

BK 653 PG 0165

BY-LAWS OF  
RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, PURPOSE AND APPLICABILITY

1.1 Name. The name of this non-profit, non-stock membership corporation shall be RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "Association".

1.2 Purpose. The purpose of the Association shall be to administer, manage, and operate the condominium property, in accordance with the Unit Ownership Act, the Non-profit Corporation Act of North Carolina, this Declaration, and the Articles of Incorporation and these By-Laws, as may be amended from time to time. The Association shall not engage in any activities other than those directly related to administration of the condominium property and the Unit Owners' responsibility with respect to the same.

1.3 Applicability. These By-Laws are applicable to the property known as RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC., as such property is described on EXHIBIT A attached to that certain Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC.. These By-Laws are binding on all present or future Owners, tenants, guests, residents, or other persons occupying or using the facilities of such condominium property. The mere acquisition, rental, or act of occupancy of any part of the condominium property will signify that these By-Laws are accepted, ratified, and will be complied with. The provisions of the Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC. regarding the governing and administration of the Association are incorporated herein by reference.

ARTICLE II

DEFINITIONS

The definition of words contained in the DECLARATION, Article II shall apply to those words and terms as used in these By-Laws.

ARTICLE III

OFFICES, REGISTERED AGENT, SEAL, FISCAL YEAR

3.1 Principal Office, Registered Office. The principal office of the Association shall be located at 3608 N. Croatan Highway, Kitty Hawk, NC 27949 or such other places as the Board of Directors may designate from time to time.

3.2 Registered Agent. The initial Registered Agent for the Unit Owners for matters incident to the condominium property and the initial Registered Agent for the Association is David L. Perrot, whose address is 3608 N. Croatan Highway, Kitty Hawk, NC 27949. The Registered Agent for the Association shall also be the Registered Agent for the Unit Owners. The individual serving as Registered Agent may be removed from office and replaced at any time by vote of the Board of Directors of the Association.

3.3 Seal. The seal of the Association shall contain the name of the Association, the word "Seal", and such other words and figures as desired by the Board of Directors. When obtained, the seal shall be impressed in the margin of the minutes of the initial meeting of the Board of Directors.

3.4 Fiscal Year. The fiscal year of the Association shall be January 1 through December 31.

#### ARTICLE IV

#### MEMBERSHIP

4.1 Qualification. Membership in the Association shall be confined to and consist of the Unit Owners. Membership shall be appurtenant to and inseparable from unit ownership. No Unit Owner shall be required to pay any consideration whatsoever for his membership. Membership in the Association shall inure automatically to Unit Owners upon acquisition of the fee simple title, whether encumbered or not, to any one or more units. The date of registration of the conveyance in the Dare County Registry of the unit in question shall govern the date of ownership of each particular unit. However, in the case of death, the transfer of ownership shall occur on the date of death in the case of intestacy, or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

4.2 Annual Meetings. The annual meetings of the Unit Owners Association shall be held at least seventy-five days before the beginning of each fiscal year on such date other than Sunday or legal holiday as may be established by the Board of Directors. At such annual meetings, members of the Board of Directors shall be elected by the Unit Owners in accordance with the requirements of Section 5.4 of these By-Laws. During the Declarant Control Period, the Declarant shall be entitled to designate members of the Board of Directors not elected pursuant to Section 4.4. If the special meeting held pursuant to Section 4.4 is held within six months of a scheduled annual meeting, the annual meeting shall not be held until the following year.

4.3 Place of Meetings. Meetings of the Unit Owners Association shall be held at the principal office of the Unit Owners Association or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

#### 4.4 Special Meetings.

(A) The President shall call a special meeting of the Unit Owners Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by at least Owners of two units. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

(B) Not later than sixty (60) days after the termination of the Declarant Control Period, a special meeting of the Unit Owners Association shall be held at which a majority of the members of the Board of Directors shall be elected by the Unit Owners.

4.5 Notice of Meetings. The Secretary shall give to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners at least twenty-one but not more than thirty days, and of each special meeting of the Unit Owners at least seven but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The giving of notice in the manner provided in this Section and Section 11.2 of the By-Laws shall be considered service of notice.

4.6 Quorum; Adjournment if No Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least Forty Percent (40%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until quorum is present.

## 4.7 Voting.

(A) The total votes in the Association are allocated to units by the Declaration. The votes allocated to the unit may be cast by the Unit Owner of that unit. When there is more than one Unit Owner of a unit, the vote for that unit shall be cast as they shall determine. The vote allocated to a unit shall not be split but shall be voted as a single whole. If there is more than one Unit Owner of a unit and said Unit Owners cannot agree on how to vote for that unit, such vote shall be cast, and the dispute shall be resolved by arbitration. The Association shall not be entitled to cast the votes allocated to the unit owned by it.

(B) Except where a greater number is required by the Condominium Act, the Declaration or these By-Laws, a Majority of the Unit Owners is required to adopt decisions at any meeting of the Association.

(C) No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors if payment of the assessment on his unit is delinquent more than thirty days and the amount necessary to bring his account current has not been paid at the time of such meeting or election. There shall be no cumulative voting.

4.8 Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor of only another Unit Owner, the Secretary of the Association, the Declarant or his Mortgagee, or in the case of a non-resident Unit Owner, the lessee of such Unit Owner's unit, his attorney or management agent. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such unit. Except with respect to proxies in favor of a Mortgagee, no proxy shall in any event be valid for a period in excess of one hundred eighty days after the execution thereof.

4.9 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereto. The President may appoint a person to serve as parliamentarian at the meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws or the Condominium Act. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.

4.10 Prohibition of Cumulative Voting. There shall be no cumulative voting.

## ARTICLE V

## DIRECTORS

5.1 Initial Board. The first Board shall consist of three (3) persons selected by the Declarant whose names are set forth in the Articles and successors to any thereof elected by the members.

5.2 Number and Qualifications of Directors. The Board shall consist of not less than three (3) nor more than nine (9) natural persons, as determined at any annual meeting by the members. Declarant during the Declarant Control Period as defined in Article II Paragraph 12 of the Declaration Creating Unit Ownership for RESORT RODANTHE CONDOMINIUM, A Condominium shall have the right to designate three (3) Directors for each term during the Declarant

Control Period, which Director as designated by the Declarant shall not be required to be Unit Owners as provided by § 47C-3-103 of the Act. The remaining members and all the Board of Directors beyond the Declarant Control Period shall be Unit Owners where the individual nominee of a Unit Owner which is other than an individual.

5.3 Election of Directors. At the first annual meeting of the members, and at each subsequent annual meeting, the members shall elect the Directors by a majority of the votes cast in the election.

5.4 Term. The terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

5.5 Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty-six percent (66%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term.

5.6 Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

5.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, at least seventy-two (72) hours prior to the meeting.

5.8 Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given personally or by mail, telephone, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

5.9 Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

5.10 Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these By-Laws.

5.11 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if

such action is authorized in a writing, setting forth the action taken, signed by all Directors.

5.12 Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

5.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these By-Laws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these By-Laws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually, a report containing at least the following:

(i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) A statement of the financial condition of the Association for the last fiscal year.

(iv) A statement of the status of any pending suits or judgments in which the Association is a party.

(v) A statement of the insurance coverage provided by the Association in accord with the requirements of Article XII of these By-Laws.

(vi) A statement of any unpaid assessments payable to the Association, identifying the unit and the amount of the unpaid assessment.

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.

(c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Elements.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof for the general welfare and safety of RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC.

(e) To enforce the provisions of the Declaration, the Articles, these By-Laws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these By-Laws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a unit without the approval of the Unit Owner.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium, the Common Elements, or more than one unit.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement, modification or improvement of common elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(k) To buy units, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in units from time to time owned by the Association.

(l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the units.

(m) To grant leases, licenses, concessions and easements through and over the Common Elements.

(n) To impose and collect reasonable charges, including reasonable costs and attorneys fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Chapter 47C-4-107 of the Act, or certificates of unpaid assessments.

(o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors' liability insurance.

(p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these By-Laws, or the rules and regulations.

(q) To act as liaison with the Board of Directors of Hatteras High Condominium in the administration of the common elements of Resort Rodanthe.

## ARTICLE VI

### OFFICERS

6.1 Designation of Officer. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association.

6.2 Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect officers as soon as practicable after filing of the Declaration.

6.3 Term. Each officer shall serve until his successor has been duly elected and has qualified.

6.4 Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

6.5 Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

#### 6.6 Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice President shall perform such duties of the President as shall be assigned to him or her by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7 Execution of Agreements, etc. All agreements, deeds, mortgages, or other instruments shall be executed by any two (2) officers, or by such other person or persons as may be designated by the Board.

6.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

### ARTICLE VII

#### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the appropriate sections of the North Carolina General Statutes, as now enacted or hereafter amended.

### ARTICLE VIII

#### COMMON EXPENSES, ASSESSMENTS AND LIENS

8.1 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these By-Laws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Property until the units are separately assessed; premiums including any deductible

or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 5.13(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result or the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VIII hereof.

8.2 Obligation of Members to Pay Assessments; Amount of Levy. Until the Association levies a Common Expense assessment, Declarant shall pay all accrued expenses of the Condominium. thereafter, each Unit Owner shall be personally and severally liable for the Common Expenses that are levied against his unit while a Unit Owner. Each Unit shall be assessed in accordance with that unit's percentage of Common Expenses as allocated by the Declaration, as amended.

8.3 Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each unit in accordance with its percentage of Common Expenses, and, if allocated, shall be owned by the Unit Owner of that unit, and, if allocated, may be paid to the Unit Owner or credited against that unit's share of Common Expenses subsequently assessed.

8.4 Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning January 1, 1990, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. The interim budget has been prepared by the Declarant. After preparation and adoption of each such budget, the board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after creation of the Condominium shall be prepared and adopted by the Board only for the balance of the then fiscal year of the Association, commencing on the date of substantial completion of all structural components and mechanical systems serving more than one unit of the initial building to be constructed, shall be prepared and adopted as soon as practicable after said date of substantial completion, and notice of the amount of the assessment against each unit for such balance of the fiscal year shall be given by the Board to each member as soon as practicable after adoption. Such assessment shall be deemed levied upon notice thereof given by the Board.

8.5 Assessment A Lien. Every assessment shall constitute a lien upon each unit assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.6 Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Except for special assessments, one quarter (1/4) of the assessment shall be paid on or before the first (1st) day of each January, April, July and October of each calendar year.



Payments shall be made to the Association, or as the Board may from time to time otherwise direct.

8.7 Funds and Reserves. All sums collected by the Association from assessments shall be accounted for as follows:

(a) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements of structural elements and mechanical equipment, and other Common Elements of the Condominium.

