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WELCH STREET COMMERCE CENTER  
CONDOMINIUM

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THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 19th day of December 1994, by: Bateman and Associates, Inc., herein referred to as the "Declarant", for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

ARTICLE I

STATEMENT OF SUBMISSION

Section 1.1 Submission of Property

DECLARANT is the owner in fee simple of certain real property situated in the Town of Kitty Hawk, Dare County, North Carolina and more particularly described in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference. It is the intention of the Declarant to submit by this Declaration that property described in Exhibit A together with all improvements, easements, rights and appurtenances thereunto belonging ("Property") in accordance with Chapter 47C of the General Statutes of North Carolina, entitled North Carolina Condominium Act (hereinafter referred to as the "Act") thereby creating a Condominium known as WELCH STREET COMMERCE CENTER. The Declarant pursuant to the Act will establish a plan of condominium ownership for WELCH STREET COMMERCE CENTER and will divide the property into five (5) units and does hereby designate all such units for separate ownership. Declarant shall sell and convey condominium units to purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved.

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

Section 1.2 Name

The Property shall be known as the WELCH STREET COMMERCE CENTER

Section 1.3 Condominium Ordinances

The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the units in the Condominium.

Section 1.4 Alterations of Units

Subject to Articles XII and XIII of the Declaration, a unit may be altered.

Section 1.5 Limited Common Elements

The Limited Common Elements serving or designed to serve each unit are hereby allocated solely and exclusively to each such unit. The Limited Common Elements are defined in Section 2.1(13) further described in Section 4.3.

Section 1.6 Unit Allocations

The allocations to each unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and of a percentage of the common expenses, are as stated in Section 6.1.

Section 1.7 Encumbrances

The liens, defects and encumbrances on the Property to which the rights of Unit Owners and occupants are hereby made subject are set out on Exhibit D.

## ARTICLE II

## DEFINITIONS

Section 2.1 Defined Terms

As provided in Section 47C-1-103 of the North Carolina Condominium Act, terms that are not otherwise defined herein shall have the meaning provided therein. The following words, when used in this Declaration shall have the following meanings:

1. "Allocated Interests" means the undivided interests in the Common Elements, the common expense liability, and votes in the Association allocated to each unit.
2. "Assessment" means an Owner's share of the common expenses assessed against such Owner and his unit from time to time by the WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., in the manner hereinafter provided.
3. "Board" or "Board of Directors" means the Board of Directors of the WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., a corporation created not for profit under the laws of the State of North Carolina. "Director" or "Directors" means a member or members of the board.
4. "By-Laws" means the By-Laws for the administration of WELCH STREET COMMERCE CENTER, contained in Exhibit C, attached hereto and made a part hereof by this reference.
5. "Common Elements" means all portions of a condominium other than the units.
6. "Common Expenses" means the expenses or financial liabilities for the operation of the Condominium. These include:
  - (i) expenses of administration, maintenance, repair or replacement of the Common Elements;
  - (ii) expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;
  - (iii) expenses agreed upon as Common Expenses by the WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., and
  - (iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.
7. "Common Expense Liability" means the liability for common expenses allocated to each unit pursuant to Section 47C-2-107.
8. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of those portions.
9. "Declarant" means: Bateman and Associates, Inc. or its successors in interest as defined in Section 47C-1-103(9) of the Condominium Act.
10. "Declaration" means this Declaration Creating Unit Ownership and Establishing By-Laws with Covenants, Conditions, and Restrictions for WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC.
11. "Eligible Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article VIII only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal Mortgage Association, the

Veterans Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

12. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.

13. "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration or by operation of Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

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

15. "Member" means a Unit Owner.

16. "Percentage Interest" means the percentage of undivided interest each Owner owns in the Common Areas and facilities as set forth in Section 6.1 of Article VI of this Declaration.

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

18. "Plans" means the plans of the building and units as set forth by William S. Jones, Jr., R.L.S. dated December 7, 1994 consisting of 4 pages and filed in Unit Ownership Book 5, sheets 21 - 24, Dare County Registry and filed prior to this Declaration.

19. "Property" means the land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

20. "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of Unit Owners and persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.

21. "Security Interest" means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

22. "Trustee" means the entity which may be designated by the Board of Directors as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the By-Laws. If no Trustee has been designated, the Trustee will be the Board of Directors from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

23. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 3.4 of this Declaration.

24. "Unit Owner" means a Declarant or other person who owns a unit but does not include a person having an interest in a unit solely as security for an obligation.

25. "Unit Owners Association" means WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.

