

Recorded: 06/01/2016 02:17:10 PM
BY: Toni Midgett
Vanzolla McMurrin, Register of Deeds
Dare County, NC

Fee Amt: \$402.00 NC Excise Tax: \$0.00

BOOK 2097 PAGE 255 (109)

700026120



Prepared by & return to:
Wyatt M. Booth, Esq.
Williams Mullen
PO Box 1000
Raleigh, NC 27602

Appendix "A" to Public Offering

DECLARATION OF CONDOMINIUM

FOR

RODANTHE SUNSET RESORT CONDOMINIUMS an expandable condominium

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR THE STATE OF NORTH CAROLINA. SEE SECTION 6.7, INFRA.

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS. SEE SECTION 6.14, INFRA.

THIS DECLARATION OF CONDOMINIUM for Rodanthe Sunset Resort Condominiums (this "Declaration") is made this 1st day of June, 2016 by Rodanthe Sunset Resort, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

BACKGROUND STATEMENT

Declarant is the owner and developer of that property situated within the Village of Rodanthe on Hatteras Island, North Carolina (the "Land"), as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. Declarant desires to submit a portion of the Land and the improvements located thereon (collectively "Phase One" as shown on the Plat and described on Exhibit "B") to the terms and provisions of the North Carolina Condominium Act, and further desires to reserve the right to submit additional portions of the Land in the future ("Phase Two" and "Phase Three" as shown on the Plat).

Rodanthe Sunset Resort Condominiums ("RSR" or the "Condominium") is presently designed to include up to three phases of development. Phase One shall consist of an existing Building consisting of six (6) residential units, which is presently owned by the Declarant and shall be converted to the condominium form of ownership. Phase Two shall be expandable land which may, but is not required to, be added to RSR in the Declarant's discretion in the future, and is currently proposed to consist of a two Buildings containing a total of twenty-seven (27) residential units. Phase Three shall be expandable land which may, but is not required to, be added to RSR in the Declarant's discretion in the future, and is currently proposed to consist of a single commercial Building containing four (4) commercial units.

The proposed commercial Building in Phase Three shall be used for commercial purposes including retail sales, office space with storage, and restaurant uses.

Upon filing of this Declaration, all of the land located in Phase One shall be subjected to this Declaration.

The land located in Phase Two and Phase Three shall become subject to this Declaration upon the filing by the Declarant of a Supplemental Declaration submitting the Phase Two or Phase Three land. Phase Two and Phase Three land may be added to the Condominium in any order and at any time in the Declarant's sole discretion, in whole or in part, and the Declarant makes no assurances regarding the order or extent of development of Phase Two or Phase Three.

All portions of the Buildings, including the existing Building and Buildings that may, but need not be, built, excepting the Units, shall be Limited Common Elements of a Building subject to assessment as Limited Common Elements. As a result, each Building will be responsible for its own maintenance, capital reserves and insurance (the "Building Expenses"), which Building Expenses shall be separately assessed against all units of a particular building and not assumed or shared by Unit Owners in other Buildings. The swimming pool, wooden walkway, and gazebo shall be a Limited Common Element for the benefit of the Residential Unit Owners, with maintenance expenses therefor shared among the Residential Unit Owners. The General Common Elements shall consist of the: roads, parking, concrete, storm water facilities, water service connections, infrastructure facilities, storm pipes, concrete curb and gutter, screened dumpster pads and gates, concrete flumes, signage, loading zone, force main, catch basin, wastewater sewage processing system, fire hydrants, bulkheading adjacent to Pamlico Sound, soundfront amenities of Pamlico Sound other than the swimming pool, wooden walkway and gazebo, all of which are of service to all of the Buildings and Units, with maintenance costs therefor to be shared among the Unit Owners.

The Declarant has deemed it desirable to create an incorporated non-profit community association (the "Rodanthe Sunset Resort Owners Association, Inc.") which will be delegated and assigned powers of maintaining and administering the General Common Elements of the Condominium, administering and assessing the Limited Common Elements of a Building, and enforcing the covenants and restrictions created in this Declaration of collecting and holding replacement reserves as agent for the Unit Owners of each Building; and of levying, collecting and disbursing the Assessments and charges created in this Declaration, of managing the Limited Common Elements and assessing Limited Common Expenses against Units in each Building; and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of Condominium Units and Buildings within the Condominium. The Bylaws of the Association make provisions for the formation of a Residential Executive Committee and a Commercial Executive Committee (if constructed) to advise and assist the Association with the management of the respective elements of the Condominium. To accomplish the objectives as referenced within these recitals the Declarant shall maintain a significant role in the implementation of each phase of RSR and in accord, the Declarant has reserved Development Rights and Special Declarant Rights and will exercise controls throughout the phasing and development of the Condominium.

STATEMENT OF DECLARATION

NOW THEREFORE, the Declarant hereby declares that all of the property described in Section 2.1 below (the "Submitted Property") shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the conversion or division of the Submitted Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Submitted Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I Definitions

1.1 Definitions. The terms defined in Section 47C-1-103 of the North Carolina Condominium Act shall be deemed to have the meanings therein specified whenever they appear in the Condominium Instruments unless the context otherwise requires and except to the extent, if any, that such definitions are changed below. In addition, the other terms defined below shall be deemed to have the meanings specified whenever they appear in the Condominium Instruments unless the context otherwise requires. These definitions shall apply whether or not the defined terms are capitalized.

1.2 "Act" shall mean and refer to the North Carolina Condominium Act, which is Chapter 47C of the North Carolina General Statutes, as amended.

1.3 "Annual Assessments" shall mean and refer to the annual levy of assessments for the General Common Elements and the Limited Common Elements of each Building as provided in Section 7.1 of the Bylaws.

1.4 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for Rodanthe Sunset Resort Owners Association, Inc. filed in the office of the Secretary of State of North Carolina and in the office of the Register of Deeds of Dare County, North Carolina, as the same may be amended from time to time.

1.5 "Assessment" shall mean and refer to the share of the Common Expenses from time to time assessed against a Condominium Unit and its Owner by the Association in the manner herein provided.

1.6 "Association" shall mean and refer to Rodanthe Sunset Resort Owners Association, Inc., a North Carolina non-profit community association incorporated under Chapter 55A of the General Statutes of North Carolina for the purpose of exercising the powers of the Association under the Act and the Condominium Instruments, a copy of the Articles of Incorporation are attached hereto as Exhibit "D".

1.7 "Board of Directors" or "Board" shall mean and refer to the board of directors of the Association, which is the governing body of the Association.

1.8 "Building" shall mean and refer to a structure in which the Units and a portion of the Limited Common Elements are located within the Condominium. Phase One consists of that Building identified as Building "A" on the Plat and Plans and containing approximately 9,500 square feet of living space and consisting of six (6) three bedroom Residential Units; Construction of Building "A" was completed in 2008 and the Building shall be converted to the condominium form of ownership pursuant to this Declaration.

1.9 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time, a copy of the initial Bylaws being attached hereto as Exhibit "C", and incorporated herein by reference, and all amendments to such Bylaws which may from time to time be adopted.

1.10 "Commercial Executive Committee" shall mean and refer to those persons who shall advise the Board of Directors concerning matters affecting the Commercial Building in accordance with the Bylaws.

1.11 "Commercial Expenses" shall mean and refer to all lawful expenditures which are for the exclusive benefit of the Commercial Limited Common Elements, Individual Commercial Limited Common Elements, or some or all of the Commercial Units.

1.12 "Commercial Limited Common Elements" shall mean and refer to those parts of the Common Elements, now or hereafter established, which are reserved for the exclusive use of all the Commercial Members according to their respective Commercial Percentage Interest. Commercial Limited

Common Elements existing at the time of recordation of this Declaration, if any, are shown on the Plat and Plans, but shall also consist of any other portions of the Condominium which are intended to serve and benefit the Commercial Units exclusively.

1.13 "Commercial Members" shall mean and refer to each of the Unit Owners of a Commercial Unit.

1.14 "Commercial Percentage Interest" shall mean and refer to the percentage assigned to each Commercial Unit by this Declaration, which establishes each Commercial Unit's liability for Commercial Expenses.

1.15 "Commercial Section" shall mean and refer to the Commercial Unit(s), together with the Commercial Limited Common Elements and Individual Commercial Limited Common Elements.

1.16 INTENTIONALLY OMITTED

1.17 "Commercial Unit" shall mean and refer to any Unit which is designated as a "Commercial Unit" within any future commercial Building built on any future Phase.

1.18 "Commercial Unit Owners" shall mean and refer to the Owners of a Commercial Unit or Units.

1.19 "Common Elements" shall mean and refer to all parts of the Condominium other than the Units and shall include: (a) General Common Elements; (b) Shared Limited Common Elements; (c) Residential Limited Common Elements; (d) Individual Residential Limited Common Elements (e) Commercial Limited Common Elements; (f) Individual Commercial Limited Common Elements. Each Unit Owner shall be the owner of an undivided interest as a tenant in common of the Common Elements, although the use and obligations with respect to certain Common Elements shall be restricted as set forth in this Declaration and in the Bylaws.

1.20 "Common Element Interest" shall mean and refer to the percentage assigned to each Unit by this Declaration, which establishes each Unit's: (a) appurtenant undivided ownership interest in the Common Elements; (b) liability for Common Expenses; (c) interest in surplus funds of the Association; and (d) vote in the Association.

1.21 "Common Expenses" shall mean and include:

(1) All lawful expenditures made or incurred by or on behalf of the (a) Association ("General Common Expenses"); (b) Residential Expenses attributable to Residential Members; (c) Commercial Expenses attributable to Commercial Members; and (d) one (1) or more but less than all the Units by the Association ("Individual Residential Limited Common Element" or "Individual Commercial Limited Common Element"), including all assessments for the creation and maintenance of reserves;

(2) Expenses of administration, maintenance, repair or replacement of the Common Elements, including repair and replacement reserves as may be established from time to time;

(3) Expenses agreed upon to be Common Expenses by the Association; and

(4) Expenses declared Common Expenses by this Declaration or the Bylaws.

1.22 "Condominium" shall mean and refer to the Rodanthe Sunset Resort Condominiums as established by the submission of the Submitted Property to the terms of the North Carolina Condominium Act.

1.23 "Condominium Instruments" shall mean and refer to this Declaration, the Bylaws, the Plat and the Plans, including any and all exhibits, schedules, certifications and amendments thereof, as they may exist from time to time.

1.24 "Condominium Unit" shall mean and have the same definition as "Unit" in Section 1.45 below.

1.25 "Declarant" shall mean and refer to initially Rodanthe Sunset Resort, LLC, a North Carolina limited liability company, which is the fee simple owner of the real property submitted to the Act and has executed this Declaration and any successors in interest, or any party to which it assigns its rights as Declarant under this Declaration.

1.26 "Declarant Control Period" shall mean and refer to the period prior to the earliest of: (i) One hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than the Declarant; (ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; (iii) two (2) years after any development right to add new Units was last exercised; or (iv) the date specified by the Declarant in a notice to the Association that the Declarant Control Period is to terminate on that date.

1.27 "Declaration" shall mean and refer to this Declaration of Condominium as it may be amended in the future.

1.28 "Default Assessment" shall mean and refer to the Assessments levied by the Association pursuant to Section 9.4 below.

1.29 "Default Rate" shall mean and refer to an annual rate of interest that is lesser of (i) five percent above the prime rate of interest charged by the Association's bank, or such other rate as shall have been established by the Board of Directors, and (ii) the maximum rate permitted by the Act or other applicable law.

1.29.1 "Development Rights" shall mean any right or combination of rights reserved to the Declarant under this Declaration to add real estate to the Condominium, to create Units, Common Elements, or Limited Common Elements within the Condominium, to subdivide Units or convert Units into Common Elements, or to withdraw real estate from the Condominium.