(b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during period of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(c) Maintenance Fund. To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to either of the above reserve funds.

(d) Working Capital Fund. All funds, if any, received by the Association for the initial working capital fund of the Association, to defray unforeseen expenses and/or the cost of additional equipment or services deemed necessary or desirable by the Board, shall be maintained in and segregated in this fund for the use and benefit of the Association.

The reserve fund for repairs and replacements shall be established by the Board beginning with the fiscal year beginning January 1, 1990 and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

8.8 Special Assessments. In addition to the assessments levied pursuant to Section 8.4, the Board, in its discretion, may levy special assessments at such other and additional times as in its judgement are required for:

(a) Maintenance, repair, restoration and reconstruction of the Common Elements, and operation of the Condominium.

(b) Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment involving an expenditure in excess of Ten Thousand Zero Hundred and No/100 Dollars (\$10,000.00) shall be first approved by the members entitled to cast at least fifty percent (50%) of the total votes in the Association at a regular or special meeting of the Association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Section 14.1 and 14.5 hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.9 Common Expenses Associated with Limited Common Elements or Benefiting Less Than All Units.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be

assessed against the unit, or in equal shares to the units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any item of Common Expenses benefiting less than all of the units against the units benefited in proportion to their Common Expense liability.

8.10 Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.4 each member shall continue to pay the assessment then previously levied pursuant to Section 8.4 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.11 Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the units, which shall be available in the office of the Association for inspection at all reasonable times by representatives. Such roll shall include, for each unit, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his unit. The certificate shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board.

8.12 Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against that unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Chapter 47C-3-116 of the Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate. 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 highest rate allowed by law on any such advances made for such purpose.

The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any condominium unit from the date on which payment of any assessment or installment thereof became delinquent, and the Association shall be entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgement for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the date incurred until paid.

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 acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice to the lien rights granted to the Association and shall acquire such interest in any condominium unit expressly subject to such lien rights.

8.13 Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. All payments upon account shall be the maximum allowed by the Act. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

#### ARTICLE IX

##### RELOCATION AND ALTERATION OF UNITS

9.1 Procedure. If any Unit Owner desires to (i) relocate the boundaries of his unit pursuant to Chapter 47C-2-114 of the Act, (ii) remove partitions or create apertures pursuant to Chapter 47C-2-113 of the Act, or (iii) make any improvements or alterations to his unit which impair the structural integrity or mechanical systems of, or lessen the support of any portion of, the Condominium, the procedure set out in this Article shall be followed. No Unit Owner shall paint or alter the exterior of his unit, including the doors and windows, nor shall any Unit Owner paint or latex the exterior of RESORT RODANTHE without the prior written consent of the Board of Directors as hereinafter set forth.

9.2 Notice to and Consent of Board. Prior to doing any work of the kind set out in Section 9.1, the Unit Owner shall give notice to the Board of his intent to do such work and request and receive the written consent thereto of the Board or, on appeal, the Association. With such notice shall be given (i) a statement of the work to be done, (ii) a copy of the plans and specifications for the work, and (iii) such additional information relative to the proposed work as the Board may reasonably request. Upon receiving all such information and any fees and charges requested by the Board, the Board shall set a date for a meeting on the proposed work which shall be within fifteen (15) days after such information and fees and charges are received. Notice of such meeting shall be given to all members of the Association in the same manner as a notice of a special Board meeting. At the meeting, the Board shall receive such testimony and evidence as it deems appropriate. The meeting may be continued from time to time by the Board. At the meeting or at such later time but, in any event, not later than sixty (60) days after such meeting, the Board shall decide whether to consent or not to consent to such work. Written notice of such decision shall be given to said Unit Owner and all members.

9.3 Appeal to Association. The Unit Owner proposing to do the work, or members representing ten percent (10%) or more of the total votes in the Association, may appeal the decision of the Board to the Association by filing a signed written request for an Association meeting on the work proposal. The written request must be filed with the Secretary within ten (10) days of the date of the notice of the Board's decision.

9.4 Meeting and Decision of Association. Upon filing of an appeal, a special meeting of the members of the Association shall be called. The notice of meeting shall be sent out within ten (10) days after such filing, and the meeting shall be held within thirty (30) days after such filing. The meeting may be continued from

time to time by the chairman. The provisions of Article IV hereof shall apply to such meeting. At such meeting the members shall decide to consent or not to consent to such work. The decision of the Association shall be final.

9.5 Fees. The Board may require the Unit Owner proposing to do the work to pay reasonable fees and charges to cover the costs to be incurred by the Association in giving notice of and holding meetings pursuant to this Article.

9.6 Conditions. The Board or, on appeal, the Association, may impose conditions on any consent to such work to protect the Common elements, units and the Condominium, and to insure that the provisions of the Act, Declaration and these By-Laws are complied with, including, without limitation, the furnishing to the Association of payment and performance bonds, or other security acceptable to the Board, to ensure that the proposed work is timely completed pursuant to the plans and specifications therefor and all costs thereof paid.

9.7 Controlling Procedure. The procedure set out in this Article shall control over any contrary provisions in the Act.

#### ARTICLE X

##### MAINTENANCE, REPAIR AND REPLACEMENT

(a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than eighty percent (80%) of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements, the cost of which shall be charged to all Unit Owners as a Common Expense.

(b) By the Unit Owner. Every Owner shall perform promptly all maintenance and repair work within his condominium unit which, if omitted would affect the Condominium, either in its entirety or in part belonging to other Owners, every Owner being 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 maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment (both inside and outside components), including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his condominium unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of any and all walls, ceilings and floors within his unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his condominium unit. Whenever the maintenance, repair, and replacement of any item for which the Owner of a condominium unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such condominium unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement 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. The Owner of a condominium unit who has exclusive use of any Limited Common Area and Facility shall maintain such at his own expense, unless said Limited Common elements have been specifically designated by the board of Directors as maintenance responsibility of the Association. All glass doors, window frames, panes and

screens are a part of the respective condominium units and shall be maintained by the respective unit owners.

(c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with compatible building materials and equipment. The method of approving payment vouchers for all repairs and replacements shall be determined by the Board of Directors.

#### ARTICLE XI

##### RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS; RULES AND REGULATIONS

(A) Restrictions. Each Unit and the Common Elements shall be occupied and used as follows:

(1) Nothing shall be done or kept in any unit or in the Common Elements which will increase the rate of insurance for the Property or any part thereof applicable for residential use without the prior written consent of the Board of Directors. No unit Owner shall permit anything to be done or kept in his unit or in the Common Elements which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste shall be committed on the Common Elements.

(2) No unit Owner shall obstruct any of the Common Elements nor shall any unit Owner place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Board of Directors.

(3) The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units.

(4) No portion of any unit (other than the entire unit) shall be leased for any period. No unit Owner shall lease a unit other than on a written form of lease: (i) requiring the lessee to comply with the Condominium Instruments and Rules and Regulations; (ii) providing that failure to comply constitutes a default under the lease, and (iii) providing that the Board of Directors has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the lessor thereunder after thirty days (30) prior written notice to the unit Owner, in the event of a default by the tenant in the performance of the lease. The Board of Directors may provide a suggested standard form lease for use by unit Owners. Each unit Owner of a condominium unit shall, promptly following the execution of any lease of a condominium unit, forward a conformed copy thereof to the Board of Directors.

(5) No trailers, campers, mobile-homes, recreational vehicles, and other large vehicles may be parked on the Property. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements. Vehicle repairs other than ordinary washing and waxing are not permitted on the Property.

(6) The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within the unit or upon the Common Elements, except that the keeping of small, orderly domestic pets (e.g., dogs, cats or caged birds not to exceed one animal per unit without the approval of the Board of Directors, is permitted, subject to the Rules and Regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and provided, further, that any such pet causing or creating a nuisance

or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board of Directors. Such pets shall not be permitted upon the Common Elements unless accompanied by an adult and unless carried or leashed. Any unit Owner who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

(7) No person shall do any act to modify or change the landscaping of the Common Elements including the planting or removing of any shrubbery or trees, without the express written authority of the Board of Directors. The Board of Directors, at its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

(8) Each Owner shall be responsible for maintaining a minimum heat of fifty-five (55) degrees in their unit for the purpose of preventing the freezing of water pipes and resulting damage therefrom. If the unit Owner is a non-resident during the winter months, then said unit Owner shall be responsible for appointing someone to make periodic inspections for the purpose of insuring that the heating unit within said unit is properly working and maintaining a minimum degree temperature of fifty-five (55) degrees.

(9) No person shall obstruct, alter or in any way modify the established drainage from on, or over, any unit, Common Element, or Limited Common Element.

(10) Refuse and bagged garbage shall be deposited only in the area provided therefor.

(11) No exterior signage on the Units including signage within the common areas shall be allowed unless the same has been approved in writing by the Board of Directors upon a written application submitted by an owner requesting signage which application shall set forth the dimensions of the sign and the language to be included on the sign. This prohibition applies to "For Sale" as well as "For Rent" signs. Owner or Owner's Agent shall have the right to have one (1) "For Rent" no greater than six inches by six inches (6" x 6") in that space so designated on the main entrance sign for Resort Rodanthe.

(B) Use of Swimming Pool. The Board of Directors shall adopt rules and regulations pertaining to the use of the swimming pool which shall be binding upon all Owners and guests. These rules shall be observed by all Owners who shall also use their best efforts to see that they are observed by members of their family, guests, invites, servants, lessees and persons over whom they exercise control and/or supervision. These rules pertaining to the use of the swimming pool shall be mailed to each of the unit Owners after the same have been adopted by the Board of Directors.

(C) Changes to Rules and Regulations. Each unit and the Common Elements shall be occupied and used in compliance with the Rules and Regulations which may be promulgated and changed by the Board of Directors. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each unit Owner.

## ARTICLE XII

### INSURANCE

#### 12.1 Authority to Purchase; Notice.

(a) Except as otherwise provided in Section 12.5, all insurance policies relating to the Property shall be purchased by the Board of Directors prior to the conveyance of a condominium unit to any party other than Declarant. The Board of Directors shall not be liable for failure to obtain any coverages required by this Article XII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at a demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each unit Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

(b) Each such policy shall provide that:

(1) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the unit Owners, and their respective agents, employees, guests and, in the case of the unit Owners the members of their households;

(2) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any unit Owner (including his invites, agents or employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and neither shall have so cured such defect within sixty (60) days after such demand;

(3) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all Mortgagees.

(c) All policies of insurance shall be written by reputable companies authorized to do business in the State of North Carolina. Physical damage policies shall be in form and substance and with carriers acceptable to Mortgagees holding a majority of the Mortgages (based upon one vote for each Mortgage owned).

