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INDEX**To Declaration of Monterey Pines Condominium**CHARLES E. BOWDY
REGISTER OF DEEDS

COUNTY OF HICKORY, N.C.

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In compliance with the North Carolina Condominium Act (the "Act") there has been created for the Unit Owners an Association to govern the Condominium. The Unit Owners' Association will be known as Monteray Pines Association, Inc. (the "Association"). The Association will become functional once a Unit has been sold and conveyed to a purchaser. Each Unit Owner will have one vote in the affairs of the Association. The Board of Directors of the Association will elect officers who will make various decisions regarding the governance of the Condominium, as is more specifically set out in the Declaration of Condominium and By-Laws. The operating expenses of the Association will be paid by the unit owners based upon an annual budget. The Association will bill each unit owner quarterly in advance for his pro-rata share of the Common Expenses. Each unit owner has an interest in the Common Elements of the Condominium which is appurtenant to and part of his fee simple interest ownership of his respective unit. Liability for the Common Expenses and other assessments of the Condominium will be borne by each unit in proportion to the percentage of his interest in the Common Elements. That percentage is 2.08% per unit with each unit having one vote in the Condominium.

If a unit owner fails to pay an assessment when due, the Association will have a lien against that unit and may file a Claim of Lien in the Office of the Currituck County Clerk of Court.

During the Period of Declarant Control or until the Association makes a Common Expense Assessment, whichever occurs first, the Declarant is responsible for all Common Expenses of the Association. Thereafter, the Declarant must pay assessments on unsold units which have been completed and submitted to the Declaration of Condominium.

The projected budget for the first year of operation for the Association has been prepared by the Declarant and is attached hereto as Attachment II. The projected budget includes amounts to be allocated as reserves for repairs and replacements and other reserve accounts established in the Condominium Documents, as well as projected common expense assessments by category of expenditures for the Association with an estimate of the amount that will be charged in excess annually for each unit.

The Association shall have all powers and responsibilities in regard to maintenance, repair, renovation, restoration and replacement of the Common Elements of the Condominium which shall be borne pro-rata by all unit owners according to the percentage of interest in the Common Elements. Common Elements will include the parking areas within the Condominium Property and all other improvements designated as Common Elements on the plans of the Condominium Property. The Common Elements are to be maintained by the Association for the benefit and use of its owners.

The following is The Declaration of Monterey Pines Condominium:

**DECLARATION OF
MONTERAY PINES CONDOMINIUM**

THIS DECLARATION, made this 1st day of June, 2001, by Southpaw BVI, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes (the "Act") of 2400 North Croatan Highway, Suite D, Kill Devil Hills, NC 27948.

WITNESSETH

WHEREAS, Declarant is the owner in fee simple of certain real estate situated in Corolla, Currituck County, State of North Carolina, as more particularly described on Exhibit "A", together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate (hereinafter referred to as "the Property"); and

WHEREAS, Declarant has previously built on the Property four (4) buildings known as: Building 814 Carolina Court, consisting of twelve (12) apartment units, Building 815 Carolina Court consisting of twelve (12) apartment units, Building 816 Carolina Court consisting of twelve (12) apartment units and Building 817 Carolina Court consisting of twelve (12) apartment units (the "Apartments"); and

WHEREAS, Declarant wishes to convert the Apartments to Condominiums, pursuant to the Act; and

WHEREAS, Declarant has developed the property into forty-eight (48) Condominium Units of residential use and Declarant wishes to submit said property as a Condominium as hereinafter provided;

NOW, THEREFORE, Declarant, as the owner of said property, hereby declares as follows:

ARTICLE I
Definitions

As used herein, the following words and terms shall have the following meaning:

- 1.1 Act. The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.
- 1.2 Articles of Incorporation. The articles of incorporation of the Association filed with the Office of the Secretary of State of North Carolina which are incorporated herein and made a part hereof by this reference, and attached as Exhibit C.
- 1.3 Assessment. The owner's share of the common expenses assessed against such owner and their unit from time to time by Monterey Pines Association, in the manner hereinafter provided.
- 1.4 Association. Monterey Pines Association, (the "Association") a nonprofit corporation organized under Section 47C-3-101 of the Act.
- 1.5 Board. The Executive Board of the Association.
- 1.6 Building. The single improved structure containing the Units and which comprises a portion of the Property and is more particularly described in the Plans.
- 1.7 Bylaws. The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference, and attached as Exhibit B.