1.29.2 "Development Rights Period" shall mean a period of time twenty (20) years from the date of recordation of this Declaration during which the Declarant or any Successor Declarant, may, in its discretion, exercise Development Rights.

1.30 "Director" shall mean and refer to a member of the Board of Directors of the Association.

1.31 "Dispute" shall mean and refer to Sections 10.1(h) and 10.1(i) of the Bylaws and any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or Bylaws to: (i) require any Owner to take any action, or not to take any

action, involving that Owner's Unit; or (ii) alter or add to a Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or Bylaws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.

1.32 "First Mortgagee" shall mean and refer to the holder, guarantor, and insurer of a Mortgage or a beneficiary under a Deed of Trust constituting a first priority lien on Phase One, Phase Two, or Phase Three of the Condominium.

1.33 "General Common Elements" shall mean and refer to the Common Elements except for the Limited Common Elements that are located within the Condominium outside of a Building but do not include any Building. Each Unit Owner shall be the owner of an undivided interest as a tenant in common of the General Common Elements, although the use and obligation with respect to certain General Common Elements shall be restricted as set forth in this Declaration and in the Bylaws.

1.34 "General Common Element Interest" shall mean and refer to the percentage assigned to each Unit by this Declaration, which establishes each Unit's: (a) appurtenant undivided ownership interest in the General Common Elements; (b) liability for General Common Expenses; (c) the surplus funds of the Association; and (d) vote in the Association.

1.35 "General Common Expenses" shall mean and refer to all sums lawfully assessed against the Unit Owners by the Association, expenses of administration, maintenance, repair or replacement of the General Common Elements together with any allocations to reserves and expenses declared General Common Expenses by the provisions of the Act, this Declaration or the Bylaws.

1.36 "Individual Residential Limited Common Elements" shall mean and refer to those parts, if any of the Common Elements which are reserved for the exclusive use and benefit of one (1) or more, but less than all, of the Residential Units and the Residential Unit Owners, such as a portion of a HVAC

system that serves a particular Unit but the compressor or other components are located outside the Unit and attached to the Building.

1.37 "Individual Commercial Limited Common Elements" shall mean and refer to those parts of the Common Elements, if any which are reserved for the exclusive use and benefit of one (1) or more, but less than all, of the Commercial Units and the Commercial Unit Owners, such as a portion of a HVAC system that serves a particular Unit but the compressor or other components are located outside the Unit and attached to the Building.

1.38 "Institutional Mortgagee" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

1.39 "Land" shall mean and refer to the real property owned by the Declarant and more particularly described on Exhibit "A" attached hereto, exclusive of any improvements located thereon or incorporated therein, and consisting of Phase One, Phase Two, and Phase Three as shown on the Plat.

1.40 "Limited Common Elements" shall mean and refer to those portions of the Buildings which are Limited Common Elements within the meaning of the Act and which are reserved for the exclusive use of a Building. All portions of a Building except the Units shall be deemed Limited Common Elements. Limited Common Elements shall include all portions of a Building which are not included in the Units, as more fully set forth in Section 3.5, provided, however, if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is either an Individual Residential Limited Common Element or Individual Commercial Limited Common Element, as applicable, allocated exclusively to that Unit and any portion thereof serving more than one Unit or a portion of the Building is a part of the Limited Common Elements of that Building.

1.41 "Limited Common Expenses" shall mean and refer to expenses separately assessed against one (1) or more Buildings but less than all of the Buildings for the Building Expenses.

1.42 "Majority Vote" shall mean and refer to a simple majority [more than fifty percent (50%)] of the votes actually cast in person or by proxy at a duly called and held meeting at which a quorum is present, with the allocations of votes among Owners in accordance with Article IV. Any specified percentage vote means that percentage vote with respect to the votes actually cast in person or by proxy at a duly held meeting at which a quorum is present. Any specified percentage vote of the Mortgagees means a vote by the Mortgagees of Units to which such percentage of the total number of votes appertain.

1.43 "Managing Agent" shall mean and refer to that person initially employed by the Declarant during the Declarant Control Period and the Association thereafter to perform obligations, duties and services relating to the management and maintenance of the Condominium and the maintenance of reserve funds in compliance with the provisions of this Declaration and the Bylaws.

1.44 "Management Agreement" shall mean and refer to any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Condominium.

1.45 "Member" shall mean and refer to any Unit Owner.

1.46 "Mortgage" shall mean and refer to a mortgage, deed to secure debt, deed of trust, security agreement or other instrument conveying a lien upon or security title to a Condominium Unit as security for a debt or for the performance of an obligation.

1.47 "Occupant" shall mean and refer to any person, including, without limitation, any guest, invitee, tenant, lessee or family member of an Owner, occupying or otherwise using or visiting a Unit.

1.48 "Officer" shall mean and refer to an officer of the Association.

1.49 "Permitted Activities" shall mean and refer to those rights granted by easement to Kitty Hawk Kites to conduct water sport activities and special events on portions of the General Common Elements and Residential Limited Common Elements as more particularly set forth in Section 5.16 of the Declaration.

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

1.50.1 "Phase One" shall mean that portion of the Land shown as Phase One on the Plat, the same being submitted to the Condominium by the recordation of this Declaration.

1.50.2 "Phase Two" shall mean the portion of the Land shown as Phase Two on the Plat, the same being reserved by the Declarant for future submission to the Condominium pursuant to the Declarant's Development Rights.

1.50.3 "Phase Three" shall mean the portion of the Land shown as Phase Three on the Plat, the same being reserved by the Declarant for future submission to the Condominium pursuant to the Declarant's Development Rights.

1.51 "Plans" shall mean and refer to the plans and specifications of the Condominium Building prepared by Edmond P. Virgili R.A. Architect and recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Dare County, North Carolina.

1.52 "Plat" shall mean and refer to the "Condominium Plat" survey for the Condominium prepared by Quible & Associates, P.C. which depicts Phase One, Phase Two, and Phase Three and the location of the Buildings and the Units which Condominium Plat is filed with the Plans.

1.53 INTENTIONALLY OMITTED

1.54 "Replacement Reserve" shall mean and refer to those Common Expense assessments collected and held by the Association or a Subassociation, as applicable, as agent for the Unit Owners, in accordance with the Bylaws, for the purposes of defraying projected future replacement costs of Common Expenses.

1.55 "Residential Executive Committee" shall mean and refer to those persons who shall advise the Board of Directors concerning matters affecting the Residential Building(s) in accordance with the Bylaws.

1.56 "Residential Expenses" shall mean and refer to all lawful expenditures which are for the exclusive benefit of the Residential Limited Common Elements, Individual Residential Limited Common Elements, or some or all of the Residential Units.

1.57 "Residential Limited Common Elements" shall mean and refer to those parts of the Common Elements which are Limited Common Elements within the meaning of the Condominium Act which are reserved for the exclusive use of all the Residential Members. The Residential Limited Common Elements, if any, existing at the time of recordation of this Declaration are shown on the Plans, but shall also consist of any other portions of the Condominium which serve and benefit the Residential Units exclusively.

1.58 "Residential Members" shall mean and refer to each of the Unit Owners of a Residential Unit.

1.59 "Residential Percentage Interest" shall mean and refer to the percentage assigned to each Residential Unit by this Declaration, which establishes each Residential Unit's liability for Residential Expenses.

1.60 "Residential Section" shall mean and refer to the Residential Units, together with the Residential Limited Common Elements and the Individual Residential Limited Common Elements.

1.61 INTENTIONALLY OMITTED

1.62 "Residential Unit" shall mean and refer to any Unit which is located in Building "A" or in any future residential Building which may be constructed in any future Phase.

1.63 "Residential Unit Owners" shall mean and refer to the Owners of a Residential Unit or Units.

1.64 "Rules and Regulations" shall mean and refer to the Initial Condominium Rules attached to the Bylaws as Appendix "A" and included in the Bylaws by reference as part thereof and those other rules and regulations

adopted from time to time by the Board of Directors ("Rules and Regulations"), that are deemed necessary for the enjoyment of the Common Elements and Limited Common Elements, respectively, provided they are not in conflict with this Declaration and the Bylaws.

1.65 "Schedule of Unit Information" shall mean and refer to the schedule attached hereto as Exhibit "C", which schedule shows in Part I the Residential Units in Building "A" and for each Unit its Identifying Number, the General Common Elements Interest, number of votes in the Association, share of liability for General Common Expenses, and the Residential Percentage Interest. In Part II, the schedule shows, as an example, the division of such interests in the event Phases Two and Three are added to the Condominium.

1.66 "Special Assessment" shall mean and refer to an Assessment levied pursuant to the Bylaws on an irregular basis.

1.67 "Special Declarant Rights" shall mean and refer to the rights reserved for the benefit of the Declarant as provided in the Act and the Condominium Instruments, and shall include without limitation the following rights: (a) to complete improvements indicated on the Plans and Plat filed with the Declaration; (b) to add additional land for future phases of the Condominium; (c) to maintain sales offices, management offices, customer service offices, signs advertising the Condominium and models; (d) to use easements through the Common Elements for the purpose of making improvements within the Condominium and/or on any future phase; and (e) to appoint or remove any officer or Director of the Association or any member of the Residential or Commercial Executive Committees during the Declarant Control Period.

1.67.1 "Special Declarant Rights Period" shall mean a period of time twenty (20) years from the date of recordation of this Declaration during which the Declarant or any Successor Declarant, may, in its discretion, exercise Special Declarant Rights.

1.68 "Successor Declarant" shall mean and refer to any party or entity Declarant and assigns any or all of its rights, obligations, or interests as Declarant and evidenced by an assignment of record in the Office of the Register of Deeds of Dare County, North Carolina, designating such party as Successor Declarant, assigned by the transferor and the transferee. Upon

such recording, Declarant's rights and obligations under the Declaration shall cease and terminate to the extent provided in such document.

1.69 "Unit" and/or "Condominium Unit" shall mean and refer to a portion of the Condominium intended for independent ownership and use, as more fully set forth and shown on the Plat and Plans consisting of enclosed rooms in the Building and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. For the purpose of defining a Unit, the terms set forth below shall be defined as follows:

1.69.1 "Unfinished Wall" shall mean and refer to the drywall which constitutes the interior face of a wall of a Unit.

1.69.2 "Unfinished Ceiling" shall mean and refer to the wooden trusses, unfinished drywall or other structural materials which constitute the ceiling of a Unit.

1.69.3 "Unfinished Floor" shall mean and refer to the wooden trusses which constitute the floor of a Unit.

The Condominium Unit shall include the drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, sub-flooring or floor covering, windows and window frames and glass, doorsteps, stoops, sliding doors to access balconies and their frames, and interior and exterior doors and door frames. A Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. A Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services to the Unit and located within the unfinished walls, ceilings and floors; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the Unit but serving more than one Unit.

1.70 "Unit Owner" shall mean and refer to the same meaning as Owner and means one or more persons, including the Declarant, who own a Condominium Unit. This term does not include a Mortgagee in his capacity as such, but shall include any person, firm, corporation or entity capable of holding title to real estate in North Carolina.

1.71 "Vote" shall mean and refer to the vote in the Association or Subassociation, as applicable, appertaining to each Condominium Unit

ARTICLE II
Creation of the Condominium

2.1 Submission to the Act. Declarant hereby submits all that real property described in Exhibit "B" to the Act, the same being shown more particularly as Phase One on the Plat, subject to the Development Rights of the Declarant to add additional Buildings and Condominium Units within Phases Two and Three. Phase One and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged and deeded in trust subject to the Act and the Condominium Instruments. Every person acquiring or having any interest in Phase One, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed to in writing, shall take such interest subject to the Act and to the Condominium Instruments and shall be deemed to have agreed thereto.

2.2 Name and Location. The name of the Condominium is "Rodanthe Sunset Resort Condominiums." The Condominium is located in the Village of Rodanthe on Hatteras Island, North Carolina.

