

Prepared by and return to:  
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Post Office Box 1890  
Kitty Hawk, North Carolina 27949

**DECLARATION OF  
CASUAL COVE CONDOMINIUM**

THIS DECLARATION OF CASUAL COVE CONDOMINIUM (hereinafter referred to as the "Declaration"), made this the 12<sup>th</sup> day of March, 2011, by Casual Cove Condominium Owners Association, Inc., a North Carolina non-profit corporation (hereinafter referred to as "Declarant"), pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina (sometimes hereinafter referred to as the "Condominium Act" or the "Act") to all prospective purchasers or owners in fee simple of the real property described herein;

**W I T N E S S E T H:**

WHEREAS, Declarant, as of the date and time of recording of this Declaration of Casual Cove Condominium, is the owner in fee simple of certain real estate located in Dare County, North Carolina, said real estate being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the condominium created hereby consists of two existing duplex buildings each containing two separate, independent residential areas divided by a common wall as more

particularly shown and delineated on the map or plat thereof filed in Unit Ownership File 3, Slides 70-72 inclusive, in the Dare County Public Registry; and

WHEREAS, the title of the recorded plat of the property refers in its title to “interval ownership” as the form of ownership applicable to the property in accordance with North Carolina General Statute 47(A), said interval or co-ownership was terminated by a Declaration of Termination recorded in Deed Book 638, Page 328, of the Dare County Public Registry; however, this declaration utilizes the plat and plans shown and depicted on the map filed in Unit Ownership File 3, Slides 70-72, inclusive as the plat and plan of the condominium without the meaning attributed to the term “interval ownership” or “co-ownership” as may appear on the recorded plat of the property subject to this declaration and the Declarant adopts said recorded plat and slides in Unit Ownership File 3, Slides 70-72, inclusive as the plat and plans of the condominium hereby established as required pursuant to NCGS Section 47C-2-109; and

WHEREAS, the prior co-tenants of the property set forth in Exhibit “A” each owned a one-fourth ( $\frac{1}{4}$ ) undivided interest in the land and they agreed to convey their respective legal interest in the real property and improvements thereon (as well as personal property and fixtures therein) to the Declarant for the sole purpose of permitting Declarant to establish the condominium form of ownership as provided in accordance with this declaration and then re-convey the real property and improvements thereon to the respective individual owners according to their interest and subject to this declaration; and

WHEREAS, the Master Deed, Declaration of Covenants, Conditions and Restrictions for Casual Cove recorded in Deed Book 638, Page 331, will be terminated as hereinafter provided pursuant to Article XI, Section 3 of the said master deed in Deed Book 638, Page 331 of the Dare County Registry; and

WHEREAS, it is the desire of the Declarant to submit the property described on Exhibit "A" together with the improvements thereon constructed, to the provisions of the North Carolina Condominium Act to provide for the condominium form of ownership; and

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of condominium units and the joint ownership by individual and separate owners thereof, as tenants in common, of all of the remaining property in the condominium (all portions of the Condominium except the Units hereinafter being referred to as "Common Elements", as further defined in Article 2B and Article 3G).

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

## ARTICLE 1.

### ESTABLISHMENT OF CONDOMINIUM

On the property described on Exhibit "A," attached hereto and incorporated herein by reference, there are two three-story buildings containing four (4) Condominium Units and other appurtenant improvements. By recording this declaration, Declarant does hereby submit the real property, and the improvements lying within the land area described on Exhibit "A," to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Casual Cove Condominium." The Condominium is located in Dare County, North Carolina.

These Condominium Instruments where defined shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of the Condominium Act as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to anyone or more of the others. Any amendment of any Condominium Instrument shall, from the time of the recordation of such amendment be deemed an integral part of the affected Condominium Instrument, so long as such amendment was made in accordance with the provisions of the North Carolina Condominium Act.

This Declaration is recorded also for the purpose of complying with the provisions of Chapter 47C of the General, Statutes of North Carolina, as amended, and hereafter, provision shall be made for the recordation of the individual condominium units on subsequent re-sales, mortgages and other encumbrances, as is done with all other real estate recordation, and each condominium unit shall constitute for all purposes a separate parcel of real property, distinct from all other condominium units.