## ARTICLE III

## BUILDINGS ON THE LAND AND UNIT BOUNDARIES

Section 3.1 Location and Dimensions of the Building

The location and dimensions of the building on the Land for are depicted on the final as built survey prepared by William S. Jones, Jr. dated December 7, 1994, said plat being the first page of pages filed in Unit Ownership Book 5, Sheets 21 - 24, Dare County Registry which site plan is hereby incorporated herein by reference thereto.

Section 3.2 Brief Description of Buildings and Improvements

WELCH STREET COMMERCE CENTER includes one multi-unit building, designated as shown on the plans. The building contains five (5) condominium units.

The building is a pre-engineered metal building system consisting of 8 inch girts with exterior walls of steel siding. The roof consists of steel sheets over 9 1/2 inch purlins.

Section 3.3 Location of Units

The location of units within the building and their dimensions are shown on the "Plans," as set forth by William S. Jones, Jr., consisting of 4 pages and filed in Unit Ownership Book 5, Sheets 21 - 24, Dare County Registry which plans are hereby incorporated herein by reference. All units, their identifying numbers, location, and type are fully depicted on the plats and plans of the aforereferenced. The "size" of each unit is the total number of square feet contained therein determined by reference to the dimensions shown on the plats and plans to which reference should be made for a more particular description.

Section 3.4 Unit Boundaries

The boundaries of each Unit created by this Declaration are shown on the Plats and Plans as numbered Units with their identifying number and are described as follows:

a. Upper Boundary: The sloping plane or planes of the unfinished lower surfaces of the roof bearing structure surfaces, extended to an intersection with the vertical perimeter boundaries.

b. Lower Boundary: The horizontal plane or planes of the undecorated and unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, seals and structural components.

c. Vertical Perimeter Boundary: The plans defined by the inner surfaces of the girts and framing of the perimeter walls; the unfinished surfaces of the interior trim, and thresholds along perimeter walls and floors; the unfinished surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

d. Inclusions: Each Unit wall includes the spaces and Improvements lying within the boundaries described in Subsections 3.4a, b, and c, above, and will also include the spaces and Improvements within such spaces containing any heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous. Also included are the sub-ceiling areas over the office spaces.

e. Exclusions: Except when specifically included by other provisions of Section 3.4, the following are excluded from each unit: The spaces and Improvements lying outside of the boundaries described in Subsections 3.4a, b, and c, above; and all chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. Non-Contiguous Portions: Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated outside the boundaries of the

Unit or in buildings or structures that are detached or semi-detached from the buildings containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their non-contiguity.

#### ARTICLE IV

##### COMMON ELEMENTS

###### Section 4.1 Location of Common Elements

Locations of the Common Elements to which each unit has direct access are shown on the plat and planes; pursuant to Section 47C-2-109(b) of the Condominium Act and include parking, sidewalks, curb and guttering, trash receptacles, low-pressure waste water treatment system, signage, exterior lighting.

###### Section 4.2 Use of Common Elements

Each Unit Owner shall have the right to the Common Elements in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. The Board shall, if any questions arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate rules and regulations limiting the use of Common Elements to Unit Owners and their guests.

(1) The Association shall provide a septic system to the Unit Owners consistent with the existing permit, as shown hereinbelow, as the same may be amended from time to time.

###### Section 4.3 Limited Common Elements

The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(1) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or portion of the Common Elements is a part of the Common Elements.

(2) Any exterior door and window or other fixture designated to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(3) Steps and walls at or around the door openings at the entrances to each building, which provide access to less than all Units, the use of which is limited to the Units to which they provide.

(4) Exterior surfaces, trim, siding, doors and windows will be the Limited Common Elements allocated to the Unit served.

###### Section 4.4 Additional Limited Common Elements

The Board shall have the right to approve, from time to time, changes in existing Limited Common Elements, to approve additional or new Limited Common Elements; provided, that such additional Limited Common Elements shall be immediately adjacent to the Unit to which it shall appertain.

#### ARTICLE V

##### EASEMENTS

###### Section 5.1 Use and Enjoyment

Every Unit Owner, his tenants, and permitted guests, shall have the right and easement of use and enjoyment in and to the Common Elements, (including the right of access, ingress, and egress to and from his Unit over those portions of the property designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provision;

The right of the Board of Directors to control the use and enjoyment thereof as provided in this Declaration, and in the duly-adopted Rules and Regulations of the Association, which shall include, but not be limited to, the right of the Board of Directors to approve all Lessees of the Unit Owners.

#### Section 5.2 Maintenance and Repair

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

#### Section 5.3 Structural Support

Every portion of the unit or the Common Element which contributes to the structural support of another Unit shall be burdened with an easement of structural support.

#### Section 5.5 Encroachments

An easement for encroachment shall be granted pursuant to the provisions of Section 47C-2-114 of the Condominium Act.