- 1.8 Common Elements. All portions of the condominium except the Units. Limited Common Elements are Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including, without limitation: the land, improvements that are not part of the Units including all foundations, columns, load bearing walls, girders, beams, supports, walls, roof, exterior stairs, any common decking, and balconies.
- 1.9 Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
- 1.10 Common Expenses Liability. Common expenses allocated to each unit pursuant to § 47C-2-107.
- 1.11 Condominium. The condominium created by this Declaration.
- 1.12 Declarant. The parties who have executed this Declaration or who hereafter executes an amendment to this Declaration except First Mortgagees.
- 1.13 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date five years after the date of the first conveyance of a unit to a unit owner other than the Declarant, or (ii) the date upon which the Declarant surrenders control of the Condominium, or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the units to unit owners other than the Declarant.
- 1.14 First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the Currituck County Registry in

which the First Mortgage is recorded, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

1.15 Limited Common Elements. Those portions of the Common Elements allocated by this Declaration, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units, to the exclusion of all other Units. The Limited Common Elements shall include, but shall not be limited to, the following:

- (1) Those portions of any duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially without the designated boundaries of a Unit serving exclusively that Unit shall be Limited Common Elements allocated exclusively to that Unit; and
- (2) Any porches, decks, balconies, or exterior walls designed to serve a single Unit but located outside the Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Unit; and
- (3) Any portions of the heating, ventilating and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, including individual electricity, shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

1.16 Member. Means a Unit Owner.

1.17 Occupant. Any person or persons in possession of a Unit, including Unit Owners, lessees, guests and invitees

of such person or persons, and guests and invitees of such lessees.

- 1.18 Person. A natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.
- 1.19 Plans. The plans of the Condominium prepared by Glenn Yates, Jr., Registered Architect, recorded with, and by the Act made a part of this Declaration, in Unit Ownership File _____ at Slides _____ in the Currituck County Public Registry.
- 1.20 Plat. That site plan of the Property prepared by Coastal Engineering & Surveying, Inc., dated September 21, 2001, recorded with, and by the Act made a part of this Declaration, in Unit Ownership File G at Slide 175 in the Currituck County Public Registry.
- 1.21 Property. The real estate described on Exhibit A, together with the Building and all other improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.
- 1.22 Rules and Regulations. Any rules and regulations of the Condominium promulgated by the Executive Board from time to time, a copy of the current Rules and Regulations is being attached hereto as Exhibit F.
- 1.23 Special Declarant Rights. Those rights reserved for the benefit of the Declarant to complete improvements indicated on the plats and plans filed with the Declaration and to exercise developmental rights of maintaining sales offices, management offices, and signs advertising Monterey Pines; to operate a model unit if necessary, to use easements through the common elements for the purpose of making improvements within the condominium; and to appoint or remove any officer of the

Association or any Board Member during any period of the Declarant Control Period.

- 1.24 Unit. That physical portion of the Condominium, whether or not contained solely or partially within the Building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit D; the boundaries of which are described pursuant to Section 47C-2-105 of the Act.
- 1.25 Unit Boundaries. The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries. Also included as a part of the Unit shall be all portions of the heating and air conditioning system for the Unit whether the same are located within or without the perimeter walls of the Unit.
- 1.26 Unit Owner. The person or persons, owning a Unit in fee simple but does not include any person having an interest in a Unit solely as security for an obligation.

ARTICLE II

Submission of Property to the Act

- 2.1 Submission. Declarant hereby submits that Property described in Exhibit A to the Act.
- 2.2 Name. The Property shall hereafter be known as Monteray Pines Condominium.

- 2.3 Division of Property into Forty-Eight Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into forty-eight (48) Units and does hereby designate the Units for separate ownership, subject however, to the provisions of Section 2.4 hereof.
- 2.4 Alterations of Units. Subject to the provisions of the Declaration and the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111 and 47C-2-112, but a Unit may not be subdivided into two (2) or more Units.
- 2.5 Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit.
- 2.6 Unit Allocations. The allocation to each Unit of a percentage of undivided interest in the Common Elements and of a percentage of the Common Expenses, is as stated on Exhibit D. The allocation of undivided interests in the Common Elements and of the Common Expenses has been determined in relation to the votes per Unit in the Association which is equal with each Unit having one vote and each Unit sharing one-forty-eighth (2.08%) of the Common Elements and Common Expenses.
- 2.7 Encumbrances. The liens, defects and encumbrances affecting the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit E.
- 2.8 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 a condominium which are not imposed upon physically similar 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.

- 2.9 Reservation of Declarant Rights. Declarant hereby reserves all Special Declarant Rights.