(d) The deductible, if any, on any insurance policy purchase the Board of Directors shall be a Common Expense, except where the claim is for components of a unit.

#### 12.2 Physical Damage Insurance.

(a) The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, insuring the entire Property including fixtures and appliances initially installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by unit Owners, and covering the interests of the Association, the Board of Directors and all unit Owners and their Mortgagees, as their interests may appear, (subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors as Insurance Trustee contained in Section 12.6 and 12.7), in an amount not less than eighty percent (80%) of the replacement cost of the insured property (exclusive of the Land, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined



annually by the Board of Directors with the assistance of the insurance company affording such coverage). The liability insurance is to cover liability which might arise out of the use, ownership, or maintenance of the Common Elements.

(b) Such policy shall also provide:

(1) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these By-Laws not to do so;

(2) The following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or unit Owner or their agents when such act or neglect is not within the control of the insured, or the unit Owners collectively; nor by any failure of the insured, or the unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the unit Owners collectively, have no control); (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction" or "condominium replacement cost"; and (iv) "agreed amount" or elimination of co-insurance clause; and

(3) That any "no other insurance" clause expressly exclude individual unit Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual unit Owners or their Mortgagees, unless otherwise required by law.

(c) A duplicate original of the policy of physical damage insurance and all renewals thereof, and any sub-policies or certificates and endorsements issued hereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board of Directors may determine, of the then current replacement cost of the Property (exclusive of the Land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 12.2. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to the Common Elements in excess of one percent (1%) of the then current replacement cost of the Property. The Mortgagee of a unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such unit.

12.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring any member of the Board of Directors, the Managing Agent, each unit Owner and the Declarant against any liability to the public or to the unit Owner (and their invites, agents and employees) arising out of, or incident to the ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and contain:

(a) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured;



- (b) hired and non-owner vehicle coverage;
- (c) host liquor liability coverage with respect to events sponsored by the Association;
- (d) deletion of the normal products exclusion with respect to events sponsored by the Association; and
- (e) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a unit Owner because of negligent acts of the Association or of another unit Owner. The Board of Directors shall review such limits once a year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than One Million Dollars (\$1,000,000.00).

12.4 Other Insurance. The Board of Directors shall obtain and maintain:

(a) adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the Managing Agent. Such fidelity bonds shall:

- (1) name the Association as an obligee;
- (2) be written in an amount not less than one-half (1/2) the total annual condominium assessments for the year or the amount required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; and
- (3) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(b) if required by any governmental or quasi-governmental agency, including without limitation the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;

(c) workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

(d) such other insurance as the Board of Directors may determine or as may be requested from time to time by a Majority of the unit Owners.

12.5 Separate Insurance. Each unit Owner shall have the right, at his own expense, to obtain insurance of his own unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his unit under coverage normally called "improvement and betterment coverage"; provided, however, that no unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all unit Owners, may realize under any insurance policy maintained by the Board of Directors or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by a unit Owner. All such policies shall contain waivers of subrogation. No unit Owner shall obtain separate insurance policies on the Condominium except as provided in this Section 12.5.

## 12.6 Insurance Trustee.

(a) All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the unit Owners, their Mortgagees and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board of Directors as "Insurance Trustee" to be applied pursuant to the terms of Article XII.

(b) The sole duty of the Board of Directors as Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these By-Laws, for the benefit of the insured and their beneficiaries thereunder.

12.7 Unavailability of Insurance. In the event any required insurance is not available, the Board of Directors must deliver notice of that fact to all of the Owners.

## ARTICLE XIII

### REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

13.1 When Repair and Reconstruction are Required. Except as otherwise provided in Section 13.4, in the event of damage to or destruction of all or any part of the building as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the building, including any damaged units, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the unit Owners in the units. Notwithstanding the foregoing, each unit Owner shall have the right to supervise the interior redecorating of his own unit.

### 13.2 Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged units and any floor coverings and kitchen and bathroom fixtures and appliances initially installed by Declarant, but not including any other furniture, furnishings, fixtures or equipment installed by the unit Owner in the unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors as Insurance Trustee determines to be necessary.

(b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense and a special assessment therefore shall be levied.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any modifications required by changes in applicable governmental regulations, and using compatible building materials and technology to the extent feasible.

### 13.3 Disbursements of Construction Funds.

(a) The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors as Insurance Trustee from collections of assessments against unit Owners on account of such casualty, shall constitute a construction

fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) If the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of twenty percent of the Mortgagees (based upon one vote for each Mortgage owned), such fund shall be disbursed pursuant to paragraph (2).

(2) If the estimated cost of reconstruction and repair is Fifty Thousand Dollars (\$50,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in North Carolina and employed by the Board of Directors as Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all unit Owners in proportion to their Percentage Interests and shall be distributed in accordance with the provisions of Section 3-113 of the Act.

(c) Common Elements. When the damage is to both Common Elements and units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclosed and service the units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the units.

(d) Certificate. The Board of Directors as Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary certifying:

- (1) whether the damaged Property is required to be reconstructed and repaired;
- (2) the name of the payee and the amount to be paid with respect to disbursement from any construction fund whether surplus funds to be distributed are less than the assessments paid by the unit Owners; and
- (3) all other matters concerning the holding and disbursing of any construction fund.

Any such certificate shall be delivered to the Board of Directors as Insurance Trustee promptly after request.

13.4 When Reconstruction Is Not Required. In the event the Board of Directors elects not to repair insubstantial damage to the Common Elements, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Condominium and the balance of any insurance proceeds received on account of such damage shall be distributed among all unit Owners

in proportion to their respective Percentage Interest. If the Condominium shall be terminated pursuant to "Act", the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors as Insurance Trustee among all unit Owners in proportion to their respective Percentage Interests, after first paying out of the share of each unit Owner, to the extent sufficient therefore, the amount of any unpaid liens on his unit in the order of priority of such liens.

#### ARTICLE XIV

##### COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

14.1 Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these by-Laws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any unit Owner or occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved unit Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these By-Laws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the unit owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting unit Owner to vote as a member of the Association until the default is cured.

14.2 Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each first mortgagee of that member's unit if required under the Declaration, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail a written notice to the board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such first mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. the Board shall serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board

shall serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

14.3 Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 14.2 hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 14.1 hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

14.4 Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 14.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

14.5 Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred until paid.

14.6 Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these By-Laws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

14.7 Assessment Liens. Assessment liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article.

#### ARTICLE XV

#### AMENDMENT

An amendment to these By-Laws shall be made and approved in the manner, and shall be subject to the same restrictions relative to requiring prior written consent of first mortgagees, as set forth in Article X of the Declaration, and once made, shall become effective when recorded in the same manner and place as an amendment to the Declaration.

IN WITNESS WHEREOF, the interim Board of Directors appointed by the Declarant has caused these By-Laws to be signed and sealed by its duly authorized officers, as its act and deed, on that date set forth within the acknowledgement hereof.

RESORT RODANTHE HOMEOWNERS  
ASSOCIATION, INC.

BY:

*James K. Kelly Jr.*  
President

(SEAL)



William E. Kelly  
Secretary

[CORPORATE SEAL]



NORTH CAROLINA  
DARE COUNTY

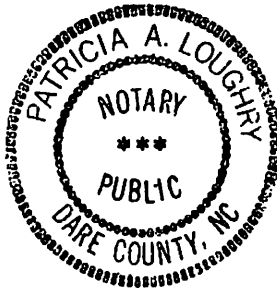
I, a Notary Public of the County and State aforesaid, certify that William E. Kelly, personally came before me this day and acknowledged that s/he is \_\_\_\_\_ Secretary of RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its Corporate Seal and Attested by ~~her~~/himself, as its \_\_\_\_\_ Secretary.

WITNESS my hand and official stamp or seal, this the 23rd day of October, 1989.

10-5-90.  
My Commission Expires

Patricia A. Loughry  
Notary Public

[STAMP/SEAL]



Prepared by & Return To:  
Daniel D. Khoury, Attorney  
P. O. Box 1584  
Kill Devil Hills, N. C. 27948

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FIRST AMENDMENT

TO

BY-LAWS OF RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC.

THIS FIRST AMENDMENT to the By-Laws of Resort Rodanthe Homeowners Association, Inc., a Non-profit Corporation is entered into this 17th day of June, 1991 by Resort Rodanthe Homeowners Association, Inc. (the "Association"), for itself, its successors, grantees and assigns:

W I T N E S S E T H:

WHEREAS, the By-Laws of the Association were previously filed as "Attachment 2" to that Declaration for Resort Rodanthe, a Condominium filed in Deed Book 653 at Page 147 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, Article XV of said By-Laws allows amendment to the By-Laws in the same manner as set forth in Article X of the Declaration which provides for amendments in accordance with the provisions of Section 47C-2-117 of the North Carolina Condominium Act; and

WHEREAS, the Association in accordance with the requirements of Section 47C-2-117 of the North Carolina Condominium Act has obtained the necessary affirmative vote of Unit Owners in Resort Rodanthe, a Condominium to the following amendment of the By-Laws as set forth herein:

(1) Section 4.07 (A) of the By-Laws is hereby amended to allow fractional voting and said section is specifically amended as follows by deleting the third, fourth, and fifth sentences as hereinafter set forth:

When there is more than one Unit Owner of a Unit, the vote for that Unit shall be cast as they shall have determined. The vote allocated to a Unit shall not be split, but shall be voted as a single whole. If there is more than one Unit Owner of a Unit and said Unit Owners cannot agree on how to vote for that Unit, such vote shall be cast, and the dispute shall be resolved by arbitration;

and in substitution of the afორereferenced deleted language, the following shall be added to Section 4.07 (A) of the By-Laws:

When there is more than one Unit Owner of a Unit or if there are co-ownership interests in a Unit, then each Owner of that Unit shall be entitled to one vote for each co-ownership interest owned weighted by multiplying such vote by the fractional undivided interest in the Unit conveyed to said Owner.

(2) Except as modified herein, all provisions of the By-Laws shall continue unchanged to remain in full force and effect.

IN WITNESS WHEREOF, the Association has caused this First Amendment to the By-Laws to be signed and sealed by its duly authorized officers on behalf of the Association the day and year below acknowledged.

RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC.

By:

*James R. Kelly, Jr.*  
James R. Kelly, Jr., President



By: William E. Kelly, Sec.  
William E. Kelly, Secretary

[CORPORATE SEAL]

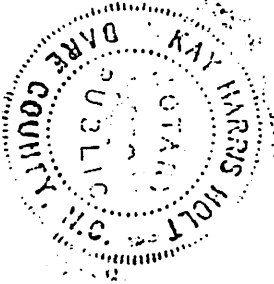
STATE OF NORTH CAROLINA  
CITY/COUNTY OF DARE

I, a Notary Public of the City/County and State aforesaid, certify that WILLIAM E. KELLY personally appeared before me this day and acknowledged that he is Secretary of RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC., a North Carolina Non-profit Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

WITNESS my hand and official stamp or seal, this the 24<sup>th</sup> day of June, 1991.