2.3 Governing Provisions. The Condominium, the Association and each Unit Owner shall be governed by the Act, the Condominium Instruments, and any Rules of Conduct adopted by the Association pursuant to the Condominium Instruments.

2.4 Reservation of Future Phases. The Declarant hereby explicitly designates all of that property shown as Phase Two and Phase Three on the Plat for potential future development, neither parcel being presently submitted to the condominium regime created by this Declaration. During the Development Rights Period, the Declarant hereby explicitly reserves an option to submit all or any portion of Phase Two or Phase Three to the Condominium. The option to submit such land may be terminated only upon the filing of an amendment to the Declaration by the Declarant. The Declarant or any successor in interest reserves the right to submit any or all portions of Phase Two or Phase Three at any time, at different times, in any order, without limitations. There are no other limitations on the option to convert except as set forth in this Article.

2.5 Assurances. Any Buildings to be constructed within Phase Two or Phase Three will be compatible in quality, materials and style with Building "A" within the Condominium; however, the Declarant reserves the right to create Buildings with different facades that are not compatible. The Declarant expressly reserves the right to create convertible space and Limited Common Elements within the future phases and to designate Common Elements therein which may be subsequently assigned as either Individual Limited Common Elements or Individual Commercial Limited Common Elements. The allocation of General Common Element Interests in the future phases shall be computed as required by the Act on the basis of the approximate proportion that the floor area of each Unit within a Building bears in relationship to the relative percentage of each Building's square footage footprint to the aggregate floor area of all Units within all of the proposed Buildings.

ARTICLE III
Description of the Condominium

3.1 Submitted Property. The Submitted Property is described on Exhibit "B" and shown on the Plat as Phase One, and it includes all improvements thereon and all rights and easements appurtenant thereto. The location and dimension of the Units contained in Building "A" are shown on the Plat and Plans.

3.2 Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Plat and those numbers are set forth in Exhibit "C".

3.3 Location of Future Phases. The location of the land which may be added by the Declarant during the Development Rights Period is as set forth on the Plat and designated as Phase Two and Phase Three.

3.4 Condominium Units. Phase One consists of Building "A" consisting of six (6) three bedroom residential Condominium Units. Each Condominium Unit consists of the Unit together with its undivided interest in the General Common Elements. The Schedule of Unit Information attached hereto as Exhibit "C" sets forth each Condominium Unit: its identifying number and undivided interest in the General Common Elements, Vote(s) in the Association, and share of liability for General Common Expenses and its percentage interest of Limited Common Expenses in a Building.

Each Condominium Unit shall constitute for all purposes a separate parcel of real property which may be owned in fee simple and which, subject to the provisions of the Act and the Condominium Instruments, may be conveyed and encumbered like any other property. The undivided interest in the Common Elements for each Condominium Unit shall not be altered except as expressly provided by the Act and this Declaration. Such undivided interest shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner shall automatically be a member of the Association, which membership shall continue during the period of ownership of the Condominium Unit by such Unit Owner.

There is projected that there could be an additional two phases built on the land designated on the Plat as Phase Two and Phase Three which may include an additional residential building or buildings and which may include a commercial building or buildings which, if submitted to this Declaration by the Declarant, would become a part of the Condominium.

3.5 Unit Boundaries. Each Unit shall include all the space within the boundaries thereof. The parametrical or vertical boundaries of each Unit are the vertical planes of the interior surfaces of the wood framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the Limited Common Elements of the Building, and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors, if any. The parametrical Unit boundaries include the drywall on the Unit side of the walls, with the framing being a part of the Limited Common Elements of the Building, and they are extended to their intersection with each other and the upper and lower horizontal boundaries of the Unit. The lower horizontal boundary of each Unit is the plane of the upper surface of the sub-floor of that Unit, and the upper horizontal boundary of each Unit is the lower surface of the ceiling joists of the Unit, with such sub-floor and framing being a part of the Limited Common Elements of the Building. The upper and lower boundaries of each Unit include the wood, drywall, plaster or other material forming the ceiling or floor, as may be applicable, on the Unit side of such sub-floor or framing as the case may be and extend to their intersection with the parametrical boundaries of the Units. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit,

including without limitation, portions of the heating and air-conditioning system and the hot water heater are deemed to be a part of each Unit.

As provided in N.C.G.S. §47C-2-102, if any chutes, flues, ducts, conduits, wires, pipes or any other apparatus lies partially within or partially outside of the designated boundaries of a Unit, any portions thereof which serve only a Residential or Commercial Unit shall be deemed an Individual Residential Limited Common Element or an Individual Commercial Limited Common Element as may be applicable, while any portions of the Building thereof which serve more than one Unit or any portion of the Limited Common Elements of the Building shall be deemed a part of the Limited Common Elements of the Building. Further, any fan coil unit mounted above the ceiling of a Unit and the air-conditioning/heating unit located outside the Unit but serving that Unit only shall be deemed to be either an Individual Residential Limited Common Element or an Individual Commercial Limited Common Element.

In interpreting the Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any Plans or Plat, regardless of settling or lateral movement of the Building and regardless of minor variance between the boundaries shown on the Plans or in a deed and those variances between the boundaries shown on the Plans or in a deed and those of the Unit.

If an Owner acquires an adjoining Unit, thereby becoming the common owner of adjoining Units, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved and subject to the Board's approved Rules of Conduct) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or in part, be part of the Limited Common Elements of a Building, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Limited Common Elements of the Building, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium, is damaged, destroyed, or endangered. The alterations permitted by the preceding sentence shall not be deemed an alteration or relocation of boundaries between adjoining Units, nor an alteration of the allocated interest in the General Common Elements, nor an alteration of the allocated interest of a Unit's percentage of Limited Common Expenses or other

appurtenant rights or interests as such appears on the Schedule of Unit Information attached hereto as Exhibit "C".

3.6 Common Elements. The Common Elements shall include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) General Common Elements,
- (b) Limited Common Elements within a Building;
- (c) Commercial Limited Common Elements;
- (d) Residential Limited Common Elements;
- (e) Individual Residential Limited Common Elements; and
- (f) Individual Commercial Limited Common Elements.

3.7 General Common Elements. The General Common Elements shall be composed of all portions of the Condominium other than those items which are shown on the Plans, or designated in this Declaration as Units, Limited Common Elements, Commercial Limited Common Elements, Residential Limited Common Elements, Individual Residential Limited Common Elements or Individual Commercial Limited Common Elements. The General Common Elements shall include, without limitation:

- (a) The portion of the Land constituting Phase One, and any portions submitted in the future as parts of Phases Two or Three;
- (b) Landscaping within the General Common Elements and related lighting;
- (c) All parking and asphalt paving services;
- (d) All stormwater areas;
- (e) All force mains and catch basins;

- (f) All screened dumpster pads and gates;
- (g) All wastewater treatment facilities including all drainfield systems and active and repair areas;
- (h) directional signage;
- (i) bulkheading adjacent to Pamlico Sound;
- (j) Intentionally Omitted;
- (k) Intentionally Omitted;
- (l) soundfront amenities of Pamlico Sound other than the swimming pool, walkway and gazebo.

During the Declarant Control Period, the Declarant reserves the right to amend or alter the General Common Elements including, but not limited to, additional stormwater controls or reconfiguration of accessways to the swimming pool or soundfront amenities.

3.8 Limited Common Elements Within A Building. The Limited Common Elements within a Building shall include, without limitation:

- (a) All structural elements of the Building, including without limitation, the roof structure, foundation, load bearing walls, and all other structural elements;
- (b) Central components of the heating ventilation and air conditioning system, which serve more than one Unit in a Building; and
- (c) The exterior walls (not including windows and doors), the stairs leading thereto, and the roof of each Building.

3.9 Limited Common Elements Reserved to a Unit ("Individual Residential Limited Common Element" or "Individual Commercial Limited Common Element"). Limited Common Elements reserved to a Unit shall mean and refer to those parts of the Limited Common Elements of a Building which are reserved for the exclusive use of one or more but less than all of the Units and the Unit Owner which shall be deemed to be as applicable either an

Individual Residential Limited Common Element or an Individual Commercial Limited Common Element depending on whether the Unit is a Commercial Unit or a Residential Unit. Individual Limited Common Elements reserved for either a Residential Unit or a Commercial Unit existing at the time of the recordation of this Declaration consist of those portions of the HVAC system which serves a particular Unit within the Building for which components of said system are located outside of the Unit and attached to the Building. As shown on the Plans, each Residential Unit has an appurtenant assigned parking area, storage closet, and shower reserved for the exclusive use of Unit to which they are assigned, the same being Individual Residential Limited Common Elements.

3.10 Residential Limited Common Elements. The Residential Limited Common Elements shall be composed of those items, if any, designated on the Plans as Residential Limited Common Elements, and shall also include any other portions of the Condominium which serve and benefit the Residential Units exclusively. In particular, the swimming pool, walkway and gazebo are Residential Limited Common Elements, subject to the Permitted Activities.

3.11 Commercial Limited Common Elements. In the event the Declarant should, as a part of Phase Two or Phase Three, construct a Commercial Building, the Commercial Limited Common Elements shall be composed of those items, if any, designated on the Plans as Commercial Limited Common Elements, and shall also include any other portion of the Condominium which serve and benefit the Commercial Units exclusively. The Commercial Limited Common Elements shall include, without limitation, the right to place retail displays upon the General Common Elements directly adjacent to any respective Commercial Units; provided, however, that such rights shall not entitle any Commercial Unit Owners to violate any governmental ordinance, rule or regulation or interfere in any way with pedestrian access to any portion of the Condominium.

3.12 Undivided Interest of Owners in the General Common Elements. The percentage interest of the General Common Elements allocated to each Unit is proportionate to that Unit's percentage of square footage to the approximate aggregate square footage of all units in all of the proposed Buildings and is set forth in Exhibit "C" attached hereto. The percentages of undivided interest in the General Common Elements allocated to each Unit shall not be changed except with: (i) the unanimous written consent of the Owners of the Units whose undivided interest in the General Common

Elements are changed, together with the consent of the Mortgages of such Units; and (ii) the consent of the holders of sixty-seven percent (67%) of the votes in the Association, and the consent of fifty-one percent (51%) of the Mortgagees of such Units, and is specifically authorized elsewhere in this Declaration or in the Bylaws.

3.13 Restraint Upon Separation and Partition of General Common Elements.

3.13(a) The allocated interests in the General Common Elements which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described.

3.13(b) The allocated interests in the General Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

3.13(c) The allocated interest in the General Common Elements appurtenant to Units shall remain undivided, and no action for partition of the General Common Elements shall lie.

3.13(d) Any actual or attempted conveyance, encumbrance, partition or separation affecting the General Common Elements, the Limited Common Elements or a Unit shall be subject to the terms of this Declaration.

ARTICLE IV

The Association and Operation of the Condominium

4.1 Organization of Association. A North Carolina non-profit corporation known and designated as Rodanthe Sunset Resort Unit Owners' Association, Inc. (the "Association") has been organized to provide for the administration of the Condominium, and the Association shall administer the operation and maintenance of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act.

4.2 Residential Executive Committee. The Residential Executive Committee shall advise the Board of Directors regarding matters affecting the Residential Building(s). In addition to such other duties as may be delegated by the Board, the Residential Executive Committee shall have the responsibility

of preparing a preliminary annual budget of Residential Expenses for the use by the Board in preparing the annual budget of the Association, and shall serve as the Architectural Review Committee for the Residential Building(s). The Residential Executive Committee shall be comprised of three (3) Residential Members who shall be appointed by the Declarant during the Declarant Control Period and shall thereafter be appointed by the Board of Directors.