## ARTICLE 2.

### SURVEY AND DESCRIPTION OF IMPROVEMENTS

A. Description of the Land and of the Buildings, and General Description and Designation of Each Unit.

A survey of the land and plat and plans of the improvements constituting the Condominium, identifying the Condominium Units, and the Common Elements, as said terms are herein defined, is recorded in the office of the Register of Deeds of Dare County in Unit Ownership File 3, Slides 70-72 inclusive (hereinafter from time to time referred to as "UOF3/70-72"), said survey, plat and plans being incorporated herein by reference. Said survey, plat and plans are sometimes collectively referred to herein as Exhibit "A" together with the legal description of the property set forth in Exhibit "A." Each Condominium Unit is identified by a specific letter on said Exhibit "A," and no Condominium Unit bears the same letter as any other Condominium Unit. The Condominium Units are designated and lettered as Units A, B, C, and D, as shown on the aforesaid recorded plat of the Condominium.

The Declarant is undertaking to impose the condominium form of ownership on the property whereby two buildings containing four condominium units as defined hereinafter, are to be individually offered for sale and sold and conveyed to unit owners, and thereafter individually owned, possessed, sold, conveyed, encumbered and disposed of by unit owners under condominium ownership.

B. Description of the Common Elements and Prohibition Against Partition.

Any utility facilities serving all Condominium Units shall constitute general Common Elements as further provided herein below. Common elements shall also include all portions of the condominium area submitted herein except the Units . The Limited Common Elements shall include the doorsteps, stoops, decks, porches, balconies, patios, driveways, parking and storage areas immediately below a unit, and all other exterior doors and windows designated to serve a single unit but located outside the unit's boundaries. Subject to this declaration, each Unit Owner

shall have the exclusive use and possession of the said Limited Common Elements and shall maintain and repair said Limited Common Elements in accordance with the standards of this Declaration. The exclusive use and possession of the Limited Common Elements of each owner is subject to the right of the Casual Cove Condominium Owners' Association, Inc., to enter upon and on the Limited Common Elements of each unit to make repairs and maintain the Limited Common Elements upon the failure or refusal of any Unit Owner to do so in accordance with the Bylaws and/or regulations of the Casual Cove Condominium Owners' Association, Inc. The cost of maintenance and/or repairs performed by or at the direction of the Association under this section shall be charged to the unit owner whose limited common element was repaired or maintained as a special assessment and shall be paid by the affected unit owner within thirty (30) days of the notice thereof by the Owners' Association. Failure to pay the charge shall result in a lien against the Condominium Unit enforceable as provided herein and as by law provided. Each unit owner shall bear the cost and expenses of such maintenance, including additional landscaping and the erection of recreational facilities or placement of recreational equipment on the respective unit's Limited Common Elements for the use of the unit owner and guests staying at the unit. Any heating or air conditioning system exclusively serving a particular unit or units shall be a Limited Common Element assigned to that unit or units.

The Common Elements shall remain undivided and shall not be subject to any suit for partition and no Unit Owner, nor any other person, shall bring any suit or other proceeding for partition or division of the co-ownership of the common elements until and unless the Condominium regime is terminated.

Nothing contained herein shall be construed as a limitation on partition by the unit owners of one Condominium Unit in the regime as to the individual ownership of such condominium units;

provided that upon partition of any such individual condominium unit the same shall be sold as an entity and not be partitioned in kind.

### ARTICLE 3.

#### DEFINITIONS

Except to the extent otherwise provided by the Condominium Instruments, the terms defined in Section 47C-1-103 of the North Carolina Condominium Act, as amended, shall be deemed to have the meanings therein specified and ascribed to them wherever they appear in the Condominium Instruments unless the context clearly otherwise requires.

A. "Act" means Chapter 47C of the General Statutes of North Carolina designated as the North Carolina Condominium Act.

B. "Articles of Incorporation" means the Articles of Incorporation for Casual Cove Condominium Owners' Association, Inc., filed in the office of the Secretary of State of North Carolina, as the same may be amended from time to time.

C. "Association" shall mean the unit owners association organized pursuant to the Act and incorporated under Chapter 55A of the General Statutes of North Carolina, and shall be known as Casual Cove Condominium Owners Association, Inc., and its successors in interest.