January 30, 1995  
My Commission Expires

Kay Harris Holt  
Notary Public



[SEAL/STAMP]

NORTH CAROLINA DARE COUNTY

The foregoing certificate(s) of Kay Harris Holt, Notary  
Public of Dare County, N.C.

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Dorris A. Fry, Register of Deeds

By Dorris A. Fry Assistant register of Deeds



Prepared by and return to:  
 THOMAS L. WHITE, JR.  
 KELLOGG, WHITE, EVANS AND GRAY  
 P. O. Box 189  
 Manteo, NC 27954

FILED

SEP 16 PM 2 14

SECOND AMENDMENT  
 TO BY-LAWS OF

RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC.

THIS SECOND AMENDMENT to the By-Laws of Resort Rodanthe Homeowners Association, Inc., a North Carolina non-profit corporation, is made and declared this the 16th day of August, 1991 by Resort Rodanthe Homeowners Association, Inc. (the "Association") for itself, its successors, grantees and assigns:

W I T N E S S E T H:

WHEREAS, the By-Laws of the Association were previously filed as "Attachment 2" to that Declaration of Resort Rodanthe, a Condominium filed in Deed Book 653, Page 147 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, the First Amendment to By-Laws of Resort Rodanthe Association, Inc. dated the 17th day of June, 1991 was filed for record in the Office of the Register of Deeds of Dare County, North Carolina and appears in Deed Book 756, Page 550; and

WHEREAS, Article XI of said By-Laws allows amendment to the By-Laws in the same manner as set forth in Article X of the Declaration which provides for amendments in accordance with the provisions of Section 47C-2-117 of the North Carolina Condominium Act; and

WHEREAS, The Association, in accordance with the requirements of Section 47C-2-117 of the North Carolina Condominium Act, has obtained the necessary affirmative vote of at least 67% of the Unit Owners in Resort Rodanthe, a Condominium to the following amendment of the By-Laws as set forth hereinafter:

(1) The designation of Section 4.07(A) wherever appearing in the First Amendment to By-Laws of Resort Rodanthe Homeowners Association, Inc. recorded in Book 756, Page 550, Dare County Registry, is corrected to read "Section 4.7(A)";

(2) Section 4.6 Quorum; Adjournment if No Quorum. is hereby amended by inserting a new sentence following the first sentence of said section so that said section reads as follows:

4.6 Quorum; Adjournment if No Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least Forty Percent (40%) of the total votes in the Association. A fractional vote shall not be considered as a whole vote, but shall be counted as that fraction of the whole vote represented by that fractional interest. If a quorum is not present, the meeting shall be adjourned from time to time until quorum is present.

(3) Section 4.7(B) is hereby amended to read as follows:

(B) Except where a greater number is required by the Condominium Act, the Declaration or these By-Laws, a Majority of the votes represented is required to adopt decisions at any meeting of the Association. A fractional vote shall not be considered as a whole vote, but shall be counted as that fraction of the whole vote represented by that fractional interest.

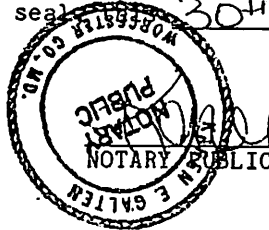
(4) Section 5.3 Election of Directors. is hereby amended by adding the following sentence after the first sentence:

STATE OF Maryland CITY/COUNTY OF Worcester

## SEAL-STAMP

I, Karen Galten, a Notary Public of the County and State aforesaid, certify that William E. Kelly personally came before me this day and acknowledged that he is Secretary of KELART CORPORATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary. Witness my hand and official stamp or seal 30<sup>th</sup> day of July, 1991.

MY COMMISSION EXPIRES:

11-1-92

NORTH CAROLINA, DARE COUNTY

The foregoing Certificate(s) of Jeanette L. Straight, a Notary Public of Dare County, North Carolina and Karen E. Galten, a Notary Public of Worcester County, Maryland is/are certified to be correct.

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

Doris A. Say  
REGISTER OF DEEDS

BY: Nama Jeanette  
ASSISTANT REGISTER OF DEEDS

EX 76300473

A fractional vote shall not be considered as a whole vote, but shall be counted as that fraction of the whole vote represented by that fractional interest.

(5) Section 5.5 Removal. is hereby amended by adding the following sentence after the first sentence:

A fractional vote shall not be considered as a whole vote, but shall be counted as that fraction of the whole vote represented by that fractional interest.

(6) Except as modified herein, all provisions of the By-Laws as amended shall continue unchanged and remain in full force and effect.

IN TESTIMONY WHEREOF, Resort Rodanthe Homeowners Association, Inc. has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed hereto by authority of its Board of Directors, all on the day and year first above written.

RESORT RODANTHE HOMEOWNERS ASSOCIATION,  
INC., a North Carolina Non-Profit  
Corporation

By: James R. Kelly, Jr. President  
James R. Kelly, Jr., President

Attest:

Faye Kelly  
Faye Kelly, Secretary

STATE OF North Carolina CITY/COUNTY OF Dare

SEAL-STAMP

I, Jeanette L. Straight, a Notary Public of the County and State aforesaid, certify that Faye Kelly personally came before me this day and acknowledged that she is Secretary of RESORT RODANTHE HOMEOWNERS ASSOCIATION, INC., a North Carolina Non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by herself as its Secretary. Witness my hand and official stamp or seal, this 29<sup>th</sup> day of July, 1991.

MY COMMISSION EXPIRES:

12-13-93

Jeanette L. Straight  
NOTARY PUBLIC

NORTH CAROLINA, DARE COUNTY

The foregoing Certificate(s) of Jeanette L. Straight, a  
Notary Public of Dare County, North Carolina

is/are certified to be correct.

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

Doris A. Say  
REGISTER OF DEEDS

BY: Norma Jennard  
ASSISTANT REGISTER OF DEEDS

## DECLARATION

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OF

## CO-OWNERSHIP INTERESTS

RECORDED  
BOOK 763 PAGE 474

THIS DECLARATION OF CO-OWNERSHIP INTERESTS, made and entered into this 16th day of August, 1991 by KELART CORPORATION, a North Carolina Corporation, (hereinafter referred to as the "Declarant");

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

WHEREAS, Declarant has previously filed a Declaration creating a condominium known as Resort Rodanthe, A Condominium (hereinafter referred to as "RRAC") said Declaration being filed of record in Deed Book 653, Page 147 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, RRAC is an expandable condominium which presently consists of Phases III and V consisting of twenty condominium units of which Declarant retains ownership in seventeen units, said units more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Declarant wishes to make provisions herein to convey some or all of the units owned by Declarant subject to co-ownership interests and restrictions (as hereinafter defined) and upon conveyance, said units or interests therein so conveyed shall be subject to the Declaration of RRAC in addition to the restrictions for co-ownership interests as hereinafter set out; and

WHEREAS, by this Declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the units and the interests therein conveyed and the payment of taxes, assessments and other expenses pertaining thereto; and

NOW, THEREFORE, the Declarant declares that the real property described herein in Exhibit A and the common areas of that property as described in the Declaration of RRAC including any additional units which may be built as set forth in Section 1.02 of RRAC shall upon any conveyance by Declarant of a co-ownership interest (as hereinafter defined) shall be held, transferred, sold and conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the real property by whomsoever owned and be binding upon all present and future Owners thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof, and which shall be in addition to and not in substitution of the Declaration of RRAC recorded in Book 653, Page 147 of the Dare County Registry as the same from time to time may be amended.

## ARTICLE I

## DEFINITIONS

The definitions provided in the Declaration of RRAC are incorporated herein by reference. In addition the following terms shall be defined as follows:

Section 1.1. "Agent" shall mean a unit Owners' agent appointed as hereinafter provided.

Section 1.2. "Check-in Time" and "Check-out Time" mean the times designated as such in the then current Rules and Regulations.

Section 1.3. "Common Furnishings" means all furniture, furnishings, appliances and all other personal property from time to time owned in common by the Owners of each unit.

Section 1.4. "Co-ownership Interest" shall mean the conveyed fee simple undivided interest in a particular unit together with the exclusive right to use and occupy that unit and the Common Furnishings within the unit for a Use Period assigned by a selection method described in Exhibit B attached hereto and incorporated herein together with a percentage of undivided interest in the common elements of RRAC as assigned to that Unit therein conveyed in accordance with that allocation of common elements, common interests, common votes and common expense liabilities set forth in Article VI of RRAC.

Section 1.5. "Declarant" means Kelart Corporation, a North Carolina Corporation or any successor in interest by merger or by express agreement of the rights of Declarant hereunder.

Section 1.6. "Declaration" means this Declaration of Co-ownership Interest as it may be amended from time to time in the manner provided herein.

Section 1.7. "First Deed" shall mean the Deed the Declarant first records after the date hereof which conveys a Co-ownership Interest from Declarant to an Owner, excluding, however, any deed which conveys Declarant's entire interest in a unit and (a) expressly recites that it is not a First Deed within the meaning of this Declaration or a Supplemental Declaration and that it is intended to substitute the Grantee as Declarant hereunder, and (b) includes an express assignment of the rights of Declarant under this Declaration.

Section 1.8. "Maintenance Period" means any period designated as a service period by the Managing Agent and during which the units are not subject to use by an Owner.

Section 1.9. "Managing Agent" means the management company engaged by the Declarant or the Owners pursuant to provisions set forth in Article III.

Section 1.10. "Original Deed" means each deed from Declarant first recorded which conveys each Co-ownership Interest after which said unit shall thereafter be subject to the provisions of this Declaration.

Section 1.11. "Owner" shall mean one (1) or more persons who hold record title to any unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

Section 1.12. "Permitted User" means any Owner of a Co-ownership Interest, or any relative, business associate, client, friend, or renter who is allowed under this Declaration, and any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc., to occupy the property.

Section 1.13. "Rules and Regulations" means any rules and regulations adopted by Resort Rodanthe Homeowners Association, Inc. relating to the possession, use and enjoyment of the property covered by each Co-ownership Interest.

Section 1.14. "Use Period" or "Use Weeks" means the total of the weeks per calendar year of exclusive use assigned to Owner of a Co-ownership Interest.