4.3 Commercial Executive Committee. The Commercial Executive Committee shall advise the Board of Directors regarding matters affecting the Commercial Building, if constructed. In addition to such other duties as may be delegated by the Board, the Commercial Executive Committee shall have the responsibility of preparing a preliminary annual budget of Commercial Expenses for the use by the Board in preparing the annual budget of the Association, and shall serve as the Architectural Review Committee for the Commercial Building. The Commercial Executive Committee shall be comprised of three (3) Commercial Members who shall be appointed by the Declarant during the Declarant Control Period and shall thereafter be appointed by the Board of Directors.

4.4 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration and the Act, the Association shall be responsible for the administration and operation of the Condominium including the delegation of respective duties to the Residential Executive Committee and the Commercial Executive Committee, and for the exclusive management, control, maintenance, repair, replacement and improvement of the Common Elements (including facilities, furnishings and equipment related thereto) and any Limited Common Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The expenses, costs and fees of such management operation, maintenance and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees. The Board of Directors will exercise for the Association all powers, duties and authority vested in or obligated to be taken by the Association and not reserved to Declarant or the other Members by this Declaration, the other Condominium Instruments or the Act.

4.5 Owner's Negligence. In the event that the need for maintenance, repair or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner, or by any

member of an Owner's family, or by an Owner's guests, invitees, licensees or tenants, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then the failure to so repay shall be a default by the owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment enforceable in accordance with Section 9.4 below.

4.6 Powers: Lien for Assessment. In the administration of the operation and management of the Condominium, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in the Bylaws, to file liens for unpaid assessments, and to adopt, promulgate and enforce such rules of conduct governing the use of the Units and Common Elements as the Board of Directors may deem to be in the best interest of the Association in accordance with the Bylaws. In the administration of the operation and management of the Condominium, the Association, subject to the provisions of N.C.G.S. §47C-3-105 and §47C-3-112, shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules of conduct governing the use of the Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C.G.S. §47C-3-102, including the right to assign future assessments, assessment rights and income of the Association.

4.7 Notice of Membership. Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded deed, vesting the person with the interest required to make him a Member. At the same time, the Member will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Condominium Instruments. In the event of any change in the facts reported in the original written notice, including any change of ownership, the member will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Member.

4.8 Owner's and Association's Addresses for Notices. All Owners of each Condominium Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Condominium Unit shall furnish such registered address to the Secretary of the Association within five days after transfer of title to the Condominium Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Condominium Unit or by such persons as are authorized by law to represent the interests of all Owners of the Condominium Unit.

4.9 Delegation by Association Board.

4.9(a) Delegation to Manager. The Association, acting through the Board, may employ or contract for the services of a Manager to act for the Association and the Board (or separate Managers acting on behalf of the Residential Section and Commercial Section) and the officers according to the powers and duties delegated to the manager(s) pursuant to the Bylaws or resolution of the Board. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a manager(s) of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

4.9(b) Committees. The Association, acting through the Board, may delegate any of its rights, duties or responsibilities as they deem appropriate to the Residential Executive Committee, the Commercial Executive Committee, or to any committee or other entity that the Board may choose to form.

4.9(c) Limitation. Any delegation by the Board under this Article IV is subject to compliance with the Act and the Bylaws and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Condominium Instruments and the Act.

4.10 Implied Rights and Obligations. The Association will perform all of the duties and obligations imposed on it expressly by the Condominium Instruments, together with every other duty or obligation reasonably to be implied from the express provisions of the Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Condominium Instruments, (ii)

reasonably to be implied from the existence of another right or privilege given expressly by the Condominium Instruments, or (iii) reasonably necessary to effectuate any such right or privilege.

4.11 Appointment of Officers, Directors, and Executive Members by Declarant. Until the expiration of the Declarant Control Period and subject to the limitations of the Act, Declarant will retain the exclusive powers to appoint and remove Directors and Officers of the Association and Members of the Executive Committee of the Commercial Section and Residential Section ("Declarant Appointments"). Notwithstanding the foregoing, Declarant may voluntarily surrender the right to Declarant Appointments before the end of the Declarant Control Period by providing a notice to that effect to the Association and otherwise complying with the procedures for termination of this Special Declarant Right, as set forth in the Bylaws. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Declarant Control Period, Declarant may require throughout the period of the Declarant Control Period (had it not been voluntarily terminated) that specified actions of the Association or the Board, as described in an instrument executed and recorded by Declarant in the Office of the Register of Deeds of Dare County, North Carolina, be approved by Declarant before those actions become effective. After the Declarant Control Period, the Directors and the Officers of the Association will be elected as provided in the Bylaws.

4.12 General Common Expenses.

4.12(a) Payment of Association Expenses. Each Unit Owner shall pay the General Common Expenses and other Common Expenses, as applicable, assessed by the Board of Directors of the Association. No Unit Owner may be exempted from liability for the assessment for such Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit.

4.12(b) Allocation of Expenses. General Common Expenses will be allocated to Unit Owners based on their Common Element Interest as shown on Exhibit "C" to the Declaration.

4.13 Relocation of Boundaries between adjoining Units. The Boundaries between adjoining Units may be relocated upon application to the Association by the Owners of those Units, subject to the approval of any Mortgagee of affected Units. Any such application to the Association must be in such form

and contain such data as may be reasonably required by the Association and be accompanied by a plat prepared by an architect licensed under the provisions of Chapter 83 of the General Statutes of North Carolina or an engineer registered under the provisions of Chapter 89C of the General Statutes of North Carolina detailing the relocation of the boundaries between the affected Units. If the Owners of the adjoining Units desire a reallocation between their Units of their allocated interests, the application must state the proposed reallocation. Unless the Association determines within 30 days that the reallocation is unreasonable, the Association, at the expense of the Owners filing the application, shall prepare and record an amendment to the Declaration that identifies the Units involved, states the reallocation, is executed by those Members and the Association, contains words of conveyance, and is indexed in the name of the grantor and the grantee by the Register of Deeds. The Association, at the expense of the Members filing the application, shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers. The Declarant is exempt from making application to subdivide any Commercial Unit during the Declarant Control Period.

4.14 Operation of the Residential Section.

4.14(a) Payment of Residential Expenses. Each Residential Unit Owner shall pay the Residential Expenses assessed by Association. No Residential Unit Owner may be exempted from liability for the assessment of Residential Expenses by reason of waiver of the use or enjoyment of any of the Residential Limited Common Elements or Individual Residential Limited Common Elements or by abandonment of the Residential Unit.

4.14(b) Collection of Assessments. The Association, or the Managing Agent at the request of the Association, shall take prompt action to collect any Assessments for Residential Expenses due from any Residential Unit Owner. Assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof shall incur a late charge in the amount of ten percent (10%) of the unpaid Assessment amount or twenty dollars (\$20) per month, whichever is greater. Unpaid Assessments shall bear interest at a rate of eighteen percent (18%) per annum, or the prevailing maximum interest rate allowed by the Act, whichever is greater. If a Residential Unit Owner is delinquent for more than thirty (30) days, the Association may file a claim of lien, and said claim of lien may be subsequently foreclosed upon by the Association pursuant to the procedures provided for in the Act. Delinquent Unit

Owners shall be liable to the Association for attorney's fees incurred by the Association for the enforcement of the Declaration and Bylaws.

4.14(c) Statement of Residential Expenses. Within ten (10) days from the receipt of a written request therefore, the Association shall provide any Residential Unit Owner, contract purchaser or Mortgagee with a written statement of all unpaid assessments for Residential Expenses from such Residential Unit Owner. The Association may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

4.14(d) Maintenance, Repair, Replacement and Other Common Expenses.

(1) By the Association. The Association shall be responsible for the maintenance, repair and replacement of all of the Residential Limited Common Elements, or improvements which by the provisions of the Declaration are exclusive to the Residential Unit Owners, as shown on the Condominium Plat and any other portion of the residential section required to be maintained by the Association pursuant to the Condominium Instruments, the cost of which shall be charged to all Residential Unit Owners as a Residential Expense (or against one (1) or more but less than all of the Residential Units as a Residential Limited Common Expense); provided, however, the Association may elect not to maintain, repair or replacement all or a portion of the Residential Limited Common Elements if in the opinion of a majority of the Board of Directors that such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Residential Unit Owner, in which event such Residential Unit Owner shall be responsible for such repair, replacement or maintenance and the cost thereof in accordance with the Bylaws. Alternatively, if the Board of Directors determines that such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Residential Unit Owner, the Association may undertake such repair or maintenance and assess the responsible Residential Unit Owner for all costs related thereto.

(2) By the Residential Member.

(i) Each Residential Member shall keep the Residential Unit and its equipment, appliances and appurtenances in good order, condition and repair an in a clean and sanitary condition. Each Residential Member shall

perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Members. Each Residential Member shall promptly report to the Residential Executive Committee or the Managing Agent any defect or need for repairs for which the Association is responsible.

(ii) The Owner of any Residential Unit to which an Individual Residential Limited Common Element (such as a balcony, window or the terrace) is appurtenant shall perform the normal maintenance for such Individual Residential Limited Common Element, including keeping it in a clean and sanitary condition, free and clear of snow, ice and any accumulation of water and shall also make all repairs thereto caused or permitted by such Residential Member's negligence, misuse or neglect.

(3) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality.

4.14(e) Additions, Alternation, Renovations or Improvements by the Association. Except during the Declarant Control Period, whenever in the judgment of the Board of Directors the Residential Limited Common Elements or Individual Residential Limited Common Elements shall require additions, alterations, renovations or improvements costing in excess of five (5%) percent of the Association's annual budget during the preceding fiscal year, the making of such additions, alterations, renovations or improvements shall require a Majority Vote of the Residential Unit Owners, and the Board of Directors shall assess the cost thereof as a Residential Expense if approved by the majority vote. Any additions, alterations, renovations or improvements costing five (5%) percent of the Association's annual budget or less during the preceding fiscal year may be made by the Board of Directors without special approval of the Residential Unit Owners and the cost thereof shall constitute a Residential Expense. Notwithstanding the foregoing, if, in the opinion of not less than eighty (80%) percent of the total members of the Board of Directors, such additions, alterations or improvements are for the benefit of less than all of the Residential Unit Owners, such Residential Unit Owners shall be assessed therefore in such proportion established by Section 4.12(b) herein.

4.14(f) Assessments for damages; fines; procedures for fines and suspension of privileges.

(1) If damage, for which a Unit Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on

any General Common Element or Limited Common Element, the Association may direct such unit owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Unit Owner.

(2) A hearing shall be held before the Board of Directors to determine if any Unit Owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the Association by the Act. The Unit Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens against the Unit in favor of the Association. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

4.15 Operation of the Commercial Section.

4.15(a) Payment of Commercial Expenses. In the event the Declarant should construct a Commercial Building on Phase Two or Phase Three, each Commercial Unit Owner shall pay the Commercial Expenses, including Limited Common Expenses, assessed by the Association pursuant to the provisions of the Bylaws. No Commercial Unit Owner may be exempted from liability for the assessment for Commercial Expenses by reason of waiver of the use or enjoyment of any of the Commercial Limited Common Elements or Individual Commercial Limited Common Elements or by abandonment of the Commercial Unit.

4.15(b) Collection of Assessments. The Association or the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any Assessments for Commercial Expenses due from any Commercial Unit Owner. Assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof shall incur a late charge in the amount of ten percent (10%) of the unpaid Assessment amount or twenty dollars (\$20) per month, whichever is greater. Unpaid Assessments shall bear interest at a rate of eighteen percent (18%) per annum, or the prevailing maximum interest rate allowed by the Act, whichever is greater. If a Commercial Unit Owner is delinquent for more than thirty (30) days, the

Association may file a claim of lien, and said claim of lien may be subsequently foreclosed upon by the Association pursuant to the procedures provided for in the Act. Delinquent Unit Owners shall be liable to the Association for attorney's fees incurred by the Association for the enforcement of the Declaration and Bylaws.

