000	16.67
TOTAL:	840,000	100%

As Phase II is added to the condominium, the percentage of interest of each Unit Owner in the common elements of the condominium reduces. To determine the applicable percentage interest of each unit that is or may become part of the condominium, determine the assigned value for the unit in question, and divide this figure by the total assigned values of all units then subject to this Declaration or any Supplementary Declarations. By acceptance of a deed of a condominium in Scrimshaw, each owner, for himself, his heirs, successors and assigns, agrees and consents that Declarant, without need for further consent or joinder of any Unit Owner, may add any one or more of all Phases described in Exhibit A to Scrimshaw, and upon the recording by Declarant of the Supplementary Declaration, the percentage interest. No Supplementary Declaration may change the percentage interest other than shown in this Article, unless a Supplementary Declaration is joined by 100% of the Unit Owners in the manner required for Amendment of the Declaration to change percentage interest of ownership on common elements.

6.4 Assigned Values. The assigned Values of each of the units in Nantucket Village is made by the Declarant, and in no way alters the right to sell any unit at the then existing fair market value by any Unit Owner of the Declarant herein.

ARTICLE VII

CONVERTIBLE SPACE AND LAND

7.1 The Declarant may designate as Convertible Space all or any portion of the buildings on the Additional Land when added to the condominium. Declarant hereby explicitly designates as Convertible Land all that property which is not at the time submitted as units. Declarant hereby explicitly reserves an option until the fifth anniversary of the recordation of this Declaration to convert all or any portion of the Convertible Land from time to time without the consent of any Unit Owner or mortgagee. The option to convert may be terminated prior to such anniversary only upon filing an Amendment to the Declaration by Declarant. Declarant expressly reserves the right to convert any or all portions of the Convertible Land at any time, at different times, in any order, without limitations; provided, however, that the Convertible Land shall not exceed the area described on Exhibit B hereto. There are no other limitations on the option to convert.

Declarant reserves the right, however, in the case of any construction undertaken after the date of recordation of this Declaration to construct or convert additional units on the Convertible Land only to the extent necessary to replace the existing units damaged or destroyed during the Declarant Control Period or converted to recreational uses. Declarant may construct or convert certain additional structures containing recreational facilities or other amenities to serve Scrimshaw. Declarant expressly reserves the right to create Convertible Space and limited common elements within the Convertible Land and to designate the common elements therein which may be subsequently assigned as limited common elements. The type of such elements may be roofs, patios, terraces, balconies, electrical and mechanical rooms and systems including heating and cooling apparatus, parking, recreational facilities, and all other elements which can be appropriately designated as common elements or limited common elements. The allocation of percentage interest in the Convertible Land shall be computed in accordance with the provisions of Section 6.3 of Article VI herein.

ARTICLE VIII

RIGHT TO LEASE OR SALE UNITS

8.1 Declarant shall own in fee simple each condominium unit not sold to any purchaser or otherwise transferred. Declarant retains the right to enter into leases with any third parties for the occupancy of any of the units owned by Declarant.

ARTICLE IX

SPECIAL DECLARANT RIGHTS; TRANSFER

9.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant as provided for in this Declaration and shall include without limitation the following rights:

- (a) To complete improvements indicated on the plats and plans filed with the Declaration;
- (b) To convert Convertible Land;
- (c) To add Additional Land;
- (d) To convert Convertible Space;
- (e) To maintain sales offices, management offices, signs advertising Scrimshaw and models;
- (f) To use easements through the common elements and limited common elements for the purpose of making improvements within Scrimshaw or Convertible or Additional Land; and
- (g) To appoint or remove any officer of Scrimshaw Homeowners Association, Inc., or Board of Directors during under Declarant Control Period.

9.2 Transfer of Special Declarant Rights.

- (a) No Special Declarant Rights created or reserved by this Declaration may be transferred except by an instrument evidencing the transfer recorded in the Dare County Registry, Dare County, North Carolina.

(1) Transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations that may be enforced for the protection of Unit Owners. Lack of privity does not deprive any Unit Owner of standing to bring an action to enforce any obligation of the transferor.

(2) If a transferor retains any Special Declarant Rights, or a successor to any Special Declarant Right is an affiliate of Declarant, the transferor is subject to liability for all obligations and liabilities imposed on Declarant by this Declaration or by Amendments to the Declaration arising after the transfer and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to "Scrimshaw."