D. "Association Documents" and/or "Condominium Instruments" means collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, and the Rules and Regulations adopted by the Association, all as may be amended, restated and revised from time to time. Any exhibit, schedule, or amendment to an Association Document shall be considered a part of that document.

E. "Board of Directors" or "Board" shall mean the body responsible for administration of the Association selected as provided in the Bylaws.

F. "Bylaws" shall mean the Bylaws of the Association as they may be amended from time to time, and as set forth in Exhibit "B" attached hereto and incorporated herein.

G. "Common Elements" shall mean and comprise all portions of the Condominium except the Units. Limited Common Elements are Common Elements.

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

I. "Condominium" shall mean the Property described on Exhibit "A" together with all buildings and improvements existing thereon or hereinafter constructed thereon.

K. "Declarant" shall mean Casual Cove Condominium Owners Association, Inc., Trustee, and any Person or entity who succeeds to the Declarant as provided herein or pursuant to the Condominium Act.

L. "Declaration" means this instrument and any amendments hereto.

M. "Limited Common Elements" means those portions of the Common Elements allocated by operation of N.C. Gen. Statute §47C-2-102 for the exclusive use of one or more but fewer than all of the Units, and those portions of the Common Elements described in this Declaration as Limited Common Elements.

N. "Member," "Owner," and "Unit Owner" shall mean one or more persons ("Person" meaning natural person, firm, corporation, partnership, association, trust or other legal entity capable of holding title to real property, or any combination thereof) who own one or more units, but does not include a mortgage unless such mortgage has acquired title pursuant to foreclosure or some other process in lieu of foreclosure.

No unit may be subdivided so as to make two or more smaller units.



O. "Mortgage" shall mean a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

P. "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

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

R. "Property" shall mean the real estate described on Exhibit "A," together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

S. "Register of Deeds" means the office of the Register of Deeds of Dare County, North Carolina.

U. "Unit Boundaries" both as to vertical and horizontal planes, as shown on the plats and plans in the Dare County Unit Ownership File 3, Slides 70-72, shall be the undecorated surfaces of the perimeter walls facing the interior of the Unit, exterior doors and exterior windows facing the interior of the unit, the undecorated surfaces of the ceiling facing the interior of the unit, and the topmost surfaces of the sub flooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

V. "Upkeep" shall mean care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Any word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in N.C. General Statute §47C-1-103.

#### ARTICLE 4.

##### OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT ALLOCATED INTERESTS

Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit also shall own, as an appurtenance to the ownership of said Condominium Unit, an undivided interest in the Common Elements (including the Limited Common Elements). The undivided interest in the Common Elements appurtenant to each of the Condominium Units which presently exists, subject to amendment as provided herein, shall be equal as set out in Exhibit "C" attached hereto and made a part hereof.

The portion of the Common Expenses of the Association allocated to each Unit is also equal as set out in Exhibit "C."

The vote in the Association allocated to each Unit shall be equal and shall be one (1) vote per Unit.

The undivided interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Elements appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Condominium Unit, which describes said Condominium Unit by the letter designation assigned thereto by the map recorded as aforesaid without limitation or exception, shall be deemed and

construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.

Assessments, fees, and other sums lawfully levied, assessed, and collected by the association, including reserves for future improvements or repairs to the condominium to be completed in the future, shall not be subject to proration and reimbursement to an owner or member divested of his ownership interest in the condominium, whether voluntarily or involuntarily.

#### ARTICLE 5.

##### CONDOMINIUM SUBJECT TO RESTRICTIONS

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

A. Each Unit shall be occupied and utilized only for single family residential purposes subject to the provisions of this Declaration.

B. Without the consent of the Association having been first obtained, no structure or personal property shall be placed or permitted to remain on any balcony, railing or other portion of the Common Elements or Limited Common Elements.

C. Food preparation, including using exterior or outside cooking equipment, shall not be permitted in any portion of the Common Elements (including Limited Common Elements) except pursuant to Rules and Regulations which may be adopted, from time to time, by the Board of Directors.

