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BY: CLAUDIA HARRINGTON  
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Dare County, NC

Fee Amt: \$38.00 NC Excise Tax: \$0.00

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Signature Touch Property Management  
2600 North Croatan Highway, 2<sup>nd</sup> Floor  
Kill Devil Hills, NC 27948

NORTH CAROLINA, DARE COUNTY

DECLARATION OF UNIT OWNERSHIP  
THE SANDS CONDOMINIUM  
KILL DEVIL HILLS, NORTH CAROLINA

L.O. SNEAD, JR., W.C. FOREMAN & S. MICHAEL RIDDICK, being partners and trading as Snead, Foreman & Riddick, pursuant to Chapter 47A of the North Carolina General Statutes entitled "Unit Ownership Act" do hereby state and declare:

**Section 1. Statement of Submission.**

A. L.O. Snead, Jr., W.C. Foreman and S. Michael Riddick are the record owners of the land hereinafter described and hereby declare and submit the same to the condominium form of ownership to use in accordance with Chapter 47A of the General Statutes on North Carolina, entitled Unit Ownership Act.

1. The name by which the condominium is to be identified is "The Sands Condominiums" located in the Town of Kill Devil Hills, Dare County, North Carolina.

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

Beginning at a point lying in the eastern margin or right of way of Virginia Dare Trail, a state road which has a right of way of 60 feet, and which point of beginning marks the intersection of the eastern right of way of Virginia Dare Trail with the northern right of way of Second Street, said point being the southwest corner of the property herein described; running thence from said beginning point N 19° 00'

W along the eastern margin or right of way of Virginia Dare Trail a distance of 150 feet to a concrete monument; thence turning and running N 71° 00' E a distance of 424.92 feet to an existing concrete monument, which monument marks the northern terminus of a tie line hereafter referred to; thence continuing N 71° 00' E a distance of 129.08 feet, more or less, to the highwater mark of the Atlantic Ocean; thence turning and running in a southerly direction along the highwater mark of the Atlantic Ocean and following the courses thereof to a point in the highwater mark of the Atlantic Ocean, which point is located a distance of 146.15 feet, more or less, on a course of N 71° 00' E from a point, which point is hereafter referred to as the southern terminus of a tie line; thence turning and running from the point at the highwater mark of the Atlantic Ocean S 71° 00' W, a distance of 146.15 feet, more or less, to an iron pipe, which pipe marks the southern terminus point to a tie line referred to above, and the tie line having a distance between its terminus points of 150.34 feet on a course of S 15° 09' 34" E from the northern terminus point to the southern terminus point; thence continuing the course of S 71° 00' W from the iron pipe referenced above, a distance of 414.84 feet along the northern margin and right of way of Second Street to the point or place of beginning.

**Section 2. Definitions.** All terms shall have the meaning as set out in Chapter 47A of the General Statutes of North Carolina and in addition thereto and for clarification, the following terms shall have the following meanings:

A. "Apartment Unit" means "condominium unit" or "unit" and is synonymous therewith as defined in N.C.G.S. 47A-3 (12).

B. "Association" or "Association of Unit Owners" means all of the unit owners acting in a group in accordance with the By-Laws and Declaration. As to The Sands Condominium, this term means The Sands Condominium Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina.

C. "Articles" means the Articles of Incorporation of The Sands Condominium Association Inc.

D. "Building" means a building or a group of buildings, each building containing one or more units, and comprising a part of the property, provided that the property shall contain not less than two units.

E. "Common Areas" or "Common Elements" means all that portion of the condominium property which is not included in the individual condominium units and as further defined in N.C.G.S. 47A-3 (2), except those items listed paragraph "h" therein, unless specifically set out in this section.

F. "Common Expenses" means expenses for which the condominium unit owners are liable to the Association as defined in the North Carolina Unit Ownership Act and in the condominium documents and includes:

1. All sums lawfully assessed against the unit owners by the association of unit owners;
2. Expenses of administration, maintenance, repair or replacement of the common areas and facilities, and association owned property;
3. Expenses agreed upon as common expenses by the association of unit owners;
4. Expenses declared common expenses by the provisions of Chapter 47A of the General Statutes, or by the Declaration or the By-Laws;
5. Hazard insurance premiums, if required.