#### Section 5.6 Utilities

There shall be a general easement upon, across, above and under all the property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to, the construction, operation and maintenance of all utility lines, pipes, sewerage line, septic tanks, drain lines, and facilities related thereto, water, telephone, electricity, cable television, which said shall inure to the benefit of all Unit Owners. Should any party furnishing any service covered by this general easement require a specific easement by separate, recordable document, Declarant, or the Board of Directors of WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., as the case may be, shall have the right to grant such easement under the terms thereof.

### ARTICLE VI

#### ALLOCATION OF COMMON ELEMENTS, COMMON INTERESTS, COMMON EXPENSE LIABILITIES AND VOTES

#### Section 6.1 Allocation of Common Elements, Common Interests, Common Expense Liabilities and Votes

The allocations to each Unit of a percentage of undivided interest in the Common Elements, of a percentage of the Common Expenses, and of votes in WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., are hereinafter set forth:

#### Section 6.2 Formulas for the Allocation of Interest

The interests allocated to each Unit have been calculated in the following formulas:

a. Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of the first floor of each Condominium. For the purpose of this calculation, attics are not to be counted.

b. Liability for the Common Expenses. The percentage of liability for the Common Expenses allocated to each Unit is based on the relative floor area of the first floor of each Unit as compared to the first floor area of all the Units in the Condominium. For the purpose of this calculation, the floor area of attics and second floors, if any, are not to be counted. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 9.3 of this Declaration.

c. Votes. the total number of votes of all voting members shall be 5 and each Unit Owner or group of Owners if a Unit is owned by more than one person shall be entitled to one vote.

## ARTICLE VII

ADMINISTRATION OF WELCH STREET COMMERCE CENTER BY  
WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC.

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

The Owner or Owners of each condominium unit shall automatically become members of said Association upon his, their or its acquisition of an ownership interest in title to any condominium unit and its appurtenant undivided interest in common property, and the membership of such Owner or Owners shall terminate automatically upon such Owner or Owners being divested of such ownership interest and the title to such condominium unit, regardless of the means by which such ownership shall be divested. The person, firm or corporation holding the lien, mortgage or other encumbrance upon any condominium unit shall not be entitled by virtue of such lien, mortgage or other encumbrance to membership in said Corporation or to any of the rights or privileges of such membership. In the administration of the operation and management of WELCH STREET COMMERCE CENTER, WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., shall have and is hereby granted the authority and power to enforce provisions of this Declaration of Condominium and specifically to levy and to collect assessments in the manner and provisions as stated under "Operation of the Property" in Article VII of the By-Laws as stated in Exhibit C, and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units and common property as Board of Directors of said Association may deem to be in the best interest of the Association.

## ARTICLE VIII

## MORTGAGEE PROTECTION

Section 8.1 Introduction

This Article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in case of conflict, this Article shall control.

Section 8.2 Percentage of Eligible Mortgagees

Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding first Mortgages in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to first Mortgages held by Eligible Mortgagees.

Section 8.3 Notice of Actions

The Association shall give prompt written notice to each Eligible Mortgagee of:

1. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable;

- a. Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains incurred for a period of sixty days;
- b. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- c. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees by the Association;
- d. Any judgement rendered against the Association.

Section 8.4 Consent Required

a. Changes in the Condominium Documents. Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described in this Subsection 8.4a may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater foregoing approval requirements set forth in the Condominium Act or this Declaration). "Material" includes, but is not limited to, any provision affecting:

- (i) assessment liens or subordination of assessments liens;
- (ii) voting rights;
- (iii) reserves for maintenance, repair and replacement of Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interest in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action;
- (vi) rights to use Common Elements and Limited Common Elements;
- (vii) boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding First Mortgages in such Unit or Units must approve this action;
- (viii) convertibility of Units into Common Elements or Common Elements into units;
- (ix) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (x) insurance or fidelity bonds;
- (xi) leasing of units;
- (xii) restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;
- (xiii) termination of the Condominium after occurrence of substantial destruction or condemnation; and
- (xiv) the benefits of Eligible Mortgagees.

b. Actions. Notwithstanding any lower requirement permitted by Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

- (i) convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause);



- (ii) the restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;
- (iii) the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which sixty-seven percent (67%) Eligible Mortgagee approval is required;
- (iv) the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the Owners of Units affected and Eligible Mortgagees of those Units need approve the action;
- (v) the merger of this Condominium with any other Condominium;
- (vi) the granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding; however, any utility easements serving or to serve the Condominium and excluding any leases, licenses or concessions for no more than one year);
- (vii) the assignment of the future income of the association, including its rights to receive Common Expense assessments; and
- (viii) any action taken not to repair or replace the Property.

c. The Association may not change the period of collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Eligible Mortgagees.

d. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment.