4.15(c) Statement of Commercial Expenses. Within ten (10) days from the receipt of a written request therefore, the Association shall provide any Commercial Unit Owner, contract purchaser or Mortgagee with a written statement of all unpaid assessments for Commercial Expenses from such Commercial Unit Owner. The Commercial Executive Committee may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

4.15(d) Maintenance, Repair, Replacement and Other Common Expenses.

(1) By the Association. The Association shall be responsible for the maintenance, repair and replacement of all of the Commercial Limited Common Elements, or improvements which by the provisions of the Declaration are exclusive to the Commercial Unit Owners, as shown on the Condominium Plat and any other portion of the Commercial Section required to be maintained by the Association pursuant to the Condominium Instruments, the cost of which shall be charged to all Commercial Unit Owners as a Commercial Expense (or against one (1) or more but less than all of the Commercial Units as a Commercial Limited Common Expense); provided, however, the Board of Directors may elect not to maintain, repair or replacement all or a portion of the Commercial Limited Common Elements if in the opinion of a majority of the Board of Directors such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Commercial Unit Owner, in which event such Commercial Unit Owner shall be responsible for such repair, replacement or maintenance and the cost thereof in accordance with the Bylaws. Alternatively, if the Board of Directors determines that such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Commercial Unit Owner, the Association may undertake such repair or maintenance and assess the responsible Commercial Unit Owner for all costs related thereto.

(2) By the Commercial Member.

(i) Each Commercial Member shall keep the Commercial Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition. Each Commercial Member shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Members. Each Commercial Member shall promptly report to the Commercial Executive Committee or the Managing Agent any defect or need for repairs for which the Association is responsible.

(ii) The Owner of any Commercial Unit to which an Individual Commercial Limited Common Element is appurtenant shall perform the normal maintenance for such Individual Commercial, including keeping it in a clean and sanitary condition, and shall also make all repairs thereto caused or permitted by such Commercial Member's negligence, misuse or neglect.

(3) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality.

4.15(e) Additions, Alteration, Renovations or Improvements by the Commercial Executive Committee. Except during the Declarant Control Period, whenever in the judgment of the Board of Directors the Commercial Limited Common Elements or Individual Commercial Limited Common Elements shall require additions, alterations, renovations or improvements costing in excess of five (5%) percent of the Association's annual budget during the preceding fiscal year, the making of such additions, alterations, renovations or improvements shall require a Majority Vote of the Commercial Unit Owners, and the Board of Directors shall assess the cost thereof as a Commercial Expense if approved by the majority vote. Any additions, alterations, renovations or improvements costing five (5%) percent of the Commercial Executive Committee's annual budget or less during the preceding fiscal year may be made by the Commercial Executive Committee without special approval of the Commercial Unit Owners and the cost thereof shall constitute a Commercial Expense. Notwithstanding the foregoing, if, in the opinion of not less than eighty (80%) percent of the total number of members of the Board of Directors, such additions, alterations or improvements are for the benefit of less than all of the Commercial Unit Owners, such benefitting Commercial Unit Owners shall be proportionally assessed therefore.

4.15(f) Assessments for damages; fines; procedures for fines and suspension of privileges.

(1) If damage, for which a Unit Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any General Common Element or Limited Common Element, the Association may direct such Unit Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Unit Owner.

(2) A hearing shall be held before the Board of Directors to determine if any Unit Owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the Association by the Act. The Unit Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens against the Unit in favor of the Association. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

4.16 Architectural Review and Approval. Except for ordinary and routine maintenance to a Unit, no construction or alteration of the interior or exterior of a Unit shall be commenced, nor shall any such construction or alteration be allowed to remain, until, in the case of a Residential Unit, the "Residential Architectural Review Committee" has approved in writing the plans therefor and, in the case of a Commercial Unit, the "Commercial Architectural Review Committee" has approved in writing the plans therefor. The two Architectural Review Committees (collectively the "ARCs") shall be comprised of the members of the Residential Executive Committee and the Commercial Executive Committee respectively. Subject to approval by the Board of Directors, the ARCs shall promulgate standards for repair and replacement of exterior doors and windows and the Residential ARC may promulgate standards for Residential Unit window treatments and for the replacement of hot tubs situated on the Individual Residential Limited Common Element balconies, and Unit Owners may repair or replace such features without further approval so long as ARC standards are met. All other construction shall require submission of plans to the ARCs for review and approval at least thirty (30)

days prior to the commencement of any such work. The ARCs may promulgate standards for the composition of interior flooring (subject to approval by the Board of Directors), but other aesthetic consideration shall be in the discretion of the Unit Owner. ARC review of interior construction shall be limited to impacts on interior and exterior walls and impacts on the Common Elements and Limited Common Elements of the Condominium, and the ARC may deny applications that the ARC determines, in its discretion, will adversely impact the Condominium Building. Any application upon which the ARC fails to act within thirty (30) days of submission shall be deemed approved. Requests by the ARC for additional information shall be deemed a determination that the application was incomplete, and the thirty (30) day time period will run from resubmission by the Unit Owner. On any application, the ARC may approve, deny, conditionally approve, or request additional information. ARC review procedures shall be determined by the Association Board of Directors and published to the Residential and Commercial Unit Owners. Nothing in this Section shall be interpreted to create a right in the Unit Owner to modify, alter, amend, construct or reconstruct any Common Elements, the same being strictly prohibited. Appeals from a decision by either ARC shall be to the Board of Directors and shall be brought within fifteen (15) days of the ARC decision.

ARTICLE V **Easements**

5.1 Preamble. In addition to the easements created by the Act, the easements described in this Article V from each Owner to each other Owner, to the Association and to the Declarant are hereby granted, reserved and established, subject to and in accordance with the following terms and conditions:

5.2 Use and Enjoyment of Common Elements. Subject to the Special Declarant Rights reserved to Declarant in this Declaration and the provisions of N.C.G.S. §47C-3-1.12, all of the Common Elements, except the Limited Common Elements, shall be and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units, subject to the following provisions and limitations:

5.2(a) The right of Owners to the exclusive use of the Limited Common Elements appurtenant to their respective Units.

5.3 Structural Support. Every portion of a Unit or the Common Elements which contributes to the structural support of another Unit or the Common Elements shall be burdened with an easement of structural support. No Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.

5.4 Utilities. To the extent that any utility line, pipe, wire or conduit serving any Unit or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit or the Common Elements shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit or Common Elements served by the same and the Association.

5.5 Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, an easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event that the Building, any Unit, any adjoining Unit, or any adjoining portion of the Common Elements shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation proceedings, and then be repaired or reconstructed, encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such repair or reconstruction, shall be permitted, and easements for such encroachments and the maintenance, repair and replacement thereof shall exist. This easement is intended to apply to only the extent necessary and does not deprive another of a substantial property right of use.

5.6 Encroachment Easements. Whenever building lines, or private plantings encroach upon the Common Elements, the Owner of the affected Unit is hereby granted a perpetual easement for the use of that portion of the Common Elements which is burdened with the encroachment.

5.7 Maintenance and Repair. There shall be an easement in favor of the Declarant, the Association and the Unit Owners through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement of Units and the Common Elements. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

5.8 Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agency and employees (including, but not limited to any manager employed by the Association) to enter upon the Condominium or any portion thereof and to enter or take access through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and operation of the Condominium and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representatives and employees, such access through such Owner's Unit as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon advance notice to and with the permission of the Owner or Occupant of a Unit directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Elements for the installation, maintenance, repair and replacement of utilities, roads and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

5.9 Declarant's Easements. 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.

5.10 Easements To Run With Land. All easements and rights described in this Article V are appurtenant easements running with the land, and except as otherwise expressly provided in this Article V 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 V, whether or not specifically mentioned in any such conveyance or encumbrance.

5.11 Sales Activity. For as long as there are any Units owned by the Declarant, the Declarant, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association property for guest accommodations, model apartments and sales, to show model Units in the Condominium to prospective purchasers and tenants of Units, and to erect on the Common Elements signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium.

5.12 Emergency Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Condominium in the performance of their official duties including any property manager of the Condominium.

5.13 Agreement to Grant Additional Easements. If additional easements between portions of the Condominium are reasonably necessary to effectuate the purposes of this Declaration, provided said proposed additional easements will not unreasonably interfere with the use and occupancy of any portion of the Condominium burdened by the proposed additional easements, unreasonably affect access to, or the operation of, any portion of the Condominium burdened by the proposed additional easements or unreasonably increase the operating cost of, or create any other additional expense for, the portion of the Condominium burdened by the proposed additional easements, each Owner, and its applicable Mortgagee, hereby agrees to use its best efforts to agree upon, determine and grant such additional easements. No abandonment of any of the easements created by this Declaration shall be deemed to exist in the absence of a written agreement by the Owners whose property is benefited by the easement being abandoned; provided, however, that each Owner agrees to execute such a written agreement promptly upon demand of the other Owners at such time as any such easements created by this Declaration are no longer needed and not reasonably anticipated to be needed in the future in connection with construction, reconstruction or restoration as permitted by this Declaration.

There shall be no merger of the easements created by this Declaration and fee title to any portion of the Condominium in the absence of a written agreement executed by the holders of all such interests.

5.14 Easements Appurtenant. Easements, uses and rights created herein for an Owner shall be appurtenant to its Unit, and all conveyances of and any other instruments affecting title to a Unit will be deemed to grant and reserve the easements, rights and uses provided for herein, even though no specific reference to such easements, uses and rights appears in any such instrument. Each Owner, whose Unit is subject to an easement created by this Declaration, may use the Easements granted herein for the purposes permitted in this Declaration not inconsistent with such easement and shall also have the right to temporarily interrupt the use of such easements as may be necessary in order to perform repair work to the Units, provided that the temporary interruption does not materially interfere with the use and occupancy of another Unit.

5.15 Perpetual Non-Exclusive Easement Granted to Kitty Hawk Kites, Inc. ("Kitty Hawk Kites") over portions of the General Common Elements. It is hereby reserved and granted to Kitty Hawk Kites and its assignees and successors in interest a perpetual non-exclusive easement to and from NC Highway 12 over portions of the General Common Elements and Limited Common Elements of the Condominium and in particular those portions of the General Common Elements and Limited Common Elements abutting Pamlico Sound to permit Kitty Hawk Kites and its invitees to conduct kite flying and other water sport activities sponsored by Kitty Hawk Kites (the "Permitted Activities") which Permitted Activities shall also include the right of Kitty Hawk Kites to host special events on the General Common Elements (such as weddings and family reunions) which Permitted Activities shall include the right to display kites, feather banners, flags, garden spinners, displays and tents, and the non-exclusive right to use the swimming pool, wooden walkway and gazebo.

ARTICLE VI Restrictions on Use

6.1 Compliance with Declaration, Bylaws and Rules and Regulations. Every Unit Owner and occupant of a Unit shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation or other governing document of the Association, and Rules and Regulations

promulgated by the Board of 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, injunctive relief and/or other relief and/or combination thereof, including, but not limited to, reasonable attorney fees.

6.2 Residential Units. All Residential Units shall be used for residential purposes only; provided, however, that the Residential Units also may be used for home office purposes by the residents of such Residential Units. Notwithstanding the foregoing, Declarant may maintain any Unit owned by Declarant as a sales office or model Unit. Under no circumstances may any Residential Unit be used for "Mercantile" purposes, as that term is defined in the North Carolina State Building Code, Volume I – General Construction.

6.3 Commercial Units. All Commercial Units shall be used only for lawful commercial purposes reasonably compatible with the operation of a mixed-use condominium and not in violation of any of the foregoing restrictions:

6.3(a) No Commercial Unit shall be used as a wholesale establishment in which goods, products or merchandise are stored on the premises for sale or lease to persons who are intermediaries between the producer and the consumer.