ARTICLE III
Easements

- 3.1 Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the Building or other improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.
- 3.2 Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.
- 3.3 Easements of Owners and Association With Respect To Common Elements. Each Unit Owner shall have a perpetual, non-exclusive easement in common with all other Unit Owners to use all pipes, wires, ducts, cables,

conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to a perpetual non-exclusive easement in favor of all other Unit Owners to use the pipes, wires, ducts, cables, conduits, public utility lines, and other Common Elements serving such other Units and located in such Units. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements upon reasonable advanced notice to the Unit Owner (except in cases of emergencies, in which cases no advanced notice shall be required) to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Common Elements. Such person shall use good faith efforts to conduct such maintenance, repair and replacement operations at such times and in such a manner as to minimize to the extent reasonably possible any intrusion on or interference with the activities of the Unit Owner.

- 3.4 Easements To Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to inspect, repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.
- 3.5 Easements for Utilities. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 3.5 shall include, without limitation, rights of the Association, any providing utility, any service company,

and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 3.5, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its Occupants.

- 3.6 Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, which easements shall exist as long as reasonably necessary for such purpose.
- 3.7 Granting of Easements by the Executive Board. The Executive Board may hereafter grant easements encumbering the Common Elements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, sewer lines, pipes, ducts, gas mains, telephone, and television or cable television wires, cables, and equipment, electrical conduits, and wires over, under and along and upon any portion of the Common Elements, and may grant such other easements encumbering the Common Elements as the Executive Board deems in its discretion necessary for the benefit of the Condominium; and each Unit Owner hereby grants the Executive Board an irrevocable power of attorney to execute, acknowledge, and record for and in the name of each Unit Owners such instruments as may be necessary to effectuate the foregoing.

- 3.8 Easements To Run With Land. All easements and rights described in this Article III are appurtenant easements running with the land, and except as otherwise expressly provided in this Article III shall be non-exclusive and perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, First Mortgagees and any other person having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article III, whether or not specifically mentioned in any such conveyance or encumbrance.

ARTICLE IV

Restrictions, Conditions and Covenants

- 4.1 Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.
- 4.2 Administration of Condominium. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and Bylaws.
- 4.3 Use Restrictions. The Units shall be occupied and used by Unit Owners for residential purposes only.
- 4.4 Prohibited Uses. No obnoxious, offensive, or unlawful activity shall be conducted within any Unit or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or a nuisance to the other Unit Owners.

Further, and without limiting the generality of the foregoing, each Unit Owner shall use his Unit and the Common Elements in such a manner as to comply with all laws, ordinances, orders, regulations and zoning classifications of any governmental authority, agency or other public or private regulatory authority (including insurance underwriters and rating bureaus) having jurisdiction over the Property. In addition, no Unit may be used for the treatment, storage, use or disposal of toxic or hazardous waste or substances or any other substance that is prohibited, limited, or regulated by any governmental or quasi-governmental authority or that, even if not so regulated does pose a hazard to health and safety of the occupants and patrons of the Units or of surrounding property; provided, however, any Unit may be used for the treatment, storage, use or disposal of toxic or hazardous substances provided that such treatment, storage, use or disposal is incident to a lawful and permitted activity being conducted within such Unit and is conducted in compliance with all necessary permits and authorizations and in accordance with all applicable laws, ordinances, orders, rules and regulations. Each Unit Owners shall indemnify and save every other Unit Owner and the Association harmless from and against any claims, liabilities, penalties, fines, costs, expenses or damages resulting from any violations of the provisions of this Section 4.4.

- 4.5 Prohibitions and Use of Common Elements. The Common Elements shall not be used for storage of supplies, personal property or trash or refuse of any kind, except that common trash receptacles may be placed at various locations on the Common Elements at the discretion of the Board. Stairs, entrances, sidewalks, and yards shall not be obstructed in any way. In general, no activity shall be carried on or conditions maintained by any Unit Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

Gas grills, charcoal grills and any other method of cooking is strictly prohibited on any of the Limited Common Elements.

- 4.6 Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse, or destruction) to or in his Unit or the Common Elements.
- 4.7 Alterations of Common Elements. No Unit Owner or Occupant shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.
- 4.8 Leases. Any lease of a Unit or a portion of a Unit shall be in writing, and shall be subject to this Declaration, the Bylaws and the current rules and regulations adopted by the Board and any failure of the lessee to comply with the terms of such documents shall be a default under the lease.
- 4.9 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws, a copy of the current rules and regulations being attached hereto as Exhibit F.
- 4.10 Restrictions, Conditions and Covenants To Run With Land. Each Unit Owner and Occupant shall be subject to

all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

- 4.11 Shrubbbery. No Unit Owner shall plant or permit to remain on the Property any type of hedge, shrubbbery or other plantings, except with the prior written permission of the Board.
- 4.12 Signs. No "For Sale" or "For Rent" signs or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board. This restriction shall not apply to the Declarant during the Declarant Control Period.