D. The occupancy of each Unit shall not exceed six (6) Persons at any time.

E. No improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Elements.

F. Nothing contained herein shall prohibit the leasing or subleasing of a Unit; provided, however, that:

a. No Unit shall be leased for a period of less than seven (7) consecutive calendar days without the prior written consent of the Board.

b. All leases for a Unit shall be in writing signed by the Owner and the tenant.

c. All leases shall be in such form, and contain such provisions, as approved by the Board, including provisions (i) requiring the tenant to comply with the Association Documents, (ii) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (iii) providing that the Board may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Unit by judicial process or otherwise.

d. No fraction or portion of any Unit may be leased separately from any other portion of the Unit.

e. The leasing of any Unit is further subject to the restrictions on occupancy set forth in this Declaration.

The Board may also adopt reasonable rules and regulations regarding leasing which may include, but are not limited to the imposition of a fee to the Owner leasing the Unit equal to the costs of administration and ensuring compliance incurred by the Association with the restrictions and rules and regulations relating to leasing the Condominium Unit.

"Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, or the Immediate Family of the Owner, for which the Owner receives, or the tenant provides, any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. As used in these Initial Use Restrictions, "Immediate Family" shall mean the parents, grandparents and children of such Owner.

H. No Unit may be used for, nor shall any Owner permit the use of a Unit for, a timesharing, fraction-sharing or similar program whereby the right to exclusive right of the Unit rotates among participants in the program on a fixed or floating time schedule over a period

of years.

I. No Owner shall post or display any sign, decoration, artwork, banner or flag either upon the Common Elements or the Limited Common Elements without the prior written consent of the Executive Board.

J. The right of an Owner to post or display any flag, sign, political sign, decoration, symbol and artwork within his Unit which is visible from any other Unit or any Common Elements shall not be abridged; provided, however, the Board of Directors may adopt reasonable time, place, size and manner of display restrictions.

K. The Board of Directors may adopt reasonable rules regarding household pets designed to minimize damage to the Common Elements and disturbance to other Owners and occupants including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Unit and fair share use of the Common Elements. Nothing in this restriction shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of Owners and occupants or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep mammals, birds, fish or reptiles of any kind for commercial or business purposes.

## ARTICLE 6.

### EASEMENTS

A. All of the Common Elements, except the Limited Common Elements, shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of

services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units. For that portion of the Common Elements upon which a particular Unit is located as depicted on Exhibit "A," the easement to so locate a Unit shall be exclusive. The Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his tenants, guests, invitees and customers, may be entitled to use the Common Elements and to establish regulations concerning the use of said Common Elements.

B. Each Unit Owner hereby is granted a perpetual easement to locate heating and air conditioning systems and related equipment and other utilities, including underground propane tanks, upon the Common Elements. When so located, such heating and air conditioning systems, utilities, related pipes, ducts, conduits, wires and related facilities and equipment shall become and be deemed to be a part of the respective Condominium Unit to which they are affixed or serve. Prior to installing any heating and air conditioning systems, utilities or any facilities and equipment in the Common Elements, the Unit Owner shall obtain the consent of the Association as provided in Article 12 herein. This provision shall not apply to the heating and air conditioning systems and facilities and underground propane tanks which are presently located in the Common Elements and any replacements thereto or any heating and air conditioning systems and facilities and underground propane tanks.

C. The Condominium Units within each building and all common areas shall be subject to an easement in favor of the owner of the other unit within the same building. This easement shall permit access to either unit by the owner of the other unit, or his agents, for purposes of maintaining, repairing or replacing existing utility or drainage facilities serving either or both units and for purposes of maintaining, repairing and replacing common elements. The Declarant or

Owners' Association may install and maintain a common utility and drainage facility, provided that such facility shall be installed underground to the extent possible and the Declarant or unit owner utilizing such easement shall promptly restore the area affected by his use of the easement to its condition prior to such use.

The Owners' Association shall have the right, which may be exercised by its Board of Directors or the managing agent, to enter each unit from time to time during reasonable hours as may be necessary for the operation of the condominium or for making repairs therein necessary to prevent damage to any units or common elements.

Each unit owner shall afford to the other unit owner and to the Owners' Association and to any agents or employees of either such access to his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit to which access is taken, the unit owner causing the same, or the Owners' Association if it caused the same, shall be liable for the prompt repair thereof.

The Property Owners' Association shall also have an easement of access over the common elements and Limited Common Elements of the Condominium Units submitted herein to provide and maintain all utility facilities it is required to provide and maintain.

The Owners' Association itself shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any portion thereof.