6.3(b) No Commercial Unit shall be used for the manufacture, assembly, processing, or fabrication of goods or materials.

6.3(c) No Commercial Unit shall be used as a flea market or other operation selling used merchandise, a pawn shop, a military surplus store, or for the sale or display of pornographic materials or drug paraphernalia.

6.3(d) No Commercial Unit shall be used exclusively as a bar (a bar may be an accessory used within a restaurant), nightclub, massage parlor, cabaret restaurant, laboratory, child care home or facility, orphanage, school, laundry or dry cleaning establishment (other than a drop-off and pick-up facility only), theatre, religious institution, police or fire station, jail, convent, community recreation center, repair shop, post office, tourist house, exterminator, locksmith, gunsmith or gun dealer, crematorium, funeral home, bus passenger station, nursing home, any adult establishment as defined in the zoning ordinance of Dare County, North Carolina, reprographics store, or photographic processing store or lab.

6.3(e) No Commercial Unit shall be used for warehousing, distribution or storage of goods and materials, other than storage for later use, sale, or consumption on the premises.

6.3(f) No Commercial Unit shall be used in a manner that generates objectionable odors (including but not limited to cooking odors or chemical odors) or sounds that can be perceived outside the boundaries of that Unit.

6.4 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium, nor shall any use be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium by its residents, occupants or guests. No activity specifically permitted by this Declaration shall be deemed a nuisance.

6.5 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of the Condominium Instruments, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.

6.6 Antennas or Satellite Dishes. No Owner shall install any receiving or transmitting device which requires any exterior protrusion whatsoever. Direct broadcast satellite antennas (satellite dishes) must be one meter (39 inches) or less in diameter. All antennas not covered by or otherwise exempt from FCC regulations are prohibited. Antennas shall be installed solely inside the Unit or on Limited Common Elements assigned to the Unit as designated on the Plat and Plans. Installation of an antenna on a Limited Common Element does not convert the Limited Common Element to individual property. Placement of antennas on Common Elements, including specifically the roof or exterior walls of the Condominium, is strictly prohibited. Nothing in this section shall be

interpreted to require the Association to provide satellite reception to a Unit that, because of orientation or elevation, cannot otherwise obtain such reception.

6.7 Residential Unit Balconies and Exterior Displays.

6.7(a) All balconies and decks which are Limited Common Elements of Residential Units shall be maintained in a neat and orderly appearance by the Owner of the Unit for which it is intended. Balconies and decks shall not be used for storage. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas of same that are normally and customarily used for a residential balcony area. Grills or other cooking units are strictly prohibited on all Residential Unit balconies.

6.7(b) There shall be no exterior protrusions in any manner from a Residential Unit or from the balconies or decks of any Residential Unit. No flags or pennants of any kind shall be allowed to be attached to the exterior of any Residential Unit, including doors and windows, or balconies or decks. No flags, signs or other displays shall be posted or attached to any Residential Unit interior, including but not limited to the interior surface of windows, in such a manner as to be visible from any Common Element of the Condominium or any adjacent parcels or roadways.

6.7(c) A Unit Owner shall have the right to keep and maintain one (1) hot tub on the Residential Unit balcony in the designated "hot tub area" as shown on the Plans, provided such hot tub may not exceed eighty five (85) pounds per square foot in weight when full or exceed eight seven inches (87") in either length or width, and subject to regulation by the Association (acting through the Residential Executive Committee and the Architectural Review Committee) with regard to color and model and other aesthetic and safety concerns.

6.8 Odors. No Unit Owner shall not permit any offensive odors originating from its Unit to permeate any portion of the Condominium owned by the other Unit Owner; provided, however, that both Unit Owners recognize that it is difficult to control odors within the certain food preparation and garbage storage areas due to the nature of the use of those areas and, although reasonable steps to minimize odors from those areas will be taken, the provisions of this section shall be interpreted to give due consideration to the difficulty in controlling odors in these areas.

6.9 Increased Insurance Costs. No Unit Owner shall use its portion of the Condominium in a manner that will increase the cost of insurance for the other Unit Owner unless the Unit Owner making such use reimburses the other Unit Owner for the increased insurance costs.

6.10 Prohibited Uses. No Unit Owner shall use its Unit for any matter which emits obnoxious noise or sound levels which would disturb guests of the Condominium; and each Unit Owner will conduct its use in a manner which does not unreasonably interfere with the other Unit Owner.

6.11 Hazardous Materials. Each Unit Owner agrees that it will not generate, use, store or dispose of any hazardous materials or substances on or from any portion of the Condominium except in full compliance with all legal requirements and each Unit Owner shall indemnify and hold the other Unit Owner, its officers, directors, Mortgagees, agents, employees and representative harmless from and against all claims, losses, damages, expenses and liabilities (including reasonable attorneys' fees at all tribunal levels and in connection with all proceedings, whether or not suit is instituted) arising from or in connection with the breach by the indemnifying Unit Owner of the foregoing agreement.

6.12 Occupants Bound. All provisions of the Declaration and of any use restrictions and Rules of Conduct promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Unit.

6.13 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Association.

6.14 Signs. No signs or other advertising devices shall be displayed on or about the exterior of any Residential Unit, or in the Common Elements, except for one or more exterior signs for each Commercial Unit, erected in conformance with applicable sign ordinances. Furthermore, no signs or other displays, whether political or commercial in nature or otherwise, shall be posted or attached to the interior of any Unit so as to be visible from the

Common Elements of the Condominium or from any adjacent parcel or roadway. Notwithstanding the foregoing, Declarant shall have the right to maintain advertising signs upon the Condominium so long as Declarant owns one or more Units that it is offering for sale, provided those signs comply with applicable governmental regulations.

6.15 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on the Condominium or in any dwelling located thereon except common household pets be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes. No individual dog shall exceed eighty (80) pounds. A Unit Owner may keep up to two (2) dogs or cats, provided that no individual animal exceeds forty (40) pounds. All pets must be spayed or neutered. No aquarium with a capacity greater than twenty (20) gallons may be kept in any Unit. All cats must be kept indoors at all times. All dogs must be kept on a leash when outdoors; dogs are not permitted in the swimming pool area. Pit Bulls (a/k/a American Staffordshire Terriers, Staffordshire Bull Terriers, or American Pit Bull Terriers), Bull Terriers, Bull Mastiffs, Rotweilers, Chow Chows, and Rhodesian Ridgeback breeds, and dogs mixed with these breeds, are prohibited. Birds (except those that are caged and weigh less than one (1) pound), chinchillas, ferrets, iguanas, monkeys, pot bellied pigs, rabbits, raccoons, rodents of any kind, skunks, snakes or reptiles of any kind, tarantulas or spiders of any kind, scorpions, and weasels are also prohibited.

All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Condominium. Pets shall not be permitted to defecate in the Common Elements, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered and inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Elements caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Condominium upon not less than ten (10) days' written notice.

6.16 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in

any Unit without permission of the Association. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located.

6.17 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square foot, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association.

6.18 Residential Unit Windows. No window treatments of any sort for any Residential Unit (including but not limited to curtains, draperies, blinds, or shutters) shall be installed or hung in any window of any unit, except for a uniform "standard" window treatment that may be promulgated by the Architectural Review Committee (and approved by the Board of Directors) from time to time. No storm windows shall be installed in any Unit. The window panes and plate glass in any Unit shall not be removed, except temporarily for cleaning, without the prior written approval of the Association, and any broken or damaged window pane or plate glass shall be replaced promptly by and at the expense of the Owner, except if such replacement is covered by insurance maintained by the Association.

6.19 Maintenance. Except for repairs or replacements covered by insurance maintained by the Association, the Owner of each Unit is responsible for maintaining his Unit as well as the Individual Limited Common Elements appurtenant thereto. Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

6.20 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Condominium may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request. Notwithstanding the foregoing, the Association shall not have the right to adopt a rule or regulation that materially restricts a then-existing lawful use being conducted in a Commercial Unit without the prior written consent of the Owner of that Commercial Unit. In

addition, the Owners of the Commercial Units shall have the right to adopt, by unanimous vote, rules and regulations applicable only to the operation of the businesses conducted in the Commercial Units.

6.21 Parking. No vehicle may be parked on the Condominium except wholly within those portions of the parking lot that are striped and designated as parking spaces, and in particular no such vehicle shall block the entrance drive. The parking rights of Owners or their guests are subject to any rules or regulations that may be promulgated by the Association.

No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Condominium at any time except in an area designated on the Plat for such use; Phase One does not contain an area for such parking, but the Declarant may, in its discretion, create such an area in Phase Two or Phase Three. If such a parking area is created, the Declarant and, subsequently, the Association, may lease such parking areas to Unit Owners on a first come, first served basis.

No significant automobile repair shall be allowed on the Condominium, and no inoperable or abandoned vehicle may be kept or stored on the Condominium at any time. The Association shall have the right to tow any vehicle in violation of this Section 6.21 at its owner's expense. The maximum number of vehicles maintained on the Common Elements for each Unit is two (2) vehicles.

6.22 No Timeshares or Nightly Rentals. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10). Individual Unit bedrooms may not be rented or advertised for rent on a nightly or weekly basis or used or occupied in a similar manner to hotel rooms.

6.23 Amendment During the Declarant Control Period. During the Declarant Control Period, the Declarant may amend, delete or add to the Rules and Regulations at its sole discretion and said amendment or additions shall be effective upon distribution in writing to the Owners.

6.24 Enforcement. The Association, or the Board acting on behalf of the Association, may take such action as it deems advisable to enforce these Occupancy and Use Restrictions as provided in this Declaration. In addition, the Association and the Board shall have a right of entry on any part of a Unit or the Common Elements for the purposes of enforcing this Article, and any

costs incurred by the Association or the Board in connection with such enforcement which remain unpaid 30 days after the Association has given notice of the cost to the Owner and otherwise complied with the Act shall be subject to interest at the Default Rate from the date of the levy by the Association or the Board through the date of payment in full by the Owner, and shall be treated as a Default Assessment enforceable as provided in Section 9.4 below.

ARTICLE VII Property Rights Of Owners

7.1 Owner's Easements of Access and Enjoyment. Every Owner has a perpetual, non-exclusive easement for use and enjoyment of the General Common Elements, which easement is appurtenant to and shall pass with the title to every Condominium Unit, subject to the following provisions:

7.2 Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Elements to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable Rules of Conduct of the Association and the other Condominium Instruments.

7.3 Easements for Encroachments. The Condominium, and all portions of it, are subject to easements hereby created for encroachments (so long as such encroachments exist) between Condominium Units and the Common Elements as follows:

7.3(a) In favor of all Owners so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

7.3(b) In favor of each Owner of each Unit so that the Owner shall have no legal liability when any part of his or her Unit encroaches upon the Common Elements or upon another Unit;

7.3(c) In favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments. Encroachments referred to in this Section 7.3 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of any Building, by error in the Condominium Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or

reconstruction of any part of the Condominium. Such encroachments shall not be considered to be encumbrances upon any part of the Condominium.

7.4 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements herein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Subject to the provisions of Section 4.5 above, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of Owners shall be a Common Expense.

ARTICLE VIII

Declarant Control, Future Development Rights, Special Declarant Rights, and Additional Reserved Rights

8.1 Declarant Control. Declarant hereby reserves unto Declarant, and it is hereby provided to Declarant during the Declarant Control Period, and to the maximum period permitted by Section 3-103 of the Act, the right to control the Association pursuant to the provisions of Section 3-103 of the Act. During this period, the Declarant, or persons designated by the Declarant, shall have the right to appoint and remove the officers and members of the Board of Directors of the Association.