## ARTICLE II

### USE RIGHTS AND RESTRICTIONS

Section 2.1. Creating Co-Ownership Interests. Co-ownership Interests in any unit may be created upon the recordation by Declarant of a First Deed to a Co-ownership Interest in such unit. No unit may be subject to co-ownership or other fractional interests by any person other than the Declarant. Declarant may assign its right to create Co-ownership Interests in a unit to any other person to which Declarant conveys some or all of its unsold units in RRAC. Declarant reserves the

right to establish the length of Use Periods of Co-ownership Interests to be conveyed by Declarant so long as Declarant owns any property for sale in RRAC.

Section 2.2. Use Rights of Owners. Subject to all of the terms and conditions contained elsewhere in this Declaration, each Owner of a Co-ownership Interest in a particular and specified unit shall have the exclusive right to use and occupy that unit and the Common Furnishings of that unit for a Use Period composed of either four, ten or thirteen use weeks a year. Use Periods will be assigned in the manner described in Section 2.3 of this Article.

Section 2.3. Assignment of Use Periods. Each Owner of a Co-ownership Interest in a unit will be deeded an interval number from one (1) to the number of undivided interests established for that unit, that number determining the particular use weeks to comprise the Owner's Use Period for the initial year and subsequent years of ownership. The weeks of each year are equitably grouped and an Owner's interval number will correspond to the number of each of the groupings assigned to him for the current year, and from year to year.

Each Owner will be assigned a Use Period comprised of five weeks for units consisting of a ten percent (10%) Co-ownership Interest; four (4) weeks for units consisting of a seven and sixty-nine hundred percent (7.69%) Co-ownership Interest and thirteen (13) weeks for units consisting of a twenty-five (25%) Co-ownership Interest. Similarly, the other co-owners of a particular unit will receive Use Periods for that year composed of use weeks corresponding to their intervals. Each year, the Use Periods will be rotated among the Owners in an orderly and consistent manner. The Use Periods to interval assignments for the year 1991 for the various undivided interests is published and attached hereto and incorporated herein as if fully set out as Exhibit "B" to this Amendment. Each year following the year 1991, the Use Periods will be rotated one step, that is for the first year following 1991, the Owner of Interval One will be assigned the Use Periods which were previously assigned to the Owner of Interval Two for the year 1991 and the last numbered interval Owner of a unit will be assigned the Use Periods previously assigned to the Owner of Interval One. The Use Periods will be rotated in like fashion among the interval Owners for the life of the time share (co-ownership scheme). The Managing Agent shall publish the Use Periods prior to the beginning of each year and shall have full and complete authority to adjust the dates to correspond with the days of the beginning and ending of occupancy during each calendar year.

Section 2.4. Managing Agent Authority Concerning Occupancy Procedures. The Managing Agent, in his sole discretion and without the consent of the Owners, may revise from time to time the times of occupancy and the vacating of Use Periods and to set other conditions, restrictions and limitations deemed necessary to assure a manageable and fair procedure for the use thereof by the co-owners. The Managing Agent further has the authority to determine when the two maintenance weeks for each unit per year will be assigned. No co-owner will be assigned use weeks during the said maintenance periods.

Section 2.5. Occupancy. No Owner shall occupy the property in which he has a Co-ownership Interest(s) or exercise any other rights of ownership with respect to that property other than the rights provided to him in this Declaration, any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc. during any period other than his Use Period(s), unless expressly authorized by the Owner entitled to occupy the unit during such time or unless he has acquired the right to occupy the unit as a result of an internal exchange of assigned weeks with another Owner. Each Owner shall keep the property and Common Furnishings in a good condition and repair during his Use Period(s), vacate the property at the expiration of the Use Period(s), remove all persons and property therefrom, excluding only the Common Furnishings, leave the property and Common Furnishings in good and sanitary condition and repair and otherwise comply with such check-out and other procedures as may from time to time be contained in any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc. Any Owner may

permit the property to be occupied during his Use Period by his relatives, business associates, clients, friends, or persons who have rented the property for part or all of his Use Period(s) for the purposes permitted by this Declaration, but the number of occupants at any given time shall not be in excess of the number of occupants permitted by any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc., and such Owner shall be responsible for any loss, damage, destruction or violation of this Declaration which occurs during such occupation as if he himself were occupying this property. All occupancy is subject to any and all zoning ordinances in effect in Dare County, North Carolina.

Section 2.6. Failure to Vacate. If any Owner or Permitted User fails to vacate the property at the end of his Use Period(s), or otherwise uses or occupies the property during a period not assigned to him, or prevents another Owner or Permitted User from using or occupying the property during such other Owner's or Permitted User's Use Period(s), such Owner or Permitted User (the "Detaining Owner" and the "Detaining Permitted User", respectively) shall (a) be subject to immediate removal, eviction or ejection from the property wrongfully occupied; (b) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction or ejection (to the extent that such notice may be waived under North Carolina law); (c) reimburse the Owner or Permitted User otherwise entitled to use the property for all costs and expense incurred by him as a result of such conduct, including but not limited to costs of alternative accommodations, travel costs, court costs and reasonable attorneys' fees incurred in connection with removing, evicting or ejecting the Detaining Owner or Detaining Permitted User from such property; and (d) pay to the Owner or Permitted User entitled to use the property during such wrongful occupancy a sum equal to three hundred percent (300%) of the fair market rental value per day of the property for each day of portion thereof, including the day of surrender, during which the Detaining Owner or Detaining Permitted User prevents occupancy of the property. The Managing Agent shall be responsible for determining and periodically posting or publishing the "fair rental value" of the property. "Fair rental value" for the period shall be based upon the cost of renting comparable accommodations located in the vicinity of the property. By accepting any deed to a Co-ownership Interest(s), each Owner agrees that, in the event of a wrongful occupancy by him or by a Permitted User, damages would be impracticable or extremely difficult to ascertain and that the measure of liquidated damages provided for herein constitutes fair compensation to those who are deprived of occupancy. If an Owner or Permitted User, by his intentional or negligent act, renders the property uninhabitable for the successive Use Period(s), such Owner or Permitted User shall be liable to the Owner(s) or Permitted User(s) of successive Use Period(s), just as if such Owner or Permitted User has refused to vacate the property at the end of his Use Period. For the purposes of this section, the act of negligence of a guest of any member of the Owner's or Permitted User's family shall be deemed to be the act of the Owner or Permitted User.

Section 2.7. Use Restrictions. Each Owner shall comply with all the use restrictions as set forth in this Declaration, Declaration of Unit Ownership of RRAC, and any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc. No animals, livestock, birds, fish, poultry, dogs, cats or household pets of any kind shall be allowed or kept in or upon the property. Nothing contained in this section or elsewhere in this Declaration shall be deemed to prohibit or preclude any Owner from renting any or all of his Use Period(s) for the purposes permitted by this Declaration, provided, however, that no such rental shall interfere with or diminish the rights of all other Owners to use and occupy the property in accordance with this Declaration and any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc. For purposes of this Section, each Owner shall be responsible for any loss, damage, or destruction to the property in which he has a Co-ownership Interest or the Common Furnishings therein, or for violation of this Declaration or any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc. which occurs during any such rental by Owner just as if such Owner were occupying the property.

Section 2.8. Sale or Transfer of Co-ownership Interest. No Owner shall transfer his Co-ownership Interest(s) unless such transfer is in compliance with the provisions of this Article II, Section 2.9. For purposes of this Section, the term "transfer" means any sale, conveyance, gift, lease for a period greater than three years, encumbrance or other voluntary disposition by an owner of his Co-ownership Interest(s). The term "transfer" does not include a conveyance or transfer by descent, distribution, or other operation of law. No Owner shall transfer of record less than all of a single Co-ownership Interest or further divide said interest.

Section 2.9. Notification of Sale of Co-ownership Interest. No later than five (5) days after the sale or transfer of any Co-ownership Interest under circumstances whereby the transferee becomes the Owner thereof, the transferor shall notify the Managing Agent in writing of such sale or transfer. Such notice shall set forth the name, address and phone numbers of the transferee and transferor and the date of sale. Unless and until such notice is given, the Managing Agent shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Managing Agent. Prior to receipt of any such notification by the Managing Agent, any and all communication required or permitted to be given by the Managing Agent shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

Section 2.10. Waiver of Tenancy-in-Common Attributes. No Owner or any person or entity acquiring any right, title, lien or interest in a unit shall seek or obtain, through any legal procedures, judicial partition of the unit or the sale thereof in lieu of partition and to that end, all Owners by acceptance of a Deed for a Co-ownership Interest shall waive any rights they have as tenants-in-common to partition of the unit or to sell thereof in lieu of partition for the term of this Agreement. If, however, any Owner who owns a Co-ownership Interest with other persons as tenants-in-common or as joint tenants, then in said event nothing herein contained shall prohibit a judicial sale of the Co-ownership Interest partition of that Co-ownership Interest as between such co-tenants or joint tenants.

Section 2.11. Protection of Co-ownership Interest. No Owner shall permit his Co-ownership Interest(s) to be subject to any lien (other than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the Co-ownership Interest(s) of any Owner or any part thereof, or should the use and enjoyment of any portion thereof by any Owner be threatened by reason of any lien, claim or charge against the Co-ownership Interest(s) of any other owner, or should proceedings be instituted to effect any such sale or interference, any Owner acting on his own behalf or the Declarant acting on behalf of any one or more Owners (provided that the Declarant is promptly indemnified to its satisfaction) may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in such event, the Owner whose interest was subjected to such lien, claim or charge shall forthwith pay the amount so paid or expended to the Owner or Declarant whomsoever shall have paid or compromised the lien, claim or charge, together with such reasonable attorneys' fees and related costs as he or it may have incurred. No Owner shall permit his interest in any funds from time to time in possession of the Managing Agent to be subject to any attachment, lien, claim or charge or other legal process and each Owner shall promptly restore any funds held by the Managing Agent in respect of his Co-ownership Interest(s) to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Managing Agent for any reasonable attorneys' fees or other costs incurred in respect thereof.

Section 2.12. Architectural Standards. Owners of Co-ownership Interests are not entitled to make any modifications or improvements to any portion of the unit or to the Common Furnishings hereof without the written approval of the Board of Directors of the Association.