#### Section 8.5 Inspection of Books

The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

#### Section 8.6 Financial Statements

The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

#### Section 8.7 Enforcement

The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

#### Section 8.8 Attendance at Meetings

Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

#### Section 8.9 Appointment of Trustee

In the event of damage or destruction under Article 20 or 21 or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Subsection 2.1(22). Unless otherwise required, the members of the Board of Directors acting by majority vote through the president may act as Trustee.

## ARTICLE IX

## MAINTENANCE, REPAIR AND REPLACEMENT

Section 9.1 Common Elements

The Association will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.

Section 9.2 Units

Each Unit Owner shall maintain, repair and replace, at such Unit Owner's expense, all portions of the Unit Owner's Unit, except the portions hereof to be maintained, repaired or replaced by the Association.

Section 9.3 Limited Common Elements

Any Common Expense associated with the maintenance, repair or replacement of heat pumps and mechanical attachments will be assessed against the Unit or Units to which the Limited Common Element is assigned.

In the event such additional component or element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment under this Section, after Notice and Hearing.

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with their Allocated Interest in the Common Expenses.

Each Unit Owner shall be responsible for removing all debris from all entry ways which are Limited to Common Elements appurtenant to such Unit Owner's Unit. If any such Limited Common Element is appurtenant to two or more Units, the Owners of those Units will be jointly responsible for such removal.

Section 9.4 Access

Any person authorized by the Board of Directors shall have the right of access to all portions of the property for the purposes of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires, and equipment, provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 9.5 Repairs Resulting from Negligence

Each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by such Unit Owner's failure to properly maintain, repair or make replacements to such Unit Owner's Unit. The association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is incurred as a result of such misconduct, it will be assessed by the Association following Notice and Hearing.

## ARTICLE X

## RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 10.1 Use and Occupancy Restrictions

The following use restrictions apply to all Units and to the Common Elements

(a) The property shall be used for business purposes and such other purposes as are incidental to the maintenance of business and for no other purposes. No Unit is intended or designed for occupancy as residential purposes. Notwithstanding the foregoing provisions, a unit may be used for limited retail purposes and service facility such as, but not limited to conduct of banking, brokerage, travel agency, real estate, real estate brokers, retail outlets or similar businesses provided that the activities therein are in full and complete compliance with all applicable governmental ordinances and do not interfere with the quiet enjoyment or comfort of

any other Unit Owner or occupant. Provided, however, all permitted uses, including without limitation retail business uses, shall be limited to such as in the opinion of the Board of Directors are not inconsistent with the maintenance of the general character of WELCH STREET COMMERCE CENTER as a business condominium of the first class and quality of its maintenance, use and occupancy.

(b) The use of Units and Common Elements is subject to the By-Laws and the Rules and Regulations of the association, as more particularly set forth in Article IX of the By-Laws.

Section 10.2 Restrictions and Alienation

A Unit may not be conveyed pursuant to a time-sharing plan.

A Unit may not be leased or rented for a term of less than one hundred eighty (180) days. All leases and rental agreements shall be in writing and subject to the requirements of the Condominium Documents and the Association. All tenants must first be approved by the Board of Directors.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

ARTICLE XI

ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Section 4.4 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common is allocated.

No Limited Common Element depicted on the Plans may be reallocated by an amendment to this Declaration pursuant to this Article XI except as part of a reallocation of boundaries of Units pursuant to Article XII of this Declaration. Such amendments shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The Person executing the amendment shall provide an executed copy thereof to the Association which, if the Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorney's fees in connection with the review of the amendment and for the recording costs.

ARTICLE XII

ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Section 12.1 Additions, Alterations and Improvements by Unit Owners

a. No Unit Owner will make any structural addition, structural alteration, or structural improvements in or to the Condominium without the prior written consent thereto of the Board of Directors in accordance with Subsection 12.1c.

b. Subject to Subsection 12.1a, a Unit Owner:

(i) may make any other improvements or alterations to the interior of such Unit Owner's Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominiums;

(ii) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium, without permission of the Association,

(iii) after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of the boundaries of any Unit.

c. A Unit Owner may submit a written request to the Board of Directors for approval to do anything forbidden under Subsection 12.1a or 12.1b(ii). The Board of Directors shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Board of Directors to the proposed action. The Board of Directors shall review requests in accordance with the provision of its Rules and Regulations.

d. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association of any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to persons or damage to property arising therefrom.

e. All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Board of Directors, cause any increase in the premium of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

#### Section 12.2 Additions, Alterations and Improvements by the Board of Directors

Subject to the limitations of Sections 8.5 and 8.6 of the By-Laws, the Board of Directors may make any additions, alterations or improvements to the Common Elements which, in its judgement, it deems necessary.