8.2 Development Rights. Declarant hereby reserves unto the Declarant, and it is hereby provided to Declarant during the Development Rights Period, the right to exercise any Development Rights. Specifically included among these Development Rights is the right of the Declarant, in Declarant's sole discretion, to add Future Phases 2 and 3 as shown on the Plat. In connection with the exercise of these Development Rights, Declarant shall have the absolute right to connect to, modify (including installation of new components), expand, excavate, and conduct any or all other construction activities necessary within the Wastewater Area in Phase One as shown on the Plat. Declarant shall also have the right to modify, alter, or expand the

retention basins and other stormwater controls on the Common Elements of Phase One as may be necessary to facilitate the exercise of the Development Rights hereunder. Declarant shall have the further right to connect drive aisles and parking areas between Phase One and Phases Two and Three, and to conduct such work with the Common Elements of Phase One as may be necessary to facilitate utility connections for Phases Two and Three.

Declarant provides no assurances as to the order in which any future phase of the Condominium may be added, or if any future phase will be added to the Condominium at all. Further, if Declarant should exercise Development Rights in any portion of Future Phases 2 or 3 as shown on the Plat, Declarant may, but is not required to and provides no assurances of, exercise Development Rights on any portion of any remainder of Future Phases 2 or 3 as shown on the Plat.

8.3 Special Declarant Rights - During Declarant Control Period. During the Declarant Control Period, the Declarant shall have the following Special Declarant Rights:

8.3(a) The right to appoint any officer or director of the Association and Executive Committees, as provided in this Declaration or the Bylaws, but subject to the limitations of the Act;

8.3(b) The right to enter into a Contract with either an affiliate of Declarant or a third party for the purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance and management of the Condominium;

8.3(c) The right to promulgate and amend the Bylaws of the Association and any Rules and Regulations.

8.4 Special Declarant Rights - During Special Declarant Rights Period. During the Special Declarant Rights Period, the Declarant shall have the following Special Declarant Rights:

8.4(a) The right to construct and complete each Building and the Units contained therein, including any future Buildings that may be built on Phase Two or Phase Three;

8.4(b) The right to maintain a sales office, signs advertising the Condominium and up to one model Condominium Unit in each Building. The offices, model Unit and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Unit and signs will remain the property of Declarant.

8.4(c) The right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the improvements within the Condominium that has not been represented as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing, and construction, regardless of whether they have become fixtures.

8.4(d) The right to amend this Declaration in connection with the exercise of any development rights or any other Special Declarant Rights to the extent permitted by the Act, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in any other provisions of this Declaration.

8.5 Interference with Development Rights and Special Declarant Rights.

8.5(a) Neither the Association nor any Unit Owner may take any action or adopt any Rules of Conduct that will interfere with or diminish any Development Right or Special Declarant Right without the prior written consent of Declarant.

8.5(b) In relation to Declarant's exercise of any Development Right or Special Declarant Right, the provisions of the Declaration which prohibit or require approval of construction of or additions or alterations to any improvements shall not be applicable.

8.6 **Assignment of Declarant's Rights and Duties.** Any and/or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person which will assume any and/or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and to the extent thereof, Declarant shall be relieved from all

liabilities, obligations, and duties hereunder. Declarant may limit and restrict the rights and powers which are assigned to any person, corporation, or association in the instrument which assigns such rights. The term "Declarant" as used herein includes all such assignees and their successors and assigns, subject to such restrictions or limitations as may be imposed in the instrument assigning such rights. As part of the reserved rights of assignment provided herein, Declarant contemplates that a third party may be transferred rights to development portions of Phase Two or Phase Three.

8.7 Easements. All rights of easements set forth in Article V above.

ARTICLE IX Assessments

9.1 Creation of Lien and Personal Obligation for Assessments. Declarant, by creating the Condominium Units pursuant to this Declaration, hereby covenants, and each Owner of any Condominium Unit, by accepting a deed for a Condominium Unit, whether or not it shall be so expressed in such deed or other instrument of transfer, is deemed to covenant to pay to the Association: (1) Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the General Common Elements, to fund reserves and replacements as provided in the Bylaws to generally carry out the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Condominium Unit for the Owner's failure to perform an obligation under the Condominium Instruments or because the Association has incurred an expense on behalf of the Owner under the Condominium Instruments.

All Assessments, together with fines, interest, costs, reasonable attorneys' fees and other charges allowed under the Act, shall be a charge on the Unit and shall be a continuing lien upon the Condominium Unit until paid subject to the provisions of Section 47C-3-116 of the Act.

Each such Assessment, together with fines, interest, costs, and reasonable attorneys' fees and other charges allowed under the Act, shall also be the personal and individual obligation of the Owner of such Condominium Unit as of the time the Assessment falls due, and two or more Owners of a

Condominium Unit shall be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment or leasing of his Condominium Unit or by waiver of the use or enjoyment of the Common Elements. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment liens provided in this Declaration.

9.2 Determination of Common Expenses and Assessments against Unit Owners. The determination of Common Expenses and Assessment against Unit Owners is provided in Article VII Operation and Management of the Condominium of the Bylaws.

9.3 Determination of Assessments and Preparation and Approval of Budgets. The method for preparation and approval of a Budget and the determination of General Common Expense by the Association's Board of Directors is set forth in Article VII of the Bylaws. The method for preparation and approval of a Budget and the determination of assessments against Residential Unit Owners by the Residential Executive Committee is set forth in Article XI of the Bylaws. The method for preparation and approval of a Budget and the determination of assessments against Commercial Unit Owners by the Commercial Executive Committee is set forth in Article XV of the Bylaws.

9.4 Default Assessments. All monetary fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Condominium Instruments, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Condominium Instruments, and any expense (including without limitation reasonable attorneys' fees) incurred by the Association as a result of the failure of an Owner to abide by the Condominium Instruments, constitutes a Default Assessment, enforceable as provided in this Declaration below and in accordance with the Act.

9.5 General Remedies of Association for Nonpayment of Assessment. Any installment of an Annual Assessment or a Special Assessment which is not paid within the time period established from time to time by the Board shall be delinquent. If such an Assessment installment becomes delinquent, or if any Default Assessment is levied, the Association, in its sole discretion, may take any or all of the following actions:

9.5(a) Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

9.5(b) Charge interest from the date of delinquency at the Default Rate;

9.5(c) Suspend the voting rights of the Owner during any period of delinquency;

9.5(d) Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

9.5(e) Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

9.5(f) File a statement of lien with respect to the Condominium Unit and foreclose as set forth in more detail below.

The remedies provided under this Declaration shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

9.6 Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except (a) the lien for real estate taxes on that Condominium Unit, and (b) the lien of a mortgage securing sums unpaid to a First Mortgagee or other lien or encumbrance recorded prior to the perfection of said lien for Assessments. Except as provided in Section 9.7 hereof and Section 47C-3-116 of the Act, the sale or transfer of any Condominium Unit shall not affect the Assessment lien.

9.7 Statement of Assessment Status. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association for such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

9.8 Initial Contribution to Reserves and Replacements. Upon the sale and closing of the purchase of each Unit in Building "A" by the Declarant to a person other than Declarant, the purchaser of each Unit shall pay a non-refundable contribution to the Reserves and Replacements Fund of the Association in an amount of \$1,150.00, or an amount equivalent to two months of the prevailing Assessment rate, whichever is greater. The Declarant reserves the right to declare a different amount due for Units in Phases Two and Three via supplemental declaration, if said Phases are added to the Condominium.

9.9 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

ARTICLE X **Insurance**

10.1 Authority to Purchase. Except as provided in Section 10.10 below, all insurance policies relating to the Condominium shall be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Managing Agent and Declarant shall not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable cost.

10.2 Notice to Owners. The Board of Directors shall promptly furnish to each Owner written notice of materially adverse changes in, cancellation or termination of, insurance obtained on behalf of the Association under this Article, such notice to be delivered to all Owners by such methods as required by the Act. The notice (which may be issued in the form of a subpolicy relating to a master policy, if the Board of Directors obtains a master policy), shall specify the insurance coverage in effect on the Owner's Condominium Unit.

10.3 General Insurance Provisions. All such insurance coverage obtained in accordance with this Article shall conform to any minimum requirements of the Act, and, to the extent not inconsistent with the Act, the following provisions:

10.3(a) As long as Declarant owns any Condominium Unit, Declarant shall be protected by all such policies in the same manner as any Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims against Declarant as the developer of the Condominium.

10.3(b) Depending on the area within the Condominium (whether General Common Elements or one or more Condominium Units) damaged or destroyed and covered by an insurance claim submitted on behalf of the Association, the deductible amount, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments allocable to all of the Condominium Units or to only some of the Condominium Units, if the claims or damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners, or as an item to be paid from working Capital Improvement Fund established by the Board of Directors. The Association may enforce payment of any amount due from an individual Owner toward the deductible as a Default Assessment in accordance with Sections 9.4 above.

10.3(c) Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage obtained by the Board of Directors pursuant to this Article shall be a Limited Common Expense of a particular Building to be paid by regular Assessments. The Board of Directors shall make appropriate allocations of the cost of any insurance carried by the Association for the benefit of a particular Owner.

10.4 Property Damage Insurance. The Association shall obtain and maintain in full force and effect property damage insurance on all insurable improvements located on or constituting part of the Condominium (including, without limitation, the Common Elements and the Units, together with, unless the Board of Directors directs otherwise, the fixtures, equipment and other

personal property initially installed in the Units and replacements thereof up to the value of those initially installed by Declarant, but not including, furniture, wall coverings, improvements, additions or other personal property supplied or installed by Owners), together with all fixtures, building service equipment and common personal property supplies of the Association, and heating equipment and other service machinery contained therein. The insurance shall be carried in an amount equal to eighty (80%) percent of the replacement value (i.e., 80% of the current replacement cost" exclusive of land, foundation, excavation, depreciation on personal property and other items normally excluded from coverage). Such insurance shall afford protection against at least the following:

10.4(a) Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard "special form" (formerly known as "all-risk") endorsement;

10.4(b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use to the Condominium. The Board shall obtain property damage insurance covering all personal property owned by the Association.

10.5 Liability Insurance. The Association shall obtain and maintain in full force and effect commercial general liability insurance (including bodily injury, libel, slander, false arrest and invasion of privacy coverage) and property damage insurance with such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Executive Committees, the Association, the Manager, and the employees and agents of the Association and the Manager against any liability to the public or the owners (and their guests, invitees, tenants, agents and employees) arising out of or incident to the ownership, existence, operation, management, maintenance or use of the Common Elements and any other areas under the control of the Association. Declarant shall be included as an additional insured in Declarant's capacity as an Owner or Director. The insurance shall cover claims of one or more insured parties against other insured parties.

Such comprehensive policy of public liability insurance shall include the following:

10.5(a) Coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, bailee's liability, garagekeeper's

liability, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to projects similar to the Condominium in construction, location, and use.

10.5(b) A cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.

The Board of Directors shall review the coverage limits at least once every two years, but, generally, the Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Condominium and in no event shall such coverage be less than \$1,000,000 for all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than \$1,000,000.

10.6 Fidelity Insurance. Fidelity insurance shall be maintained by the Association in an amount at least equivalent to three (3) months of current year Assessments to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association, regardless of whether such person receives compensation for services. Such insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. In addition, if responsibility for handling funds is delegated to a Managing Agent, such insurance shall be obtained by the Managing Agent for the Managing Agent and its officers, employees, and agents, as applicable, and shall contain the same coverages that are provided under the fidelity insurance obtained by the Association.

10.7 Flood Insurance. The Association shall maintain flood insurance on the Buildings and all personal property of the Condominium (except personal property of the Condominium Unit Owners).

10.8 Personal Liability Insurance of Officers and Directors. To the extent obtainable at a reasonable cost, appropriate officers' and directors' personal liability insurance, including employment practices coverage, shall be maintained by the Association to protect the officers and Directors from

personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.

10.9 Other Insurance. The Association may obtain insurance against such other insurable risks of a similar or dissimilar nature as it deems appropriate with respect to the Association's responsibilities and duties.