ARTICLE III

BK 76350479

MANAGEMENT

Section 3.1. Authority and Duty to Engage Managing Agent. Each Owner authorizes and directs Declarant, as agent for each Owner, to engage a reputable person or firm as the Managing Agent for the property and the Co-ownership Interest operation contemplated hereby pursuant to a written agreement (the "Management Agreement") meeting the requirements of this Section. Each Owner further authorizes and directs Declarant, as agent for each Owner, to administer the Management Agreement with the Managing Agent until such time as all Co-ownership Interests have been initially sold and Declarant no longer has any interest in Resort Rodanthe, at which time the Management Agreement shall be administered by the Owners, with one Owner elected from each Unit to act as the representative for that unit in so administering the Agreement. Each Management Agreement shall:

- (1) Authorize and obligate the Managing Agent to perform all the duties and obligations specified in Section 3.3 below, provided, however, that the Managing Agent may delegate its authority and responsibilities to one or more sub-agents for such periods and upon such terms as the Managing Agent deems proper.
- (2) Provide for a term of not more than one (1) year, except that the Management Agreement may provide that the term will be automatically renewed for successive one (1) year terms unless notice of non-renewal is given no later than three (3) months prior to the end of any one (1) year term by the Managing Agent or bought by a sixty-seven percent 67% majority of the owners of the Co-ownership Interests in all the units. The original Management Agreement shall be subject to termination by the Declarant, as the Owners' Agent, as follows:
  - (a) At any time, for cause.
  - (b) Prior to three (3) years after the date of the conveyance by Declarant of the first Co-ownership Interest by Original Deed ("Starting Date"), the Declarant shall terminate the Management Agreement if requested to do so by a two-thirds (2/3) majority of all Co-ownership Interest(s) in all Units.
- (3) If for any reason no Managing Agent can be engaged or if the Managing Agent refuses to act for any reason, then Declarant, if it retains any interest in Resort Rodanthe, will become the acting Managing Agent until a new Managing Agent can be engaged. In such event, Declarant shall be entitled to compensation as Managing Agent in accordance with the provisions of this Section.

Section 3.2. Powers and Duties Generally. The Managing Agent, acting alone, through its officers, or other duly authorized representatives may, subject to the provisions of this Declaration and the Management Agreement, exercise any or all rights and powers hereinafter enumerated.

Section 3.3. Specific Powers and Duties of the Managing Agent. The management, maintenance and repair of all Units thereon, the acquisition (by purchase or lease), maintenance, repair and replacement of the Common Furnishings and the administration of the affairs of the Owners, the occupancy of the Units and payment of expenses and costs enumerated in this Declaration shall be under the direction and control of the Managing Agent. The Managing Agent shall have the duty to maintain and repair the Units; to sell, acquire, maintain, repair and replace Common Furnishings as needed; to permit the Units thereon to be used and occupied by a Permitted User, provided such use is in accordance with this Declaration

and such occupancy is in compliance with and subject to all of the terms and conditions of this Declaration and any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc.; to administer the Co-ownership Interest(s) operation provided herein; and to levy, collect and enforce the fees and assessments enumerated in this Declaration. On or before January 15 of each year, the Managing Agent shall furnish each Owner with a roster of the names and addresses of each of the Owners of his Unit. The Managing Agent shall have the power to do all things that are required to be done by it pursuant to this Declaration. Without limitation of the foregoing powers and duties, the Managing Agent is expressly authorized, in its discretion and on behalf of the Owners, to do any or all of the following:

- (1) Repair and Maintenance. To repair, maintain, repaint, furnish or refurnish the Units or any part thereof; to establish reserves for anticipated costs, including the costs of acquisition and replacement of Common Furnishings; furnishings, labor or service which the Managing Agent deems necessary or proper for the maintenance and operation of the Units thereon and the Common Furnishings therein.
- (2) Taxes and Assessments. As agent and not as principal, to pay all taxes and assessments, and other costs affecting or relating to the property or Common Furnishings; and to discharge, contest or protest liens or charges affecting the property.
- (3) Utilities. As agent and not as principal, to obtain and pay the costs of electrical, telephone, cablevision, gas and other utility services for all Units.
- (4) Rules and Regulations. To adopt, publish and enforce, from time to time, Rules and Regulations relating to the possession, use and enjoyment of the Units, which Rules and Regulations shall be consistent with the provisions of this Declaration.
- (5) Insurance. To obtain and pay the cost of (i) insurance covering the Units and the Common Furnishings therein against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage; (ii) insurance covering the Units and the Common Furnishings therein against loss or damage by flooding; (iii) public liability for personal injury or property damage resulting from an occurrence in, on or about the property; and (iv) any other insurance deemed necessary or desirable by the Managing Agent. The policies of insurance shall cover such risks, be written by such insurers and be in such amounts as the Managing Agent shall deem proper under the circumstances. The Managing Agent and any employee of the Managing Agent who has charge of the Owners' funds shall be bonded.
- (6) Levy and Collection of Assessments. To levy, collect and enforce the fees and assessments against the Owners in the manner provided in Articles IV and V hereof in order to pay the expenses of the Co-ownership Interest operation and the fee of the Managing Agent.
- (7) Financial Statements. To cause the following statements to be regularly prepared and copies thereof distributed to each Owner:
  - (a) A pro forma operating statement (the "Budget") of the collective expenses of each of the Units covered by this Declaration for each year, which shall be distributed to by December 1st of each calendar year.
  - (b) A regular statement (quarterly or semi-annually, at the Managing Agent's discretion) of the collective receipts

and disbursements for all of the Units covered by this Declaration.

- (c) An annual balance sheet for all Units covered by this Declaration and an operating statement for each year which shall be distributed to each Owner by no later than March 1st of each year.
- (8) Bank Accounts. All funds collected from Owners pursuant to Article IV hereof and all other amounts collected by the Managing Agent in connection with its duties provided herein shall be deposited as follows:
  - (a) All funds shall be deposited in a management bank account for Resort Rodanthe Co-ownership (the "General Account") with a bank located in the State of North Carolina. The Managing Agent shall keep accurate books and records reflecting the amount of such account attributable to each Owner. Funds deposited in such account may be used by the Managing Agent only for the purposes for which such funds have been collected.
  - (b) Funds which the Managing Agent shall collect for Reserve Expenses, as defined in Section 4.4 of Article IV, pursuant to this Section shall, within twenty-nine (29) days after deposit in the General Account, be deposited in an interest bearing account with a bank or savings and loan association located in the State of North Carolina selected by the Managing Agent, or invested in U.S. Treasury Bills or Certificates of Deposits of banks or savings and loan associations located in the State of North Carolina (said interest bearing bank or savings and loan account or Treasury Bills or Certificates of Deposit are all herein collectively referred to as the "Reserve Account") and the Managing Agent shall keep accurate books and records reflecting the amount in the Reserve Account attributable to each Owner. Funds deposited in the Reserve Account shall be held in trust and may be used by the Managing Agent only for the specific purposes for which such amounts have been collected.
- (9) Statement of Status. Upon the request of any Owner, purchaser or other prospective transferee of a Co-ownership Interest, to issue a written statement as of the last calendar year setting forth the amount in the General Account and the Reserve Account pertaining to such Co-ownership Interest, any amounts unpaid with respect thereto, and the use entitlement for the remainder of the year. Such statement, for which a reasonable fee may be charged, shall be binding upon the Managing Agent in favor of any person who may rely thereon in good faith.
- (10) Maintenance. To provide for maintenance and repairs during Maintenance Periods and at all other reasonable times so that the property is maintained in good order and repair. If provided for in the applicable Budget, to provide, upon the departure of each Owner or other occupant, for once-a-week cleaning service.
- (11) Right of Entry. The Managing Agent shall have the right and authority during Maintenance Periods and at any reasonable time a Unit is not occupied, to enter the Unit for the purpose of painting, maintenance and repairs. In addition, the Managing Agent shall have the right and authority to enter the Units, at any reasonable time, whether or not during a Maintenance Period and whether or not in the presence of an Owner, for the purpose of (i) making emergency repairs therein, (ii) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted

or maintained, (iii) protecting the property rights and welfare of the other Owners, (iv) cleaning service or (v) for any other purpose reasonably related to the performance by Managing Agent of its responsibilities under the terms of this Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and/or enjoyment of the Owner or occupant of the Unit and shall be preceded by reasonable notice to the Owners or occupant thereof whenever the circumstances permit.

- (12) Use of Property by Permitted User. To permit a Permitted User to use and occupy the property in accordance with this Declaration and any Rules and Regulations adopted by Resort Rodanthe Homeowners Association, Inc.
- (13) Other Necessary Acts. To do all other things or acts deemed by the Owners to be necessary, desirable or appropriate for the operation and maintenance of all Units, and the Co-ownership Interest operation.

#### ARTICLE IV

##### FEEES AND ASSESSMENTS

Section 4.1. Creation of Personal Obligations for Fees and Assessments. Each Owner by acceptance of a Deed from Co-ownership Interest, whether or not it shall be so expressed in said Deed, shall be deemed to have covenanted and agreed, for each Co-ownership Interest owned, to pay the Managing Agent the annual Maintenance Fee, all special Assessments and Personal Charges, as hereinafter described in Sections 4.3, 4.5 and 4.6 respectively, of this Article (all of which are sometimes herein individually and collectively called "Assessment(s)"), which shall be established, made and collected as hereinafter provided. The Assessments, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of each Owner at the time the Assessment becomes due and payable and also shall be a lien and charge upon the Co-ownership Interest against which the Assessment or charge is made. The personal obligation for delinquent Assessments shall not pass to successors-in-title unless expressly assumed by them provided, however, this shall not extinguish the lien on the Co-ownership Interest until said assessments are paid. No Owner may waive or otherwise avoid liability for the Assessment for non-use of his Co-ownership Interest or any part hereof or any abandonment thereof.

Section 4.2. Purpose of Assessments. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owner, the improvement, operation and reimbursement of expenses incurred by the Managing Agent and other expenditures incurred in the performance of the duties of the Managing Agent as set forth in this Declaration.

Section 4.3. Annual Maintenance Fee. An annual Maintenance Fee for each Co-ownership Interest shall be assessed the Owners. The Maintenance Fees collected from the Owners shall be used to operate, manage, maintain and repair the property; to provide utility services, cleaning services, maintenance, replacement and repair of the Common Furnishings and of the household items as required; to administer to Co-ownership Interest operation; to provide for payment when due of the principal and interest installments under the Property Mortgage(s), if applicable; property taxes; bond payments or other assessments to which the property is or may become subject; to provide for reserves to insure payment when due of the cost of capital expenditures relating to repair of the Units and repair and replacement of Common Furnishings, and for such other purposes as are required by good business practice (the "Reserve Expenses"), to provide for a fund to account for the possibility that some Maintenance Fees may not be paid on a current basis; and to provide for the payment the fee of the Managing Agent. Maintenance expenses shall not include any expenses constituting a Personal Charge. The Maintenance Fee may be increased or decreased by the Owners holding two-thirds (2/3) of all of the Co-

ownership Interest(s) in all Units. The annual maintenance fee shall include that percentage of common expenses as provided in Article VIII of the By-Laws of the Association.