(3) A transferor who retains no Special Declarant Rights has no liability for any act, or omission, or any breach of contractual or warranty obligation arising from the exercise of a Special Declarant Right by successor or Declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in the Mortgage, in case of foreclosure of the Mortgage, sale by a trustee under a deed of trust, or sale under Bankruptcy Act or receivership proceedings, of any Units owned by a Declarant in the Condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special Declarant Rights, or only to any rights reserved in the Condominium Instruments to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special Declarant Rights requested.

(d) The liabilities and obligations of persons who succeed to special Declarant Rights are as follows:

(1) A successor to any special Declarant Right who is an affiliate of a Declarant is subject to all obligations and liabilities imposed of any Declarant by the Condominium Act or by the Condominium Instruments.

(2) A successor to any special Declarant Right, other than a successor described in Paragraphs (3) or (4) of this Section 9.2, who is not an affiliate of the Declarant, is subject to all obligations and liabilities imposed upon a Declarant by the Condominium Act of the Condominium Instruments, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous Declarant or made before the Condominium was created, or for a breach of fiduciary obligation by any previous Declarant.

(3) A successor to only a right reserved in the Condominium Instruments to maintain models, sales offices, and signs, if he is not an affiliate of a Declarant, may not exercise any other special Declarant Right, and is not subject to any liability or obligation as a Declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special Declarant Rights who is not an affiliate of a Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under Subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another Person. Thereafter, until transferring all special Declarant Rights to any Person acquiring title to any Unit owned by the seccessor, or until recording an

the Condominium Instruments for the duration of any Declarant Control Period, and any attempted exercise of those rights is void. So long as a successor Declarant may not exercise special Declarant Rights under this subsection, he is not subject to any liability or obligation as a Declarant other than liability for the successor's acts or omissions under this Declaration.

ARTICLE X

NO OBLIGATIONS

Nothing contained in this Declaration shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct, or provide any building except for those shown on Exhibit A herein.

ARTICLE XI

ADMINISTRATION OF THE CONDOMINIUM BY SCRIMSHAW HOMEOWNERS ASSOCIATION, INC.

To efficiently and effectively provide for the administration of Scrimshaw by the owners, the Condominium Units, a non-profit North Carolina Corporation known as and designated as Scrimshaw Homeowners Association, Inc., has been organized, and said Corporation shall administer the operation and management of Scrimshaw and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of these Articles of Incorporation and By-Laws are annexed hereto and expressly made a part hereof as Exhibits C and D, respectively, which documents are incorporated herein by reference as if fully set out word for word. Including but not limited to all matters concerning the Units Owners Association, the Board of Directors, the officers, the office of Scrimshaw, including the termination of common expenses and assessments against Unit Owners, payment of common expenses, collection of assessments, statement of common expenses, maintenance, repair, replacement, and other common expenses, additions, alteration or improvements by the Board of Directors and Unit Owners, restrictions on use of units; rules and regulations; rights of access, utility charges, parking spaces, all matters of insurance, all matters relating to repair and reconstruction after fire or other casualty, all mortgages, and rights of mortgagees; matters of compliance and default; and amendments to By-Laws are all set forth within the By-Laws and attached hereto in Exhibit D.

The owner or owners of each Condominium Unit shall automatically 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 property, and the membership of such owner or owners shall terminate automatically upon such owner or owners being divested of such ownership interest and the title to such Condominium Unit, regardless of the means by which such ownership shall be divested. The person, firm or corporation holding the 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 Corporation or to any of the rights or privileges of such membership. In the administration of the operation and management of Scrimshaw, Scrimshaw Homeowners Association, Inc., shall have and is hereby granted the authority and power to enforce provisions of this Declaration of

Article VII of the By-Laws as stated in Exhibit D, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and common property as Board of Directors of said Association may deem to be in the best interest of the Association.