ARTICLE V
Assessments

- 5.1 Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefore, all as set forth in the Bylaws.
- 5.2 Personal Liability of Transferees; Statement; Liability of First Mortgagee.
- (1) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

- (2) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to Section 7 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.
- (3) Where a First Mortgagee, or other person claiming through such First Mortgagee, pursuant to the remedies provided in a deed of trust, or by foreclosure or by deed, or assignment, in lieu of foreclosure, obtains title to a Unit, the liability of such First Mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.
- (4) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien under (b) above or, resulting, as provided in (c) above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed, or assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the First Mortgagee or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

5.3 Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Unit Owner may be exempt from liability for their share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of their Unit or otherwise.

ARTICLE VI

Management, Maintenance, Repairs
Replacements, Alterations and Improvements

6.1 Common Elements.

- (1) By the Association. The management, replacement, maintenance, repair, alteration, and improvement of the Common Elements shall be the responsibility of the Board, and, subject to the provisions of Section 6.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 6.1(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.
- (2) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant, guest or invitee of their Unit. Such payment shall be made upon demand made by the Board.

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

- (1) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.
- (2) In addition, the Association may assess any Common Expense benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

- (3) The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the Individual Unit Owner or Unit Owners having the right to the use and enjoyment of such Limited Common Elements, but the responsibility for maintenance, painting, repair and replacement, together with control over the exterior decoration of the Limited Common Elements visible from any other Unit or from the Common Elements, shall remain with the Association. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Unit Owners to which such Limited Common Elements are allocated. Electricity and any other utility service to each Unit shall be individually metered and each Unit Owner shall pay all charges assessed against his Unit for the use of such services.

- 6.3 Units. Each Unit Owner shall maintain their Unit at all times in a good and clean condition, and repair and replace, at their expense, all portions of their Unit. All doors within the walls enclosing a Unit shall be a part of that Unit; however, responsibility for maintenance and replacement of any exterior doors shall be the responsibility of the Association and not the Unit Owner. Replacement of any broken glass in a window that is part of a Unit shall be the sole responsibility and expense of the Unit Owner of that Unit. Each Unit Owner shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or

destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

6.4 Right of Entry.

- (1) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous conditions or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. The Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.
- (b) By Unit Owners. Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter their Unit or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit or performing the duties and obligations under the act,

this Declaration or the Bylaws, of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. The person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

- 6.5 Partitioning. The interest in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned, or otherwise included with the Unit even though such interest are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage, or other instrument which purports to grant any right, interest, or lien in, to or upon the Unit, shall be null, void, and of no effect insofar as the same purports to affect any interest in a Unit's allocated interest in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto in the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.
- 6.6 Conveyance of or Lien Against Common Elements. For such time as the Property remains subject to this Declaration and to the provisions of the Act, no

conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements unless the Unit Owners holding at least eighty percent (80%) of the total allocated interests in the Common Elements agree to that action; provided, however, all the owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest or lien. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this declaration and that the right to file a mechanics' lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of assessments for Common Expenses provided for in Article V of this Declaration. Provided, however, nothing in this Section shall be construed to limit the right of any Unit Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

- 6.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be, and it is hereby declared to be, and to constitute a separate parcel of real property, and the Unit Owner thereof shall be entitled to the exclusive fee simple ownership and possession of his Unit, subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be contained herein and in the accompanying Bylaws and in the minutes of the Executive Board of the Association.

ARTICLE VII **Insurance**

- 7.1 Casualty Insurance. The Association shall maintain, to the extent available, casualty insurance upon the Property in the name of, and the proceeds thereof shall be payable

to, the Association, as trustee for all Unit Owners and First Mortgagees as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than eighty percent (80%) full insurable value of the Property on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

- 7.2 Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least Five Hundred Thousand Dollars (\$500,000.00) per person and One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage. Such insurance shall comply in all respects to the requirements of the Act and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks, and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

- 7.3 Insurance Unavailable. If the insurance described in Section 7.1 or 7.2 is not reasonably available, the Association shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and First Mortgagees.
- 7.4 Individual Policy for Unit Owners. Each Unit Owner shall obtain insurance, at their own expense affording personal property, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect their own interests. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of their insurance, to the extent of such reduction, to the Association.