Hereafter, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying letter of that unit, the name of the condominium, the name of the county wherein the condominium is situated, and the deed and page



number where the first page of this Declaration has been recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein.

#### ARTICLE 7.

##### EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS

In the event that any Condominium Unit shall encroach upon any Common Elements, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Condominium Unit for so long as such encroachment naturally shall exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Condominium Unit for so long as such encroachment naturally shall exist. If any Condominium Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Elements in accordance with Article 22 hereof, there exist encroachments of portions of the Common Elements upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments naturally shall remain.

#### ARTICLE 8.

##### RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

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

#### ARTICLE 9.

##### ADMINISTRATION OF THE CONDOMINIUM

##### BY CASUAL COVE CONDOMINIUM OWNERS ASSOCIATION, INC.

To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, an association of all Unit Owners has been incorporated pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "Casual Cove Condominium Owners' Association, Inc." (herein sometimes called the "Association"). The Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Bylaws. The Owner or Owners of each Condominium Unit automatically shall become members of said Association upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person, firm or association holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such

lien, mortgage or other encumbrance, to membership in said Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association, subject to the provisions of N.C. General Statute §47C-3-105 and 47C-3-112, shall have all the powers set forth in North Carolina General Statutes Section 47C-3-102.

#### ARTICLE 10.

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

A. The use of Common Elements by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be at all times subject to the Association Documents.

B. The use of Limited Common Elements is restricted to the Owners and Owners' tenants, guests, invitees and customers, of the Unit and/or Units to which the Limited Common Elements are allocated.

#### ARTICLE 11.

##### RIGHT OF ENTRY

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

Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any routine maintenance, alteration or non-emergency repair to any portion of the Common Elements or adjacent Condominium Units, the Owner of each Condominium Unit shall

permit other Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made at reasonable times and with reasonable advance notice.

## ARTICLE 12.

### LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS, NO RIGHT TO ALTER COMMON ELEMENTS

A. Subject to the provisions of N.C. General Statute §47C-2-108, 47C-2-111, and 47C-2-112, and to the limitations in this Article 12, Units may be altered, boundaries between adjoining Units may be relocated, Limited Common Elements may be reallocated, and Common Elements may be allocated as Limited Common Elements.

B. No owner of a Condominium Unit shall permit any modification or alteration to be made to a Condominium Unit or any betterment or improvement to the Limited Common Elements appurtenant to a Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such modifications, alterations, betterments or improvements would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Owner shall cause any improvements or changes to be made to any Unit or building (other than interior painting or other interior decoration) including the installation of electrical wiring, television or radio antennae or any other objects, machines or equipment which may protrude through the walls, ceiling or floor of any Unit or the walls and roof of any building, or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No Unit Owner shall cause any object to be affixed to the Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Association being first obtained. In the event the Association

shall grant its consent for such improvements or changes to be made, such improvements, including but not limited to all antennae and other objects, machines or equipment which may protrude through the walls or roof shall become and be deemed to be a part of the Unit to which they are affixed.

C. The Board of Directors of the Association, in its sole discretion, may require a Unit Owner desiring to add betterments or improvements to his Unit or the Limited Common Elements appurtenant to his Unit to indemnify the other Unit Owners and the Association against any and all loss, cost and expense that may be occasioned by the addition of such betterments or improvements and further may require such Unit Owner to obtain liability insurance naming the other Unit Owners and the Association as additional insureds in such amounts and upon such terms as the Board of Directors shall determine.

#### ARTICLE 13.

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

The Association shall have the right to make or cause to be made such alterations or improvements to the Common Elements which do not prevent the use of by an owner of their Condominium Unit. The cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

ARTICLE 14.

MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNIT

A. Every Owner shall perform promptly all upkeep within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, or adversely impair the ability to rent such Owner's Unit or any other Unit, and every Owner shall be expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit shall be liable and responsible for the Upkeep of all air conditioning and heating equipment, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service solely to his Condominium Unit. Such Owner further shall be responsible and liable for the Upkeep of the exterior surfaces of any and all walls, ceilings and floors in the interior of his Unit including painting, decorating and furnishings, and all other accessories in his Condominium Unit.

B. Whenever the Upkeep of any item for which the Owner of a Condominium is obligated to Upkeep at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of such Upkeep except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such Upkeep.