#### Section 12.3 Landscaping and Signage within the Common Elements and Limited Common Elements

No alterations or additions to the landscaping and signage within the Common Elements and Limited Common Elements shall be done unless there is prior written approval by the Board of Directors.

### ARTICLE XIII

#### RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

##### Section 13.1 Application and Amendment

Subject to approval of any structural changes and required permits pursuant to Article XIII, the boundaries between adjoining Units may be relocated by any amendment to the Declaration upon application to the Association by the Owners of the adjoining Units affected by the relocation. If the Owners of the adjoining Units have specified a relocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Board of Directors determines, within forty-five (45) days after receipt of the application, that the reallocation are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by the Owners of the affected Units and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be listed in the grantee's index in the name of the Association.

##### Section 13.2 Recording Amendments

The Association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Board of Directors.

### ARTICLE XIV

#### CONDEMNATION

If any or all of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with provisions of Section 47c-3-113(e) and (h) of the Act.

## ARTICLE XV

## AMENDMENTS TO DECLARATION AND/OR BY-LAWS

Section 15.1 Amendments to Declaration

Except in cases of amendments that may be executed by certain Unit Owners under Article XI and Section 12.1 of this Declaration and Section 47C-2-18 of the Condominium Act, and except as limited by Article VIII of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreements of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 15.2 Amendments to By-Laws

The By-laws may be amended only by a vote of two-thirds (2/3) of the members of the Board of Directors, following Notice to all Unit Owners, at any meeting duly called for such purpose.

## ARTICLE XVII

## GENERAL PROVISIONS

Section 17.1 Covenants Running with the Land

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

Section 17.2 Duration

So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it shall be the duty of the Board of Directors of the Association to enforce the covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signature of a majority of the Owners reaffirming and newly adopting the Declaration and Covenants running with the land. Such adoption by a majority shall be binding on all, and each Owner of any unit, by acceptance of a deed thereof, is deemed to agree that the Declaration and Covenants may be extended as provided in this Section 17.2.

Section 17.3 Articles of Incorporation and By-Laws of WELCH STREET COMMERCE CENTER PROPERTY ASSOCIATION, INC.

A true copy of the Articles of Incorporation and By-Laws of the WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., which together with this Declaration shall govern the administration of the Condominium, is attached hereto as Exhibits B and C, and by reference, is made a part hereof as if fully set out word for word.

Section 17.4 Interpretation

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

Section 17.6 Gender and Grammar

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

Section 17.7 Captions

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

Section 17.8 Non-Waiver

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

Section 17.9 Severability

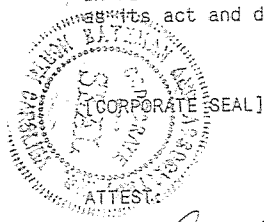
All of the covenants, conditions, and By-Laws, restrictions and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the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

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be signed and sealed as its act and deed, the day and year hereinafter set out.

BATEMAN & ASSOCIATES, INC.

By: Michael W. Bate

Title: President



By: [Signature]

Title: Secretary

\*\*\*\*\*

STATE OF North Carolina

CITY/COUNTY Dare

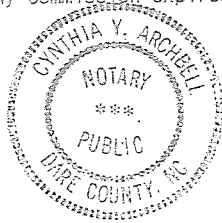
I, Cynthia Y. Archbell, a Notary Public of the City/County and State aforesaid, certify that James M. Holland, personally came before me this day and acknowledged that he is Secretary of Bateman & Associates, Inc. a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 22 day of December, 1994.

[SEAL]

Cynthia Y. Archbell  
Notary Public

My commission expires: 9-16-97



NORTH CAROLINA DARE COUNTY  
The foregoing certificate of Cynthia Y. Archbell a Notary Public of Dare Co. NC is 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: Doris Jean Fry Assistant Register of Deeds

EXHIBIT A

LEGAL DESCRIPTION

All those certain lots or parcels of land lying and being near Kitty Hawk in Atlantic Township, Dare County, North Carolina, and known and designated as and being Lots No. 8 and 9, Block A, in the subdivision known as "Corrected - Ted Wood Kitty Hawk Terrace Addition, Atlantic Township, Dare County, North Carolina," as shown and delineated on a map or plat of said subdivision made by William F. Clark, Registered Surveyor, and duly recorded in Map Book 5, Page 46, Dare County Registry, reference to which is hereby made for a more particular description thereof.

ARTICLES OF INCORPORATION

OF

WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC.

I, the undersigned, a natural person of the age of eighteen years or more do hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the Laws of the State of North Carolina, and as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act" and the several amendments thereto, and to that end hereby set forth:

ARTICLE I

The name of the Corporation is WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC.