ARTICLE VIII
Casualty Damage

- 8.1 Casualty Damage. If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced unless: (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners elect not to rebuild or replace by an eighty percent (80%) vote. All proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act.

ARTICLE IX
Condemnation

- 9.1 Condemnation. In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the awards paid on account thereof

shall be applied in accordance with Section 47C-1-107 of the Act.

ARTICLE X
Termination

- 10.1 Termination. The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XI
Amendment

- 11.1 Amendment. This Declaration in compliance with the Act, including without limitation, Sections 47C-2-108 and 47C-2-117 of the Act, except that no Amendment altering Special Declarant Rights may be made without the written consent of Declarant.

ARTICLE XII
Rights of First Mortgagees

The following provisions shall take precedence over all other provisions of this Declaration and the Bylaws:

- 12.1 Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request, make available for inspection by Unit Owners and the First Mortgagees, current copies of the Declaration, the Bylaws, other rules and regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide a financial statement for the preceding fiscal year if requested in writing by a First Mortgagee. The Association shall, upon request, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, the Rules and Regulations governing the Condominium, and the most recent annual financial statement.

- 12.2 Successors' Personal Obligation for Delinquent Assessments. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.
- 12.3 Rights of Action. The Association and any aggrieved Unit Owner shall have the right of action against Unit Owners and any aggrieved Unit Owners shall have a right of action against the Association for failure to comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the Bylaws.
- 12.4 Rights to Notice. If any First Mortgagee has served written notice upon the Association of its desire to receive notices under this section by certified mail, return receipt requested, addressed to the Association and sent to its current address, identifying the First Mortgage that it holds, which notice designates the place to which notices are to be given by the association to such party, then such party shall have the right to receive from the Association prompt written notice of the following:

Default under any of the terms and provisions of the Declaration and the Bylaws by any Unit Owner owning a Unit encumbered by a First Mortgage held by such party.

Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a First Mortgage held by such First Mortgagee.

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

Any proposed action by the Association, the Board or the Unit Owners, which under the terms of the Declaration or Bylaws requires the consent of all or any portion of the First Mortgagees.

- 12.5 Assessments. Assessments shall be due and payable in installments as determined by the board. As provided in Article IX of the Bylaws and as legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay assessments until an assessment is levied. Assessments will begin at such time as the Board elects.
- 12.6 Rights of First Mortgagee: Insurance Proceeds or Condemnation Awards. With respect to First Mortgages held by or for the benefit of First Mortgagees, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

ARTICLE XIII
Notices

- 13.1 Notices. Whenever notices are required to be sent under this Declaration, the same may be delivered to Unit Owners by mail at their place of residence. Notices to the Association shall be mailed to:

Robert R. DeGabrielle
Over/Seas Professional Centre
Suite D
2400 N. Croatan Highway
Kill Devil Hills, NC 27948

ARTICLE XIV
General Provisions

- 14.1 Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.
- 14.2 Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.
- 14.3 Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.
- 14.4 Exhibits. Exhibits A, B, C, D, E, and F attached hereto are hereby made a part hereof.
- 14.5 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

- 14.6 Non-Waiver. The failure of the Declarant, Board of Directors, or any unit 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.
- 14.7 Law Controlling. This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina, provided, however, that if there are conflicts or inconsistencies between the Act and this Declaration (in that order), 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.
- 14.8 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.

BOOK 547 PAGE 557

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first above written.

DECLARANT:

SOUTHPAW BVI, LLC
a North Carolina Limited Liability
Company

BY: *Robert R. DeGabrielle* (SEAL)
Robert R. DeGabrielle, Manager

STATE OF NORTH CAROLINA
COUNTY OF DARE

I, the undersigned Notary Public of the City/County and State aforesaid, certify that Robert R. DeGabrielle, personally came before me this day and acknowledged that he is Manager of Southpaw BVI, LLC, a North Carolina Limited Liability Company and that by authority duly given and as the act and deed of the Company he executed the foregoing Declaration.

Witness my hand and official seal this the 17th day of August, 2001.

(stamp/seal)

Matthew Munnery
Notary Public

My commission expires: 09-15-2002



BOOK 547 PAGE 558
EXHIBIT A
To Declaration

PROPERTY DESCRIPTION

All that property described on that plat captioned "Monteray Shores
Apartment Parcel 5" dated September 14, 2000 prepared by Coastal
Engineering, Inc. and recorded in Plat Cabinet G at Page 175 in the Office
of the Public Registry of Currituck County, North Carolina.