Section 4.4. Payment of Maintenance Fee. The Maintenance Fee shall be payable in equal periodic installments over periods determined by the Managing Agent, but in any event not more frequently than monthly. Each installment payment of the Maintenance Fee shall be paid by each Owner within fifteen (15) days of the date of the statement therefor, and, if an Owner does not pay said installment payments in a timely fashion, he shall be subject to any late fee penalty provided for in the Rules and Regulations. Each portion of the Maintenance Fee which is attributable to the reserve established for capital expenditures shall be deposited in the Reserve Account provided for in Section 3.3(8)(b).

Section 4.5. Special Assessments. If the Maintenance Fees are, or will become, inadequate to meet all expenses incurred by the Managing Agent hereunder (other than for items constituting Personal Charges) for any reason, including nonpayment by any Owner of Maintenance Fees on a current basis, the Managing Agent shall immediately determine the approximate amount of such inadequacy and levy against each Owner a special assessment (the "Special Assessments") in an amount sufficient to provide for such inadequacy. Special assessments may also be levied by the Association pursuant to Section 8.8 of the By-Laws. Any other assessment may be made only by a two-third (2/3) vote of all of the Co-ownership Interest(s) in all Units.

Section 4.6. Personal Charges. The term "Personal Charges" means: (i) any expense resulting from the act or omission to act of any Owner or other persons occupying a Unit during the Use Period of an Owner including, without limitation, the cost of long distance telephone charges or telephone message unit charges, any telephone service charge provided for in the Rules and Regulations, and other special services or supplies attributable to the occupancy of the Unit during such Owner's Use Period; (ii) the cost to repair any damage to the Unit or to repair or replace any Common Furnishings located thereon on account of loss or damage occurring during such Owner's Use Period; and (iii) the cost to satisfy any expense to any of the other Owners or to the Managing Agent attributable to any intentional negligent act or omission to act of such Owner, his family, guests or invitees or resulting from the breach by such Owner of any provisions of this Declaration or the Rules and Regulations. Such Personal Charges shall be paid by each Owner to the Managing Agent within thirty (30) days after receipt of a statement.

Section 4.7. Declarant's Obligations. For any unsold Co-ownership Interest(s), the Declarant shall be responsible for and pay assessments as provided in this Article IV except as to such unsold Co-ownership Interest(s) which are vacant and unoccupied the Declarant shall not be responsible or liable for any portion of the assessment attributable to maid, linen service and charges which relate solely to occupancy and use.

## ARTICLE V

### ENFORCEMENT OF RESTRICTIONS

Section 5.1. In General. The Managing Agent shall have full power and authority to enforce compliance with this Declaration and the Rules and Regulations in any manner provided for by law or in equity including, without limitation, the right to enforce the Declaration and Rules and Regulations, to enforce the liens provided for therein and any statutory lien provided by law, including the foreclosure of any such lien, an appointment of a receiver for an Owner and the right to take possession of the Co-ownership Interest of any such Owner in the manner provided by law. In the event the Managing Agent shall employ an attorney to enforce the provisions of this Declaration or Rules and Regulations against any Owner, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at a rate not to exceed the maximum legal rate per annum from the due date,

or, if advanced or incurred by the Managing Agent or any of the Owner pursuant to authorization contained in this Declaration, within ten (10) days after repayment is requested. All enforcement powers of the Managing Agent shall be cumulative. The Declarant shall have full power and authority to enforce the provisions of this Section, coextensive with the power and authority of the Managing Agent, so long as it retains any interest in Resort Rodanthe.

Section 5.2. Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Section 5.1 above, the Managing Agent shall have the following rights and powers:

- (1) Enforcement by Lien. Pursuant to North Carolina General Statute 47C-3-116, the assessments provided for in Article IV of this Declaration, together with interest, costs and reasonable attorneys' fees (as permitted by the law), shall be a charge on and a continuing lien upon the Co-ownership Interest against which the assessments are made when a notice of such lien has been filed of record in the Office of Superior Court of Dare County, North Carolina, in the manner provided by Article 8, Chapter 44 of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of thirty (30) days after the same shall become due. Said notice of lien shall also secure all assessments against the Co-ownership Interest becoming due thereafter until the lien has been satisfied. In addition, each Owner shall be personally liable for any assessments against his Co-ownership Interest becoming due and payable while he is the Owner of the Co-ownership Interest.
- (2) Priority of Assessments Lien. The Assessments lien provided for in this Article shall be prior and superior to all other liens except (i) ad valorem taxes, (ii) all sums unpaid on Deeds of Trust, mortgages or other encumbrances against Co-ownership Interest prior to the docketing of the lien herein, and (iii) any other levies which, by law, are prior to the lien. The sale or transfer of any Co-ownership Interest shall not affect the Assessments lien against the Co-ownership Interest. The sale or transfer of any Co-ownership Interest pursuant to a foreclosure sale or execution sale instituted by a superior lien holder, however, shall extinguish the inferior lien provided for herein against the subject to Co-ownership Interest from liability for any assessments thereafter becoming due and for any future lien in connection therewith.

## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS

Section 6.1. Membership. Every Owner shall be deemed to have a membership in Resort Rodanthe Homeowners Association, Inc. herein referred to throughout this Declaration as "Association". No Unit owner, whether one (1) or more persons, shall have more than one (1) membership per Unit owned; provided, however, in the case of Co-ownership Interests there shall be one (1) membership per Co-ownership Interest. The rights and privileges of membership may be exercised by the member or the member's spouse, subject to the provisions of this Declaration, the Declaration of Unit Ownership for RRAC and the By-Laws of the Association. The membership rights of an Owner which is a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written statement provided to the Secretary of the Association, subject to the provisions of this Declaration.

Section 6.2. Voting. The members shall be entitled to one (1) equal vote for each Unit owned; provided, that members owning Co-ownership Interests shall be entitled to a fractional vote based on the

percentage or undivided interests in a Unit conveyed by the Declarant to such Owner.

Section 6.3. Special Declaration Rights. The Declarant during the Declarant Control Period as defined in Article II, paragraph (12) of the Declaration Creating Unit Ownership for RRAC shall have the right to designate three (3) Directors for each term during the Declarant Control Period pursuant to Article V of the By-Laws of the Association.

## ARTICLE VII

### MAINTENANCE

Section 7.1. Association's Responsibility. The Association's maintenance obligation shall include, but need not be limited to, maintenance, repair and replacement of all common elements, Units, landscaping, amenities and Common Furnishings of all Units within the co-ownership Units. Declarant shall establish Maintenance Weeks applicable to each Unit during which the Association may carry out its maintenance obligations for the Unit and Common Furnishings. Such Maintenance Week shall occur during weeks not designated in Use Periods for a particular Unit. The Board or its designee shall have the right to enter and to maintain the Unit during the designated Maintenance Weeks, but the Association shall have no ownership interest in any Unit.

Section 7.2. Owner's Responsibility. Each Owner of a Co-ownership Interest must maintain the Unit and the Common Furnishings in a neat and attractive condition consistent with that standard of conduct and maintenance generally prevailing throughout the co-ownership Units of RRAC and pursuant to any standards adopted by the Association; provided, however, except as otherwise directed by the Association, it is required to prevent damage or injury to persons or property in an emergency, no Owner of a Co-ownership Interest shall make or contract for improvements, replacements or repairs (including, without limitation, exterior or interior painting, any exterior modifications, tiling, waxing, wall-papering, or otherwise refinishing or redecorating in any way) to any portion of a Unit or to the Common Furnishings. No Owner of a Co-ownership Interest shall remove any of the Common Furnishings from a Unit without the prior written consent of the Board of Directors of the Association.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

Section 8.1. Termination. This Declaration shall remain in effect for a period of fifty (50) years from the date of recordation hereof and thereafter shall remain in effect for successive periods of ten (10) years unless, prior to the expiration of the original period or any such extension period, a declaration of release is recorded terminating this Declaration as to a particular and specified unit.

Section 8.2. Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally or three (3) days after deposit in the United States Mail, postage prepaid, addressed to an Owner at the last address such Owner designates to the Managing Agent for delivery of notices, or in the event of no such designation, at such Owner's last known address, or if there is none, at the address of Resort Rodanthe. Notices to the Managing Agent shall be addressed to the address designated by the Managing Agent by written notice to all Owners or by recordation of a notice of such change of address. Notices to Declarant shall be addressed to Kelart Corporation, P. O. Box 126, Rodanthe, NC 27968, or such other address as may be designated by Declarant by written notice to all Owners or by recordation of a notice of such change of address.

Section 8.3. Severability and the Rules Against Perpetuities. If any provisions of this Declaration, or any section, sentence, clause,

phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and of the application of such provision, sentence, clause, phrase or word and under any other circumstance shall not be affected thereby. If any provision of this Declaration would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of any Owner in Resort Rodanthe, whichever is later.

Section 8.4. Successors. The provisions of this Declaration shall be binding upon all parties having or acquiring any Co-ownership Interest(s) or any right, title or interest therein and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Co-ownership Interest and paying all sums and performing all obligations hereunder insofar as the same relate to each Co-ownership Interest up to the time his ownership terminated.

Section 8.5. Violation or Nuisance. Every act or omission whereby any provision of this Declaration or the Rules and Regulations is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated whether or not the release sought is for the negative or affirmative action, by Declarant or Managing Agent or any Owner.

Section 8.6. No Waiver. The failure to enforce any provisions of this Declaration shall not constitute a waiver thereof or the right to enforce such provision thereafter.

Section 8.7. Amendment. This Declaration may be amended by owners holding sixty-seven percent (67%) of the co-ownership interests in all of the property covered by this Declaration of Co-Ownership Interests.

Until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration of Co-ownership Interests. After the termination of the Declarant Control Period, the Declarant may unilaterally amend this Declaration of Co-ownership Interests but at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (d) necessary to enable any governmental agency or reputable private insurance company to make, purchase or insure mortgage loans on the Units; or (e) for the purpose of adding additional Phases III and V to RRAC as provided in Section 3.8 of the Declaration of Unit Ownership for RRAC.

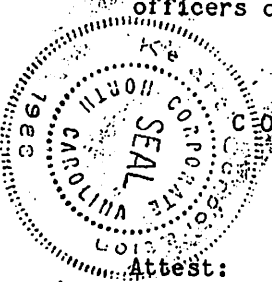
Any amendment shall be binding upon every Owner and every Co-ownership Interest whether burdens thereon are increased or decreased. No amendment shall require the consent or approval of any Property Mortgagee. Any amendment authorized hereby shall be evidenced by an instrument properly recorded in the Office of the Register of Deeds of Dare County, North Carolina.