ARTICLE XII

AMENDMENT TO DECLARATION

This Declaration may be amended by the vote of the Unit Owners of at least a majority of the interest in the common areas and facilities provided that no such amendment shall be effective until placed in writing, executed, acknowledged by the Unit Owners owning a least a majority of the common areas and facilities and filed for registration in the Dare County Registry; provided, however, if a larger vote is required to take or refrain from taking this specific action as set forth in the fact or this Declaration no amendment shall be made unless and until the Unit Owners holding such larger percentage interest in the common areas and facilities execute such amending instrument. All person or entities who own or hereafter acquire any interest in the Condominium Property shall be bound to abide by any Amendment to this Declaration, upon the same being passed as provided herein and duly set forth in an Amended Declaration duly recorded as provided herein. Notwithstanding anything to the contrary contained in this Declaration of the By-Laws attached hereto, no Amendment of the Declaration may be made without the prior written approval of the required percentage of mortgagees where such approval is provided for in Section 8.5 of the By-Laws only if such approval is required elsewhere in the Declaration. No Amendment shall be made to any Condominium Instrument during the Declarant Control Period without the written consent of the Declarant. No Amendment to the Condominium Instruments shall diminish or impair the rights of mortgagees under the Condominium Instruments without the prior written consent of all mortgagees or diminish or impair the rights of the Declarant under the Condominium Instruments without the prior written consent of the Declarant. Except as specifically provided in the Condominium Instruments, no provisions of the Condominium Instruments shall be construed to create to any Unit Owner, or to any other person, any priority over any rights of mortgagees. Notwithstanding anything to the contrary contained in this Declaration or the By-Laws attached hereto, no change or amendment to this Declaration or the By-Laws shall affect or change the percentage of the undivided interest of each Owner in the common areas and facilities, except the change of percentage interest resulting from expansion of the Condominium as set out in Section 6.3 of Article VI herein.

ARTICLE XIII

GENERAL PROVISIONS

13.1 Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein including, but not limited to, every unit and the appurtenances thereto; and each and every provision of this Declaration shall bind and inure to the benefit of all unit owners and claimants of the land or any part thereof or interest therein and their heirs, executors, administrators, successors and assigns, including the Declarant herein.

13.2 Duration. So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it

extended when necessary by filing a document bearing the signature of a majority of the owners reaffirming and newly adopting the Declaration and covenants then existing in order that the same may continue to be covenants running with the land. Such adoption by a majority shall be binding on all, and each owner of any unit, by acceptance of a deed therefor, is deemed to agree that the Declaration and covenants may be extended as provided in this Section 13.2

13.3 Articles of Incorporation and By-Laws of Scrimshaw Homeowners Association, Inc. A true copy of the Articles of Incorporation and By-Laws of the Scrimshaw Homeowners Association, Inc., which together with this Declaration shall govern the administration of the Condominium, is attached hereto as Exhibits C and D, and by reference, is made a part hereof as if fully set out word for word.

13.4 Interpretation. The provisions of this Declaration and By-Laws shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of the Condominium Property.

13.5 Voting and Percentages. Unless expressly stated to the contrary, all percentages for voting purposes means the owners of that percentage of the interest in the Common Areas and Facilities by voting the percentage interests as set forth in this Declaration.

13.6 Law Controlling. This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina. Provided, however, that if there are conflicts or inconsistencies between the Act, and this Declaration (in that order) shall prevail and the Unit Owners covenant to vote in favor of such amendments as will remove such conflict or inconsistencies, except that where the Act, the Declaration, or the By-Laws conflict and the provisions of the Act are merely enabling and not mandatory, the provisions of the Declaration or the By-Laws shall control.

13.7 Gender and Grammar. The singular, whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereto apply to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.8 Captions. Captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Declaration or the intent of any provisions hereof.

13.9 Non-Waiver. The failure of the Declarant, Board of Directors, or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any Restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

13.10 Severability. All of the covenants, conditions, and By-Laws, restrictions and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations or clause or phrase thereof.

SMITHFIELD MANAGEMENT GROUP, INC.

By Ronald W Pack
President

Christina A. Pack
Secretary

STATE OF ~~NORTH CAROLINA~~ VIRGINIA
COUNTY OF ~~DARE~~ ISLE OF WIGHT

This the 21st day of December, 1984, Ronald A. Pack personally came before me, Deborah G. Parker, who being by me duly sworn, says that he is President of Smithfield Management Group, Inc., that the seal affixed to the foregoing instrument in writing is the corporate seal of said Company, said writing was signed and sealed by him in the office of said Corporation by its authority duly given him, and the said Christina A. Pack acknowledged the said writing to be the act and deed of said Corporation.

Deborah G. Parker
Notary Public

My commission expires: 10/19/87

J. MacN. Duff
J. MacN. Duff, Trustee

The above Trustee joins in the execution of this Declaration for the sole purpose of complying with paragraph (1) of the Release Provisions as set forth in that Deed of Trust recorded in Deed Book 281 at Page 508, Dare County Registry, North Carolina.

STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

I, a Notary Public of the County and State aforesaid, certify that J. MacN. Duff, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official seal or stamp, this 13 day of December, 1984.

Landra Strickland
Notary Public