ARTICLE II

The period of duration of the corporation is perpetual.

ARTICLE III

The purposes for which the corporation is organized are:

A. The operation and management of an office condominium known as WELCH STREET COMMERCE CENTER which shall be established in accordance with Chapter 47C of the General Statutes of North Carolina Unit Ownership Act and to that end shall have power and authority;

(i) To undertake the performance of, and carry out the acts and duties incident to the administration of WELCH STREET COMMERCE CENTER in accordance with the terms, provisions, conditions and authorization contained in these Articles and in the Declaration which shall be recorded in the Public Records of Dare County, North Carolina;

(ii) To make, establish and enforce reasonable rules and requirements governing the use of condominium units, common elements, limited common elements, condominium property and real personal property which may be owned by the Association itself;

(iii) To make, levy and collect assessments against condominium unit owners; to provide the funds to pay for common expenses of the condominium as provided in the condominium documents and the Unit Ownership Act, and to use and expand the proceeds of assessments in the exercise of the powers and duties of the Association;

(iv) To maintain, repair, replace and operate the condominium property, specifically including all portions of the condominium property to which the Association has the right and power to maintain, repair, replace and operate in accordance with the condominium documents and the Unit Ownership Act;

(v) To reconstruct improvements within the condominium property in the event of casualty or other loss;

(vi) To enforce by any legal means, the provisions of the condominium documents, including the Declaration, these Articles, the By-Laws of the Association, and the rules and regulations for use of the condominium property;

(vii) To contract for the management of the Condominium and to delegate to such manager or managers all powers and duties of the Association except those powers and duties which are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.

B. The association shall have all the common law and statutory powers of the non-profit corporation which are not in conflict with the terms of the Declaration and the Condominium Association under and pursuant to the Unit Ownership Act, including all of the powers reasonably necessary to implement the purposes of the Association.



ARTICLE IV

MEMBERSHIP

A. The membership of WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., shall consist of all of the owners of the condominium units in WELCH STREET COMMERCE CENTER. Membership shall be established by acquisition of fee title to a condominium unit in WELCH STREET COMMERCE CENTER, whether by conveyance, devise, or judicial decree. A new owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to the condominium unit designated shall be terminated. Each new owner shall deliver to the Association a true copy of such deed or instrument of acquisition of title.

B. The share of a member in the funds and assets of the corporation, and membership in the Corporation cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to a condominium unit.

C. There shall be one class of membership in WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., which shall consist of members owning the condominium units in WELCH STREET COMMERCE CENTER.

ARTICLE V

DIRECTORS

A. The number of Directors and the method of election of the Directors shall be fixed by the By-Laws; however, the number of Directors shall not be less than three.

B. The number of Directors constituting the initial Board of Directors shall be three (3), and the names and addresses of the persons who are to serve as the first Board of Directors are:

NAME	ADDRESS
Michael Bateman	Suite 102 3915 Welch Street Kill Devil Hills, NC 27948
Ron Woerle	Suite 103 3915 Welch Street Kill Devil Hills, NC 27948
Ken White	Suite 101 3915 Welch Street Kill Devil Hills, NC 27948

ARTICLE VI

REGISTERED OFFICE AND REGISTERED AGENT

The address of the initial registered office of the Corporation is Suite 102, 3915 Welch Street, Kill Devil Hills, Dare County, NC 27948. The name of the initial registered agent at such address is: Michael Bateman.

ARTICLE VII

TAX AGENT

The corporation shall have all the powers granted non-profit corporations under the laws of the State of North Carolina. Notwithstanding any other provisions of these Articles, this corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal revenue Code. It is further provided that no distributions of income of the Corporation are to be made to members, directors or officers of the corporation provided; however, that members of the corporation may receive a rebate of any excess dues and assessments.

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ARTICLE VIII

INCORPORATOR

The name and address of the incorporator is: James B. Archbell, Post Office Box  
345, Kill Devil Hills, NC 27948.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this the 22 day of  
October, 1994.

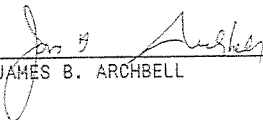
 (SEAL)  
JAMES B. ARCHBELL

EXHIBIT C TO DECLARATION  
FOR WELCH STREET COMMERCE CENTER  
CREATING UNIT OWNERSHIP  
AND ESTABLISHING RESTRICTIONS,  
COVENANTS AND CONDITIONS

BY-LAWS OF

WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC.

ARTICLE I

NAME, PURPOSE AND APPLICABILITY

1.1 Name. The name of this non-profit, non-stock membership corporation shall be WELCH STREET COMMERCE CENTER OWNER'S 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 Owner's responsibility with respect to the same.