Section 8.8. No Liability. Neither Declarant nor the Managing Agent shall have any liability to any Owner in regard to any disputes whatsoever which may arise among or between Owners of Co-ownership Interest(s). Although the Managing Agent is charged with the responsibility of assigning Use Periods, it shall have no liability to any Owner for any disputes arising among Owners concerning the use and occupancy of any Unit. Neither the Declarant nor the Managing Agent shall be responsible for the acts, omissions to act or conduct of any



Owner or user or a Unit or for the breach of any obligation by any Owner or user.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration of Co-ownership Interest to be signed and sealed by its duly authorized officers on behalf of the Declarant, the day and year below acknowledged.



KELART CORPORATION

By:

James R. Kelly, Jr., President  
James R. Kelly, Jr., President

Attest:

William E. Kelly  
William E. Kelly, Secretary

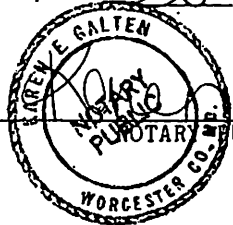
STATE OF Maryland CITY/COUNTY OF Worcester

SEAL-STAMP

I, Karen E. Galten, a Notary Public of the County and State aforesaid, certify that William E. Kelly personally came before me this day and acknowledged that he is Secretary of KELART CORPORATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary. Witness my hand and official stamp or seal, this 30th day of July, 1991.

MY COMMISSION EXPIRES:

11-1-92



Karen E. Galten

NORTH CAROLINA, DARE COUNTY

The foregoing Certificate(s) of Karen E. Galten, a Notary Public of Worcester County, Maryland

is/are certified to be correct.

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

Doris A. Soy  
REGISTER OF DEEDS

BY:

Norma Jean Wade  
ASSISTANT REGISTER OF DEEDS

BK 763 0488

**EXHIBIT A  
TO  
DECLARATION OF CO-OWNERSHIP INTERESTS**

Being Units 9-A, 9-B, 10-A, 10-B, 11-B, 11-C, 12-A, 12-B, 12-C, 17-A, 17-B, 18-A, 18-B, 19-A, 19-B, 20-A and 20-B at Resort Rodanthe, located at Highway 12, Rodanthe, North Carolina 27968.

EXHIBIT B, PAGE 1 TO THE  
DECLARATION OF CO-OWNERSHIP INTERESTS  
(one-fourth shares)

Use Periods to Interval Assignments  
for the year 1991  
One Fourth Undivided Co-Ownership Interests (25%)

<u>Interval #</u>	<u>Use Periods</u>
1	12/21/90 - 01/04/91 02/15/91 - 03/01/91 04/12/91 - 04/26/91 06/07/91 - 06/21/91 08/02/91 - 08/16/91 09/27/91 - 10/11/91 11/22/91 - 11/29/91
2	01/04/91 - 01/18/91 03/01/91 - 03/15/91 04/26/91 - 05/10/91 06/21/91 - 07/05/91 08/16/91 - 08/30/91 10/11/91 - 10/25/91 11/29/91 - 12/06/91
3	01/18/91 - 02/01/91 03/15/91 - 03/29/91 05/10/91 - 05/24/91 07/05/91 - 07/19/91 08/30/91 - 09/13/91 10/25/91 - 11/08/91 12/02/91 - 12/13/91
4	02/01/91 - 02/15/91 03/29/91 - 04/12/91 05/24/91 - 06/07/91 07/19/91 - 08/02/91 09/13/91 - 09/27/91 11/08/91 - 11/22/91 12/13/91 - 12 20/91

**EXHIBIT B, PAGE 2 TO THE  
DECLARATION OF CO-OWNERSHIP INTERESTS  
(one-tenth shares)**

Use Periods to Interval Assignments  
for the year 1991  
One Tenth Undivided Co-Ownership Interests (10%)

<u>Interval #</u>	<u>Use Periods</u>	<u>Interval #</u>	<u>Use Periods</u>
1	03/01/91- 03/08/91 05/31/91 - 06/07/91 06/07/91 - 06/14/91 09/06/91 - 09/13/91 11/15/91 - 11/22/91	6	01/25/91 - 02/01/91 04/19/91 - 04/26/91 07/19/91 - 07/26/91 10/11/91 - 10/18/91 12/20/91 - 12/27/91
2	03/08/91 - 03/15/91 06/14/91 - 06/21/91 06/28/91 - 07/05/91 09/13/91 - 09/20/91 11/29/91 - 12/06/91	7	12/28/90 - 01/04/91 02/01/91 - 02/08/91 04/26/91 - 05/03/91 07/26/91 - 08/02/91 10/18/91 - 10/25/91
3	03/15/91 - 03/22/91 06/21/91 - 06/28/91 09/20/91 - 09/27/91 12/06/91 - 12/13/91 08/23/91 - 08/30/91	8	02/08/91 - 02/15/91 03/29/91 - 04/05/91 05/03/91 - 05/10/91 08/02/91 - 08/09/91 10/25/91 - 11/01/91
4	03/22/91 - 03/29/91 07/05/91 - 07/12/91 08/30/91 - 09/06/91 09/27/91 - 10/04/91 12/13/91 - 12/20/91	9	02/15/91 - 02/22/91 04/05/91 - 04/12/91 05/10/91 - 05/17/91 08/09/91 - 08/16/91 11/01/91 - 11/08/91
5	01/18/92 - 01/25/91 04/12/91 - 04/19/91 07/12/91 - 07/19/91 10/04/91 - 10/11/91 11/22/91 - 11/29/91	10	02/22/91 - 03/01/91 05/17/91 - 05/24/91 05/24/91 - 05/31/91 08/16/91 - 08/23/91 11/08/91 - 11/15/91

**EXHIBIT B, PAGE 3 TO THE  
DECLARATION OF CO-OWNERSHIP INTERESTS  
(one-thirteenth shares)**

Use Periods to Interval Assignments  
for the year 1991  
One Thirteenth Undivided Co-Ownership Interests (7.69%)

<u>Interval #</u>	<u>Use Periods</u>	<u>Interval #</u>	<u>Use Periods</u>
1	12/21/90 - 12/28/90 03/22/91 - 03/29/91 06/21/91 - 06/28/91 09/20/91 - 09/27/91	8	02/08/91 - 02/15/91 05/10/91 - 05/17/91 08/09/91 - 08/16/91 11/08/91 - 11/15/91
2	12/28/90 - 01/04/91 03/29/91 - 04/05/91 06/28/91 - 07/05/91 09/27/91 - 10/04/91	9	02/15/91 - 02/22/91 05/10/91 - 05/17/91 08/16/91 - 08/23/91 11/15/91 - 11/22/91
3	01/04/91 - 01/11/91 04/05/91 - 04/12/91 07/05/91 - 07/12/91 10/04/91 - 10/11/91	10	02/22/91 - 03/01/91 05/24/91 - 05/31/91 08/23/91 - 08/30/91 11/22/91 - 11/29/91
4	01/11/91 - 01/18/91 04/12/91 - 04/19/91 07/12/91 - 07/19/91 10/11/91 - 10/18/91	11	03/01/91 - 03/08/91 05/31/91 - 06/07/91 08/30/91 - 09/06/91 11/29/91 - 12/06/91
5	01/18/91 - 01/25/91 04/19/91 - 04/26/91 07/19/91 - 07/26/91 10/18/91 - 10/25/91	12	03/08/91 - 03/15/91 06/07/91 - 06/14/91 09/06/91 - 09/13/91 12/06/91 - 12/13/91
6	01/25/91 - 02/01/91 04/26/91 - 05/03/91 07/26/91 - 08/02/91 10/25/91 - 11/01/91	13	03/15/91 - 03/22/91 06/14/91 - 06/21/91 09/13/91 - 09/20/91 12/13/91 - 12/20/91
7	02/01/91 - 02/08/91 05/10/91 - 05/17/91 08/02/91 - 08/09/91 11/01/91 - 11/08/91		

BK 763 0492

FILED

Prepared by and return to:  
THOMAS L. WHITE, JR.  
KELLOGG, WHITE, EVANS AND GRAY  
P. O. Box 189  
Manteo, NC 27954

'91 AUG 16 PM 2 16

DEEDS  
DARE COUNTY, N.C.

NORTH CAROLINA  
DARE COUNTY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that KELART CORPORATION, of Dare County, North Carolina, has made, constituted and appointed and by these presents does make, constitute and appoint ROBERT G. THOMAS, JR., of Rodanthe, North Carolina, its true and lawful attorney-in-fact, for it and in its name and stead, to do and perform the following matters and things:

To grant, bargain, convey, sell and to contract for the sale of condominium units and co-ownership interests in Resort Rodanthe, a Condominium, located in the Village of Rodanthe, Dare County, North Carolina, to any person, for such price or prices, and on such terms and conditions, as the said attorney-in-fact may deem proper, and in the name of Kelart Corporation, to make, execute, acknowledge and deliver a good and sufficient deed or deeds of conveyance, or such other instrument or instruments, necessary to effect such sale, conveyance or agreement; and to receive and hypothecate and assign to Piedmont Trust Bank such financing documents, including promissory notes and deeds of trust as may be given by purchasers of said condominium units and co-ownership interests to finance the balance of the purchase price of said units and co-ownership interests. And Kelart Corporation does hereby ratify and confirm all things so done by its said attorney-in-fact, within the scope of the authority herein given him, as fully and to the same extent as if done and performed by Kelart Corporation itself.

All rights, powers and authority of the said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect on the 23rd day of July, 1991 and such rights, powers and authorities shall remain in full force and effect thereafter until the 23rd day of July, 1994.

IN TESTIMONY WHEREOF, Kelart Corporation has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed hereto by authority of its Board of Directors, all on the day and year first above written.

KELART CORPORATION

Corporate  
seal

By James R. Kelly, President  
James R. Kelly, President

Attest:

William E. Kelly  
William E. Kelly, Secretary

STATE OF Maryland CITY/COUNTY OF Worcester

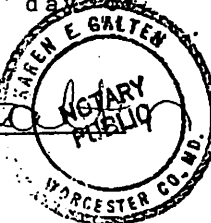
## SEAL-STAMP

I, Karen Galten, a Notary Public of the County and State aforesaid, certify that William E. Kelly personally came before me this day and acknowledged that he is Secretary of KELART CORPORATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary. Witness my hand and official stamp or seal, this 30th day of July, 1991.

MY COMMISSION EXPIRES:

11-1-92

Karen E. Galten  
NOTARY PUBLIC



NORTH CAROLINA, DARE COUNTY

The foregoing Certificate(s) of Karen E. Galten a  
Notary Public of Worcester Co., Md.

is/are certified to be correct.

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

Doris A. Say  
REGISTER OF DEEDS

BY: Nama Jean Wake  
ASSISTANT REGISTER OF DEEDS