G. "By-Laws" means the By-Laws of The Sands Condominiums Association, Inc.

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

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

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

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

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

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

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

O. "Owners" means the Declarants, L.O. Snead, Jr., W.C. Foreman and S. Michael Riddick being partners and trading as Snead, Foreman & Riddick.

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

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

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

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

**Section 3. Building Description.** The condominium building constructed on the hereinabove described real property consists of three (3) floors in the building with each floor in the building containing six (6) units for a total of eighteen (18) condominium units. The buildings themselves are constructed upon foundations consisting of 12" diameter pilings being placed as per plan on center throughout. Each row of pilings support four (4) 2' x 12" girders which support the load bearing walls and floors. The floors consist of 2" x 8" joists located 16' on centers with a 1/2" plywood subfloor located underneath a 5/8" particle board on which the carpet pad and carpet inside each unit is installed. The first floor has 6" insulation. All other floors have thermoply insulative sheathing with the ceiling consisting of 5/8" drywall. The exterior walls are constructed by 2" x 4" studs located 16" on center with R-13 insulation, 5/8" drywall inside and 1/2" plywood and 5/8" exterior T-11 plywood outside. The interior walls are 2" x 4" studs located 16" on center with 1/2" drywall on each side. In addition the walls located between apartment units contain R-11 insulation between each wall. The roof consists of built tar and gravel which is located on top of 1/2" CDX plywood sheathing supported by 2" x 8" rafters located 16" on center.

**Section 4. Apartment Unit Designation and Description.** There are eighteen (18) condominium unit apartments, six (6) each on each floor of the condominium building, each apartment being designated by an alpha numerical figure. The first number being the building number and the second digit being a letter designating the apartment unit within the building. The first floor apartments in each building are designated 1A through 6A, the second floor apartments are designated 1B through 6B, and the third floor apartments are designated 1C through 6C. Apartments 1A – 6A, 1B – 6B and 1C – 6C all have approximately 870 square feet of floor space.

The units 1 – 6 on all floors shall run in a North-South direction with the northern unit being numbered 1 and the southern unit being numbered 6.

Each of the condominium living units shall be known and designated by the number shown for each unit on the Foundation Plan, Floor Plans (Sheet No. 1). Each unit shall consist of an enclosed space designated as a dwelling occupying part of a floor in a building as shown on the plats recorded in the Dare County Registry and lying between the unfinished surface of the floor and the unfinished surface of the ceiling of each floor or story of the building and between the interior finished surface on the inside of each unit. The balcony adjoining each unit shall be a part thereof and shall be bounded horizontally by vertical planes coinciding with the interior surface of the railings, and the exterior surface wall of the building, and extending vertically from the top of the unfinished floor of the balcony to a horizontal plane in an extension of the bottom of the unfinished ceiling of the unit.

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

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

#### **Section 5. Common Elements, Areas, and Expenses Related Thereto.**

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

1. All of the land and the premises above described in Section 1 hereof, including all appurtenant rights thereto, shall be general common elements. All facilities located underground shall be general common elements, including any septic tank installation and associated pumps, pipes, tanks, drain fields and lines, and waste treatment facilities and systems associated therewith.
2. At the ground level and extending thereupwards, all of the area of said premises not included in the condominium units as described in Section 4 hereof and all facilities not located in said condominium areas, shall be general common elements.
3. Any lighting facilities, equipment and wiring installed to illuminate the above general common elements and all electric lines, both primary and secondary, leading to but exclusive of any individual unit electric meter, shall also be general common elements.
4. In addition, those items set out in N.C.G.S 47A-3 (2), except as herein reserved or excepted, shall be general common elements.

5. Also included as general common elements are water supply lines to the individual common units, vent lines, plumbing facilities, sanitary sewage lines, waste pipes and vents, located outside the individual condominium units.