C. All betterments and improvements added to the Limited Common Elements by the Unit Owners are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners.

## ARTICLE 15.

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

The Association shall be responsible for the Upkeep of the Common Elements, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements or in a Condominium Unit for the furnishing of utility and/or other services to the Common Elements or other Condominium Units. If any incidental damage is caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the Upkeep of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the Upkeep of any item for which the Association is responsible for Upkeep at its expense is occasioned by any act of a Condominium Unit Owner, his tenants, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of such Upkeep, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay such portion of the cost of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

Whenever the Upkeep of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a condominium Unit Owner, his tenants, guests or invitees, and such loss or damage is not covered by any insurance maintained in force by the Association, the Unit Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay the cost of such Upkeep.

Establishment of liability for damage caused by the Owner of a Unit or the Association is subject to

the provisions of N.C. General Statute §47C-3-107(d). Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

#### ARTICLE 16.

##### AUTHORITY TO PURCHASE INSURANCE

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

#### ARTICLE 17.

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

A. The following insurance coverage shall be maintained in full force and effect by the Association:

(i) Casualty insurance covering the Common Elements, and, the Units, including all buildings and all improvements upon the land and all personal property included within the Condominium, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to at least eighty percent (80%) of the maximum insurable



replacement value thereof (exclusive of land, excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and, (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief, flood and wind and hail. Casualty insurance obtained for the buildings and improvements shall provide such coverage commonly known as "all inclusive building" coverage and/or "completed condominium unit" coverage as such terms are used in the insurance industry, and shall include, but not be limited to, all components of the Units together with fixtures, cabinets, built in appliances and all other such improvements which are part of the Units.

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

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

C. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by

the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear.

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

E. Except as provided in Article 14 hereof, proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated.

G. Insurance policies carried pursuant to this Article 17 shall provide, if possible, that:

(i) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;

(ii) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household, if applicable;

(iii) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

(iv) If, at the time of any loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

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

I. If the insurance described in this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

J. The Association shall maintain flood insurance on the building and all improvements upon the land, the Common Elements, and all personal property of the Condominium (except personal property of the Condominium Unit Owners).

K. If desired, the Association may maintain fidelity insurance.

## ARTICLE 18.

### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

A. Any portion of the Condominium for which insurance is required pursuant to Article 17 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an seventy-five percent (75 %) vote, including one hundred percent (100%) approval of all Owners of Units not to be rebuilt or Owners of Units assigned Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense.

If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lien holders, as their interests may appear, and (3) the remainder of the proceeds shall be distributed to all of the Unit Owners or lien holders, as their interests may appear, in proportion to their Common Element interest. If Unit Owners vote not to rebuild any Unit, that Unit's allocated interests automatically shall be reallocated upon the vote as if the Unit had been condemned pursuant to N.C. General Statute §47C-1-107(a), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations. Unless otherwise prohibited, any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

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

C. When the damage is to Common Elements, Limited Common Elements and Condominium Units, the insurance proceeds will be applied first to the costs of repairing the Common Elements, secondly to the cost of repairing the Condominium Units, and thirdly to the cost of repairing the Limited Common Elements.

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

## ARTICLE 19.

### ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

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

A. Mortgage Provisions. The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

(i) Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

a. Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

b. Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of ninety (90) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within ninety (90) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws which is not cured within ninety (90) days; or

c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

(ii) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(iii) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

## ARTICLE 20.

### ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs

and expenses (not including the payment of real estate and personal property taxes) which are sometimes herein referred to as "Common Expenses." To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management and improvement of the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

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

B. Any Common Expense associated with the maintenance, repair or the replacement of a Limited Common Element be assessed equally against the Units to which that Limited Common Element is assigned. Any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited in such proportions as determined by the Board.

C. Assessments provided for herein may be payable in installments as directed by the Board of Directors of the Association. Such assessments shall commence upon the recordation of this Declaration.

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



operation and management of the Condominium. or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

E. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements, which capital improvement and replacement fund ("Capital Improvement Fund") shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

F. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, and the Bylaws of the Association. As monies for any assessment are paid into the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by other Owners of Condominium Units.

Although all funds and Common Surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.

G. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owing to the Association shall be due and payable at the office of the Association. In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any such installment, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire outstanding balance of the Assessment, including such delinquent installment, may be declared due and payable in full immediately by the service of notice to such effect upon the

defaulting Owner.

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

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

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

expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien provided for herein. Subject to N.C. General Statute §47C-3-116, as amended, the lien granted to the Association may be foreclosed in the same manner as real estate mortgages and deeds of trust may be foreclosed under power of sale in the State of North Carolina. The Association shall be entitled to bid at any foreclosure sale and may apply as cash credit against its bid all sums due as provided herein. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or may acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

K. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the office of the Clerk of Superior Court of Dare County, North Carolina. which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due, the date when due and shall comply with any other requirements under N.C. General Statute §47C-3-116, as amended. The claim of lien shall be recordable at any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid, but shall be extinguished unless a proceeding to enforce the lien is instituted within three (3) years after the docketing thereof. Such

claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided and all fees, charges, late charges, times and interest as set forth in N.C. General Statute §47C-3-116, as amended. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

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

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

L. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association; upon written request of the Unit Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment

which shall be due and payable to the Association for such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

M. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

N. Upon the transfer of title of a Condominium Unit to a person by the Declarant, sale and closing of the purchase of each Unit by the Declarant to a Person other than Declarant, the transferee of each Unit shall pay a non-refundable contribution to the working capital of the Association in an amount equal to two (2) monthly installments of the annual Common Expense liability to be assessed against such Unit for the first year of operation of the Condominium.

## ARTICLE 21.

### COMPLIANCE AND ENFORCEMENT

A. General Remedies. Every Owner and any occupant of any Unit shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

B. Enforcement/Sanctions. The Board or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing

in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

(i) Imposing reasonable monetary fines which upon filing of notice of claim of lien with the Dare County Clerk of Courts Office, shall constitute a lien upon the Unit of the violator;

(ii) Suspending an Owner's right to vote;

(iii) Suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Unit; and

(iv) Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association.

C. Hearing. No sanction shall be imposed without a hearing in accordance with §47C-3-107.1 of the Act.

D. Self Help Remedies. In addition to other rights set forth in the Association Documents and the Act, upon violation or breach of any provision of the Association Documents, the Board shall have the right: (i) to enter a Unit or Limited Common Element appurtenant thereto, on which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents, and the Board shall not thereby be deemed guilty in any manner of trespass, (ii) to use self-help to remove or cure any violation of the Association Documents (including, without limitation, the towing of vehicles); or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction or improvements may be altered or

demolished, except in emergencies, judicial proceedings shall be instituted by the Association against such defaulting Owner or its tenant.

E. Cumulative Remedies/Attorney's Fees. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Association Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys, fees and court costs, reasonably incurred in such action.

F. Association's Right Not to Take Action. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.



G. Enforcement by Owner. Nothing set forth in this Article 25 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity against a violating Unit Owner for a violation of the Association Documents.

## ARTICLE 22.

### COMMON SURPLUS

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

## ARTICLE 23.

### TERMINATION

The Condominium may be terminated only in strict compliance with N.C. General Statute §47C-2-118.

## ARTICLE 24.

### AMENDMENT OF DECLARATION OF CONDOMINIUM

This Declaration may be amended as follows:

(a) An amendment or amendments to this Declaration may be executed as set forth in other provisions of this Declaration (such provisions deal with specific and limited reasons for amendment);

(b) An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President. It shall be the duty of the Secretary to give to each member written or printed notice of any meeting called to consider the amendment or amendments, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of at least seventy-five (75 %) of the votes in the Association which are allocated to Unit Owners in the Condominium in order for, such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the Register of Deeds Office of Dare County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, a

copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments.

As an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. The written agreement shall include the proposed amendment or amendments in reasonably detailed form. To be effective, the written agreement must be executed by Unit Owners of Units to which at least seventy-five percent (75 %) of the votes of the Association are allocated. Once approved, the amendment or amendments shall be transcribed, certified, executed, recorded and a copy sent to all Owners as specified above.