1.3 Applicability. These By-Laws are applicable to the property known as WELCH STREET COMMERCE CENTER, as such property is described on EXHIBIT A attached to that certain Declaration Creating Unit Ownership and Establishing Restrictions, covenants, and Conditions for WELCH STREET COMMERCE CENTER. 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 WELCH STREET COMMERCE CENTER 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 3915 Welch Street, Kill Devil Hills, NC 27948 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 Michael Bateman, whose address is 3915 Welch Street, Kill Devil Hills, NC 27948. 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. Unit 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 fifteen (15) 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.

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. Special meetings of the Association may be called by the President, a majority of the Board, or by the Unit Owners having twenty percent (20%) of the votes in the Association. The president shall call a special meeting of the Unit Owners Association is so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by a majority of Unit Owners. 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 January 2, 1995, 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 fourteen (14) but not more than thirty (30) 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 Article XIII shall be considered service of notice.

4.6 Quorum. Except as otherwise provided in these By-Laws, the Unit Owners present in person or by proxy, at any meeting of Unit Owners, (but no less than sixty percent (60%) of the members) shall constitute a quorum at such meeting.

4.7 Voting. If only one of several owners of a unit is present at a meeting of the Association, the owner present is entitled to cast all the votes allocated to the unit. If more than one of the owners are present, the votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit.

4.8 Proxies. Votes allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Unit Owners. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

4.9 Majority Vote. The vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, these By-Laws, or the Condominium Act.

## ARTICLE V

## DIRECTORS

5.1 Initial Board. The first Board shall consist of the three (3) persons elected by the members 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 five (5) natural persons, as determined at any annual meeting by the members. Each Director shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

5.3 Election and 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 for one (1) year. Once elected, Directors 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-seven percent (67%) 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 meeting.

5.8 Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or 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 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 the Board~~ ~~to the Board~~ 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 judgements 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 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 WELCH STREET COMMERCE CENTER.

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.

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 purposes.

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.

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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. Exercise any other powers conferred by the Declaration or By-Laws.

r. Exercise any other power necessary and proper for the covenants and operation of the Association.

s. To enforce the restrictions on use, alienation and occupancy as set forth in Article X of the Declaration.

## 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 monies 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 Agreement, 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.

6.9 Resale Certificates and Statements of Unpaid Assessments. The Treasurer, Assistant Treasurer, or a manager employed by the Association, or, in their absence, any officer having access to the books and records of the Association, may prepare, certify, and execute resale certificates and statements of unpaid assessments in accordance with Sections 47C-3-102(12) and 47C-4-109 of the Condominium Act.

The Association may charge a reasonable fee for preparing resale certificates and statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. The Association may refuse to furnish resale certificates and statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

#### 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

##### ASSESSMENT AND COLLECTION OF COMMON EXPENSES

8.1 Apportionment of Common Expenses. Except as provided in Section 8.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as set forth in Section 6.1 of the Declaration.

8.2 Common Expenses Attributable to Fewer 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 Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expense attributable to the Limited Common Element shall be assessed among the Units to which it is assigned in proportion to the Allocated Interests in the Common Expenses for such units.

b. Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from service.

c. Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

d. An assessment to pay a judgement against the Association may be made only against the Units in the Condominium at the time the judgement was entered, in proportion to their Common Expense liabilities.

e. If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

f. Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments.

8.3 Lien.

a. The Association has a lien on a unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk of Superior Court of each county in which the Condominium is located. Fees, charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

b. A lien under this section is prior to all other liens and encumbrances on a Unit except:



(i) liens and encumbrances (including but not limited to, a mortgage deed of trust on the unit) recorded before the docketing of the lien on the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanic's or materialman's liens.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Offices of the Clerk of Superior Court.

d. This Section does not prohibit an action to recover sums for which Subsection 8.3a of this section creates a lien or prohibit the Action from taking a deed in lieu of foreclosure.

e. A judgement, decree or order in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.

f. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

g. If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and its heirs, successors and assigns, shall be liable for the assessments against such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectable from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

h. Any payments received by the Association in the discharge of a Unit Owner's Obligation may be applied to the oldest balance due.

8.4 Budget Adoption and Ratifications. Within thirty (30) days after adoption of a proposed budget for the Condominium, the Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing the summary. Unless at that meeting sixty-seven percent (67%) of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Board of Directors.

8.5 Ratification of Non-Budgeted Common Expense Assessments. If the Board of Directors votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 8.2 of this Declaration, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board of Directors shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 8.4.

8.6 Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board of Directors and each Unit Owner.