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

UNIT	FAIR MARKET VALUE	PROPORTIONATE SHARE
1A	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
2A	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
3A	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
4A	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
5A	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
6A	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
1B	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
2B	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
3B	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
4B	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
5B	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
6B	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
1C	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
2C	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
3C	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
4C	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
5C	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
6C	\$ 81,000.00	1/18 <sup>th</sup> or 5.55%
Totals	\$1,458,000.00	100%

#### **Section 6. Limited Common Elements or Areas.**

There are no limited common elements in the Sands Condominiums.

## **Section 7. Easements.**

A. Perpetual Non-Exclusive Easement in Common Area. The common elements or areas shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement which easement is hereby created, in favor of all the apartment or unit owners in the condominium for their use and for the use of their immediate families, guests, invitees and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Developer, the Sands condominium association, and all unit owners, and may be used for ingress or egress, for the providing of electric power, telephone, sewer, water and other utility services and lighting facilities, including but not limited to television transmission facilities, security services, and facilities connected therewith. The Owners, for themselves, their heirs and assigns and the association herein described reserve the right to impose upon the common elements henceforth and from time to time such easements and cross easements for any of the foregoing purposes as they deem to be in the best interest of and necessary and proper for, the owners of apartments and units in The Sands Condominiums.

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

### **C. Easement for Recreation, Parking, Access, Egress, and Ingress.**

There is hereby conveyed and reserved non-exclusive easement of access, egress and ingress to and from the condominium buildings and U.S. Highway 158 Business and the Atlantic Ocean and for other purposes herein expressed over, upon and across all the lands dedicated to unit ownership and described in Section 1 of this declaration.

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

D. Easement for Construction. There is retained, by the owners, a construction easement over, upon and across the common elements or areas and also, over, upon and across those lands set out and described in

Paragraph C. of this Section for the purpose of construction improvements on the properties now owned by the owners, said easement to run in favor of the owners, their heirs and assigns, their contractor and subcontractors, laborers and material men. This easement shall expire and become null and void upon completion of the permanent improvements on said properties.

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

#### **Section 8. Statement of Purpose, and Restrictions as to Use.**

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

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

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

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

E. An individual condominium unit owner may keep a pet or pets in his unit, but only under the regulations as promulgated by the association from time to time, and no person may keep any other animals, livestock or poultry



nor may any of the same be raised, bred or kept upon any portion of the condominium property, including the common elements, balconies and terraces. The association shall have the authority to declare any pet or pets a nuisance and may cause the owner thereof to remove the same from the condominium property.

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

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

H. No condominium unit owner shall make structural modifications or alterations in his unit or the permanent fixtures therein unless he has previously obtained approval therefor, in writing from the Board of Directors of the Association.

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

#### **Section 9. Use and Transfer of Parking Spaces.**

A. The Owners shall assign the use of two (2) particular parking spaces to a particular condominium unit at the time the unit is originally acquired from the Owners. The assignment of use shall be made by describing the particular parking space by reference thereto in a book entitled "Parking Space Assignments" which book shall be maintained by the Owners and at such time as the Owners transfer all authority to the association, the association, which said book shall be for the purpose of listing each assignee of each parking space and the transfer thereof. Each transfer shall be recorded in the book and the owner of the unit to which its use is assigned shall have the exclusive right to the use thereof. Upon the conveyance of or the passing of title to the condominium unit to which said parking space is assigned, the owner of the said unit making the conveyance shall deliver notice of transfer thereof to the association which shall thereupon cause to be executed a new assignment in the assignment book.

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

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

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

#### **Section 10. Maintenance and Alteration of Apartments.**

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

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

1. To maintain, repair and replace at his expense all portions of his apartment unit except the portions to be maintained, repaired and replaced by the association.
2. Not to paint or otherwise decorate or change the appearance of the exterior of the condominium building.
3. To repair any frozen pipes, repair any stopped sewer and sink lines, to repair any heating and air conditioning equipment, whether located within an apartment unit or on a limited common element, and to replace any broken window panes or doors that serve an individual apartment unit.
4. To promptly report to the association any defect or need for repairs, the responsibility for which is that of the association.

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

D. It shall be further the responsibility of each unit owner to examine his hot water heater for rust and other signs of wear, and to assure its replacement as needed.