#### ARTICLE 26.

##### CONFLICT WITH ACT: SEVERABILITY

Should any of the terms, conditions, provisions, paragraphs or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

#### ARTICLE 27.

##### LIBERAL CONSTRUCTION

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

#### ARTICLE 28.

##### DECLARATION BINDING ON ASSIGNS AND SUBSEQUENT OWNERS

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

The Association shall have current copies of the Declaration, Bylaws of the Association, and other rules and regulations concerning the Condominium, and the books, records and financial statements available for inspection by Unit Owners and by holders, insurers and guarantors of mortgages during normal business hours at the office of the Association.

#### ARTICLE 29.

##### CONDEMNATION

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and/or the awards paid on account thereof shall be used and applied in accordance with N.C. General Statute §47C-1-107.

## ARTICLE 30.

### TAXES

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

## ARTICLE 31.

### LITIGATION

Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75 %) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Association Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 20; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute

proceedings as provided above. No judicial, quasi-judicial, administrative or governmental proceeding shall be commenced or prosecuted by the Association against or involving Declarant unless approved by a vote of seventy-five percent (75%) of the Members.

## ARTICLE 32

### GENERAL PROVISIONS

A. Parties Bound. All person and persons and entities acquiring any interest in any of the units, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities and other occupants of any of the units, shall likewise be bound.

B. Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

C. Termination of Master Covenants. Termination of the Covenants and Restrictions set forth in that Instrument titled "Master Deed Declaration of Covenants, Conditions and Restrictions for Casual Cove, Nags Head" dated July 3, 1989, and recorded in Deed Book 638, Page 331, of the Dare County Registry are hereby declared, by Declarant pursuant to Article II, Section 3, to be terminated, and hereinafter, null, void and unenforceable by reason thereof. Contemporaneously with the recording of this Declaration, the Declarant shall cause duly executed deeds conveying the four Condominium Units subject to this Declaration to the individuals or entities who have joined in the execution of this Declaration to evidence their consent to the terms, conditions, restrictions and covenants set forth herein as well as their consent to the termination of the covenants and restrictions described in this paragraph; and to further evidence their consent to accept a special warranty deed from the Declarant conveying the Condominium Unit designated by their name, all subject to this Declaration previously recorded.

D. Waiver of Public Offering Statement. The current joint owners hereby waive the requirement that the Declarant furnish the owners as proposed Unit Owners with a Public Offering Statement required by the Condominium Act and acknowledge having received, have read and understand the Casual Cove Condominium Declaration.

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

Casual Cove Condominium Owners Association, Inc.

By: \_\_\_\_\_ {SEAL}  
George Dale Peters, President

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, do hereby certify that George Dale Peters personally came before me this day and acknowledged that he is the President of Casual Cove Condominium Owners Association, Inc., a North Carolina non-profit corporation, and that he, as President being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of March, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

{SEAL/STAMP}

\_\_\_\_\_

The undersigned hereby evidence their consent to the terms, conditions, covenants and restrictions contained in this Declaration of Condominium and to the termination of the Declaration of Master Covenants and Restrictions set forth in the instrument recorded in Deed Book 638, Page 328, of the Dare County Registry, and further to accept a special warranty deed from the Declarant for the Condominium Unit hereinafter set forth by the name affixed hereto.

1. Richard C. Osborne and Mary E. V. Osborne      Unit A
2. Gateway Bank & Trust Company                      Unit B
3. Lina L. Ward    Unit C
4. George Dale Peters    Unit D

\_\_\_\_\_  
Richard C. Osborne    {SEAL}

\_\_\_\_\_  
Mary E. V. Osborne    {SEAL}

Gateway Bank & Trust Company

By: \_\_\_\_\_ {SEAL}  
President

\_\_\_\_\_  
Lina L. Ward    {SEAL}

\_\_\_\_\_  
George Dale Peters    {SEAL}

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, a Notary Public of the above referenced County and State, do hereby certify that Richard C. Osborne and Mary E. V. Osborne personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

{SEAL/STAMP}

\_\_\_\_\_



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the President of Gateway Bank & Trust Company, A Division of The Bank of Hampton Roads, Successor in Trust By Merger to Gateway Bank & Trust Company, and that he/she, as President being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

{SEAL/STAMP}

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, a Notary Public of the above referenced County and State, do hereby certify that Lina L. Ward personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

{SEAL/STAMP}

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, a Notary Public of the above referenced County and State, do hereby certify that George Dale Peters personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:

{SEAL/STAMP}