8.7 Monthly Payment of Common Expenses. All Common Expenses assessed under Section 8.2 shall be due and payable monthly.

8.8 Acceleration of Common Expense Assessments. In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against such Unit Owner's Unit, the Board of Directors shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

8.9 Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

8.10 No Waiver of Liability for Common Expenses. No Unit Owner is or may become exempt from liability for payment of the Common Expenses by waiver of the use and enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

8.11 Personal Liability of Unit Owners. The owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall pass to a successor in title to the Unit unless such successor agrees to assume the obligation.

## ARTICLE IX

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 general business 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) 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 are not permitted on the Property.

(4) All animals including domestic pets are prohibited within the Units, Common Elements and Limited Common Elements of WELCH STREET COMMERCE CENTER.

(5) 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.

(6) 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 in damage therefrom. If a unit is vacant 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 the Unit is properly working and maintaining a minimum degree temperature of fifty-five (55) degrees.

(7) 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.

(8) Refuse and bagged garbage shall be deposited only in the areas provided therefor.

(9) No signage is permitted except that expressly authorized by the Board of Directors including any proposed "For Rent" or "For Sale" signs.

(10) Each Unit is subject to the restrictions set forth in Article X of the Declaration.

(11) 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 X

## INSURANCE

## 10.1 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 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 an excessive or 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 of the Unit Owners, (if one is selected) 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 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 licensed to do business in the State of North Carolina. Physical damage policies shall be in the 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 purchased by the Board of Directors shall be a Common Expense, except where claim is for components of a unit.

#### 10.2 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 the 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), 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 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 subpolicies 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.

10.3 Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Board of Directors but in no event less than \$2,000,000.00 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

a. Other Provisions. Insurance policies carried pursuant to this section shall provide that:

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

(ii) the insurer waives the right to subrogation under the policy against a Unit Owner, a tenant of a Unit Owner, and any employee of a Unit Owner or a tenant of a Unit Owner.

(iii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known address.

10.4 Fidelity Bonds. A blanket fidelity bond may be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services.

10.5 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 betterments 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 bought 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 10.5.

10.6 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.

10.7 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.

10.8 Premiums. Insurance premiums shall be a Common Expense.

## ARTICLE XI

### DAMAGE TO OR DESTRUCTION OF PROPERTY

11.1 Duty to Restore. A portion of the Condominium for which insurance is required under Section 47C-3-113 of the Condominium Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless;

- a. the Condominium is terminated;
- b. Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- c. sixty-seven percent (67%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

11.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

11.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

11.4 Replacement of Less than Entire Property.

a. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.

b. Except to the extent that other persons will be distributed:

(i) the insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the owner of the Unit and the Owner of the Unit to which the Limited Common Elements were allocated, or to lienholders, as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Element interests of all the Units.

c. If the Unit Owners vote not to rebuild a Unit, the allocated interests of the Units are reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Condominium Act, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

11.5 Insurance Proceeds. The Trustee, or if there is no Trustee, then the Board of Directors of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of Subsection 11.1a through Subsection 11.1c, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated.

11.6 Certificate by the Board of Directors. The Trustee, if any, may rely on the following certifications in writing made by the Board of Directors.

a. Whether or not damaged or destroyed property is to be repaired or restored;

b. The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

## ARTICLE XII

### COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

12.1 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, any 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 the defaulting member to vote as a member of the Association until the default is cured.

12.2 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 the 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 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 requests 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.

12.3 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 12.2 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.

12.4 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.

12.5 Recovery of Attorney's Fees and Costs. In any proceeding arising because of an alleged default by a member of 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.

12.6 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, 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.

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

ARTICLE XIII

NOTICES

Notices. All notices to the Association or the Board of Directors shall be delivered to the office of the manager, or if there is no manager, to the office of the Association, or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all Unit Owners and to all Eligible Mortgagees. Except as otherwise provided, all notices to any Unit Owner shall be sent to such Unit Owner's address as it appears in the records of the Association. All notices to Eligible Mortgagees shall be sent, except where a different manner of notice is specified elsewhere in the Condominium Documents, by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Association. All notices shall be deemed to have been given when mailed except notices of changes of address which shall be deemed to have been given when received.

ARTICLE XIV

AMENDMENTS TO BY-LAWS

The By-Laws may be amended only pursuant to the provisions of Article XV of the Declaration.

The foregoing By-Laws are certified to be the By-Laws adopted by consent of the Directors of WELCH STREET COMMERCE CENTER OWNER'S ASSOCIATION, INC., DATED 12/22/94, 1994

BATEMAN & ASSOCIATES, INC.

[CORPORATE SEAL]

By: Michael W. Bate

Title: Pres.

ATTEST:

By: [Signature]

Title: SECRETARY