E. It shall be further the responsibility of each unit owner to assure that the water to his unit is shut off and the lines drained during the period from December 15<sup>th</sup> to February 28<sup>th</sup> of the following year, except when the unit is occupied, and to maintain the temperature at not less than 55 degrees.

F. If by reason of a unit owners failure to comply with any of the provisions of this Section 10, and by reason thereof damage shall occur to the property, personal or interior structure, of any other unit owner, or to the common areas, or to any portion of the building for which the association would otherwise be responsible, the unit owner shall be fully responsible for all costs of repairs; provided, however, if the damage arises from a casualty insured by the Association, the unit owner shall be responsible for payment of the deductible portion of the policy.

#### **Section 11. Maintenance and Alterations of the Common Elements and Association Property.**

A. The maintenance and operation of the common elements, and property, real and personal, owned by the association shall be the responsibility and the expense of the association.

B. After the completion of the improvements including the common elements which are contemplated by this Declaration, there shall be no alteration or further improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than 75% of the common elements and any such alteration or improvement shall not directly interfere with the rights of any unit owner, without first obtaining his written consent. There shall be no change in the shares and rights of any unit owner in the common elements which are altered or further improved, whether or not such unit owner contributes to the cost thereof, except by an Amended Declaration. **Repairs or replacement shall not constitute alterations or improvements hereunder and may be authorized by a majority vote of the owners, or as otherwise provided in the Constitution and By-Laws.**

## **Section 12. Assessments.**

A. Assessments against apartment unit owners for common expenses shall be made pursuant to North Carolina General Statutes Section 47A-12 and the By-Laws of the association and shall be allocated as set forth Section 5, Paragraph B of this Declaration.

B. Any sums assessed by the Association for the share of the common expenses chargeable to any unit, and remaining unpaid for a period of thirty (30) days or longer, shall constitute a lien on such apartment unit when filed for record in the Office of the Clerk of Superior Court of Dare County by the association under the provision of Article 8 of Chapter 44 of the North Carolina General Statutes and any amendments or supplements thereto. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, (b) all sums unpaid on deeds of trust and other encumbrances recorded against the unit prior to the docketing of the lien, and (c) materialmen's and mechanics liens.

C. A lien created pursuant to paragraph B above may be foreclosed by suit by the Board of Directors of the Association, acting on behalf of the apartment unit owners, in like manner as a foreclosure of a deed of trust or mortgage of real property. The Board of Directors of the Association, acting on behalf of the apartment unit owners, may maintain a suit to recover a money judgment for unpaid common expenses without foreclosing or waiving the lien securing said common expenses. The unit owner shall be responsible for all court costs, interest and reasonable attorney's fees incurred in the collection, by foreclosure or otherwise, of said lien for common expenses. Except for purchasing at foreclosure as herein stated, the association shall not purchase or own a condominium unit. **The foregoing remedies shall not be exclusive, but shall be in addition to such remedies or relief as shall be available under the laws of North Carolina.**

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

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

**Section 13. Association.** The operation of the condominium shall be by The Sands Condominiums Association, Inc., hereinafter called the Association, a Non-Profit Corporation under the laws of North Carolina which shall be organized and shall fulfill its functions pursuant to the following provisions.

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

B. The association shall be incorporated under the Articles of Incorporation in the form attached as Exhibit B, but the Articles of Incorporation may be amended as permitted by law without amending this Declaration.

C. The initial By-Laws of the association shall be in the form attached as Exhibit C, but may be amended as therein provided or as permitted by law without amending this Declaration, except as required by law.

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

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

**Section 14. Insurance.**

A. Insurance policies upon the condominium property covering the items described in Paragraph B of this Section shall be purchased by the association for the benefit of the association and the apartment unit owners and their mortgagees as their interests may appear. Such policies and endorsements shall be issued in the name of and deposited with the Board of Directors of the association as trustee for each of the apartment unit owners in the percentages of interest of each apartment unit owner established in this Declaration in Section 5.

B. Insurance shall cover the following:

1. All buildings and improvements upon the land and all personal property included in the common elements shall be insured in an amount equal to the maximum insurable replacement value without deduction for depreciation, as determined annually by the Board of Directors of the association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, including flood insurance and such other risks as are

customarily covered with respect to buildings similar to the building on the land, such as vandalism and malicious mischief.

2. Public liability insurance in such amounts and with such coverages as shall be required by the Board of Directors of the association, and with cross liability endorsements to cover liabilities of the apartment unit owners as a group to an apartment unit owner.

3. Workman's compensation as required by law.

4. Such other insurance as the Board of Directors of the Association may determine from time to time as desirable.

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

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

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

F. Each apartment unit owner shall have the **obligation** to insure his own apartment unit for his own benefit, though his provision will not alter or vary the requirement that the association purchase insurance on the building and improvements in the condominium. Any apartment unit owner that has made, or does make, permanent improvements within his apartment unit that have become or will become affixed to the realty, and who desires additional specific contingent insurance on such improvements, may request the association's insurance trustee to include this coverage as a separate item in the standard Improvement and Betterments clause of the association's policy, the premiums for said additional coverage to be paid in advance by the apartment unit owner so requesting the coverage at his own expense and said premium shall not be a portion of the common expenses of the association. The association's insurance trustee may not unreasonably deny such a request, but shall not be liable for failure to see that such additional insurance is properly issued.

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

**Section 15. Repair and Replacement of Destroyed Property.**

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

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

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

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

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

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

#### **Section 16. Compliance and Default.**

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

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

C. The failure of the association or any apartment unit owner to enforce any covenant, restriction or any provision of this Declaration, the By-Laws of the association or the regulations adopted thereto, shall not constitute a waiver of the right to do so thereafter.

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

#### **Section 17. Amendments.** This Declaration may be amended by the association in the following manner:

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

B. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the association or by any member of the association. Directors and members not present in person or by proxy at any meeting considering the amendment may express their approval in writing, providing such approval is delivered to



the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by not less than 75% of the entire membership of the association.

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

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

#### **Section 18. Agent for the Service of Process.**

A. W.C. Foreman, whose address is Post Office Box 697, Kill Devil Hills, NC 27948, is hereby designated as the agent upon whom service of process may be made in any action or proceeding brought against the Condominium.

#### **Section 19. Termination.**

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

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

#### **Section 20. Status of Owners.**

A. Upon initial creation of The Sands Condominium Association, Inc., the Owners shall have control of and shall appoint the Board of Directors therefor. At such time as twelve (12) units are sold in the condominium buildings, the Owners within fifteen (15) days shall turn over and deliver control of the Condominium Association Board of

Directors to the duly elected officers of The Sands Condominium Association, Inc., as provided in the Articles of Incorporation and the By-Laws.

B. For as long as the Owners are the record owners of one or more condominium apartment units which remain unsold, the Owners shall be responsible for and pay their prorata portion of the common expenses as determined by the association.

C. Until the Owners have sold all of the apartment units neither the condominium unit owners, nor the association, nor the use of the condominium property shall interfere with the completion of the contemplated improvements and sale of the condominium units. The Owners may make use of the unsold condominium apartment units and common areas as may facilitate completion of the construction thereof and sale, including but not limited to the maintenance of a sales office, model apartment, the showing of the property and displaying of advertising signs.

**Section 21. Severability.** If any provision of this Condominium Declaration or any of the condominium documents is held to be invalid or unconstitutional by a Court of competent jurisdiction, the validity of the remainder of this Declaration and the other condominium documents shall not be affected thereby.

Amendments:

03/10/18: Section 10 Maintenance and Alteration of Apartments: added sub-sections D., E., and F.

IN WITNESS WHEREOF, the said President of The Sands Condominiums has caused this instrument to be executed this day April 5, 2018.

  
Patricia Cox, President, The Sands Condominiums

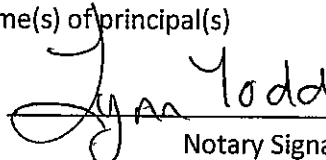
Dare County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document.

Patricia Cox

Name(s) of principal(s)

Date: 4/5/18



Notary Signature

Lynn Todd, Notary Public

My commission expires: October 29, 2022