10.10 Insurance Obtained by Owners. It shall be the responsibility of each Owner, at such Owner's expense, to maintain property damage insurance on such Owner's personal property, furnishings, betterments and improvements (also commonly referred to as additions and alterations insurance coverage) and public liability insurance covering such Owner's Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Condominium Unit as the Owner, in the Owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the owner as if the amount were a Default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners (including Declarant, should Declarant be the Owner of any Condominium Unit).

The Board of Directors may require an Owner who purchases additional insurance coverage for the Owner's Condominium Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within 30 days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

ARTICLE XI
Casualty Damage

11.1 The Role of the Board of Directors. Except as provided in Section 11.6 the event of damage to or destruction of all or part of any Condominium Unit, Common Elements, or other property covered by insurance written in the name of the Association under Article X , the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Condominium, including, without limitation, the floor coverings, fixtures, and appliances initially installed therein by Declarant, and replacement thereof installed by the Owners up to the value of those initially installed by Declarant, but not including any furniture, furnishings, fixtures, equipment, or other personal property supplied or installed by the Owners in the Condominium Units unless covered by insurance obtained by the Association.

11.2 Estimate of Damage or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Condominium, unless such damage or destruction shall be minor, the Board of Directors shall obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Condominium damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed part of the Condominium to substantially the same condition in which it existed immediately prior to the damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

11.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of that part of the Condominium damaged or destroyed. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

11.4 Funds for Repair and Reconstruction. Subject to the provisions of Section 11.6 below, the proceeds received by the Association from any hazard insurance carried by Association shall be used for the purpose of repair and reconstruction. If the proceeds of the Association's insurance are insufficient to

pay the estimated or actual cost of such repair and reconstruction, the Association and as applicable, the Residential Subassociation or the Commercial Subassociation, may, pursuant to either Section 7.1(b)(iii), 11.2(d) or 15.2(d) of the Bylaws, levy, assess, and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction, as well as to cover any insurance deductible payment incurred by the Association. Any cost of repair and reconstruction in excess of insurance proceeds and reserves is a Common Expense.

11.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. Such fund shall be applied by the Association as attorney-in-fact for such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact to cause the repair and restoration of the improvements. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, or if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of General Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

11.6 Decision Not to Rebuild. Any portion of the Condominium for which insurance is required pursuant to the provisions of this Declaration or the Act which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(i) The Condominium is terminated pursuant to Article XVI below and the Act;

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(iii) Owners representing at least 80% of votes in the Association,

including the vote of every Owner of a Condominium Unit or assigned Limited Common Element that will not be rebuilt and including, during the Declarant Control Period, the vote of Declarant, the vote of at least 51% of First Mortgage Holders (based on one vote for each mortgage owned), and any other votes required by the Act, vote not to repair and reconstruct the Condominium;

(iv) Prior to the conveyance of a Unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Condominium rightfully demands all or a substantial part of the insurance proceeds.

If the entire Condominium is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all the Units, as set forth on Exhibit "C". If Unit Owners vote not to rebuild any Unit, that Unit's allocated interests automatically shall be reallocated upon the vote as if the Unit had been condemned pursuant to N.C.G.S. §47C-1-107(a), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation. Unless otherwise prohibited, any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

11.7 Priority of Repair. When the damage is to Common Elements, Limited Common Elements and Condominium Units, the insurance proceeds will be applied first to the costs of repairing the Limited Common Elements of a Building, secondly to the cost of repairing the General Common Elements, and thirdly to the cost of repairing the Limited Common Elements of a Unit.

11.8 Notice of Damage or Destruction to First Mortgagees. In the event that any portion of the Condominium encompassing more than one Unit is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each

Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

11.9 No Waiver. Nothing in this Article shall be deemed a waiver of any right or claim of the Association, or any insurance provider having subrogation rights through the Association, to recover, in law or equity, directly from a Unit Owner for damages caused by the intentional or negligent acts of the Unit Owner, their guests, agents, and licensees. This Article is intended solely to address the administration of repairs to the Condominium following a casualty loss, and the allocation of Association insurance proceeds in such event.

ARTICLE XII

Association as Attorney-In-Fact

12.1 Appointment. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for purposes of dealing with the Condominium upon its damage or destruction as provided in Article XI, or a complete or partial taking as provided in Article XIII below. In addition, the Association, or any insurance trustee or substitute insurance trustee designated by the Association, is hereby appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under Article X above and to represent the Owners in any condemnation proceeding under Article XIII below including: the collection and appropriate disposition of the proceeds of such insurance or any condemnation award; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Condominium shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact..

ARTICLE XIII
Condemnation

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

13.2 **Reorganization.** In the event a partial taking results in the taking of a Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Condominium Units. Thereafter, subject to the provisions of the Act, the Association shall reallocate the ownership and assessment ratios determined in accordance with this Declaration and the Act, according to the same principles employed in this Declaration at its inception and as required under the Act and the Board of Directors of the Association shall amend this Declaration accordingly.

13.3 **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article XI.

13.4 **Notice of Condemnation.** In the event that any portion of the Condominium shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

ARTICLE XIV
Rights Reserved To First Mortgagees

14.1 **Rights of First Mortgagees to Examine Books and Records.** Any First Mortgagee, and any insurer or guarantor of loan secured by a mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Instruments, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any First Mortgagee requests, and agrees to pay the cost

of the audit, the financial statement shall be audited by an independent certified public accountant.

14.2 First Mortgagee's Rights to Notice. If any First Mortgagee, or any guarantor or insurer of a loan secured by a First Mortgage, has served written notice of its desire to receive notices upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Mortgage that it holds, guarantees, or insures, 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:

14.2(a) Default under any of the terms provisions of the Condominium Instruments by any Owner owning a Unit encumbered by a First Mortgage held, insured, or guaranteed by such party.

14.2(b) 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, insured or guaranteed by such mortgagee.

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

14.2(d) Any proposed action by the Association, the Board of Directors, or the Owners, which under the terms of the Condominium Instruments requires the consent of all or any portion of the First Mortgagees.

The failure of any First Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Instruments wherever First Mortgagee approval is required shall constitute an approval by that mortgagee of the proposed addition or amendment.

14.3 First Mortgagees' Rights.

14.3(a) Rights of First Mortgagee to 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.

14.3(b) Payment of Taxes and Insurance. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. First Mortgagees making such payments shall be owed reasonably prompt reimbursement from the Association.

14.3(c) Payment of Assessments. First Mortgagees shall be entitled to cure any delinquency of the Owner of the Condominium Unit encumbered by the First Mortgagee in the payment of assessments of which the First Mortgagee has received notice under Section 14.2 above. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

14.4 Title Taken by First Mortgagee. Any First Mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, shall be liable for all Assessments due and payable as of the date title to the Condominium Unit vests in the First Mortgagee under the statutes of North Carolina governing foreclosures. Except as provided in the Act, such First Mortgagee shall not be liable for any unpaid dues and charges attributable to the Condominium Unit which accrue prior to the date such title vests in the First Mortgagee.

14.5 Enforcement. The provisions of this Article are for the benefit of all First Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XV Ad Valorem Taxes

15.1 Ad Valorem Taxes. Pursuant to the provisions of N.C.G.S. §47C-1-105, each Unit and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes

authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. No part of the Condominium nor any of the Common Elements shall be deemed to be a parcel for separate tax listing purposes.

ARTICLE XVI
Amendment of Declaration

16.1 Amendments Proposed by Association. An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President who shall either:

(i) call a Special Meeting of the members of the Association for a date not later than sixty (60) days from receipt by him of the proposed amendment or amendments. It shall be the duty of the Secretary to give to each member written notice of such Special Meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than fourteen (14) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United State Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of at least sixty-seven percent (67%) of the votes in the Association which are allocated to Unit Owners in the Condominium in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or

|

an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed shall be recorded in the Register of Deeds Office of Dare County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting; or,

(ii) as an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. To be effective, the written agreement must be executed by Unit Owners of Units to which at least sixty-seven percent (67%) of the votes of the Association are allocated. Once approved, the amendment or amendments shall be transcribed, executed, recorded and a copy sent to all Owners as specified above.

16.2 Amendments by Declarant. The Declarant may amend the Declaration as set forth herein and in the Act without the consent of any other person or the Association to exercise Development Rights and/or Special Declarant Rights.

16.3 Amendments Requiring Declarant Consent. During the Development Rights Period and the Special Declarant Rights Period, this Declaration may not be amended in a manner that affects the Development Rights or Special Declarant Rights of the Declarant without the prior written consent of the Declarant. This Declaration may not be amended whatsoever during the Declarant Control Period without the prior written consent of the Declarant.

ARTICLE XVII
Miscellaneous Provisions

17.1 **Severability.** This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

17.2 **Captions.** The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

17.3 **Waiver.** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

17.4 **Limitation of Liability.** Neither the Association nor any officer or member of the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Condominium Instruments if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

17.5 **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

17.6 **Law Controlling.** This Declaration and the Condominium Instruments shall be construed and controlled by and under the laws of the State of North Carolina.

17.7 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act.

Specific language shall control over general language. Throughout this Declaration, wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

17.8 Joinder of Trustee & Beneficiary. Trustee and Beneficiary join in the execution of this Declaration to consent to the terms of the same and subordinate the lien of any deed of trust to the Trustee for the benefit of Beneficiary encumbering the Land to the provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of the day and year first set forth above.

SIGNATURES AND NOTARY ACKNOWLEDGMENTS
APPEAR ON FOLLOWING PAGES

DECLARANT:

RODANTHE SUNSET RESORT, LLC, a North Carolina limited liability company

By:  _____ (SEAL)
John M. Harris, Member/Manager

STATE OF North Carolina

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John M. Harris, Member/Manager of Rodanthe Sunset Resort, LLC, a North Carolina limited liability company.

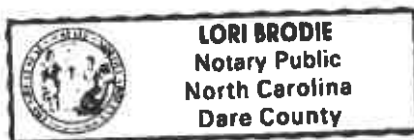
Date: May 25, 2016

 _____
Signature of Notary Public

Lori Brodie _____
Notary Printed Name

My Commission Expires: 1/10/2020

(Official Seal)



By: [Signature] (SEAL)
Jeffrey Fabrikant, Member

STATE OF DISTRICT OF COLUMBIA
COUNTY OF [Blank]

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jeffrey Fabrikant Member of Rodanthe Sunset Resort, LLC, a North Carolina limited liability company.

Date: 05/25, 2016

[Signature]
Signature of Notary Public

ANNA MASSEY
Notary Printed Name

My Commission Expires: _____

(Official Seal)

My Commission Expires
June 30, 2018



|

TRUSTEE:



H. Taylor Sugg, Jr. (SEAL)

STATE OF NC

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: H. Taylor Sugg, Jr., Trustee.

Date: June 1, 2016



Signature of Notary Public

KELLY J. PIERCE

Notary Printed Name

My Commission Expires: 7/4/16

(Official Seal)



[THIS PAGE INTENTIONALLY BLANK]

|

BENEFICIARY:

TOWNEBANK

By: [Signature] (SEAL)

Name: H. TAYLOR SUGG

Title: PRESIDENT

STATE OF NC

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: H. TAYLOR SUGG, PRESIDENT of TowneBank, a Virginia banking corporation.

Date: June 1, 2016

[Signature]
Signature of Notary Public

KELLY J. PIERCE
Notary Printed Name

My Commission Expires: 7/4/16



EXHIBIT "A"

Legal description of the Land, a portion of which (Phase One - Exhibit "B") is submitted to this Declaration; Declarant reserves right to submit additional portions in future Phases pursuant to Developer and Special Declarant Rights:

BEGINNING at an iron pipe set in the Western right-of-way boundary of North Carolina Secondary Road 12, 100 Foot R/W, which iron pipe set is located North 27 degrees 35 minutes 20 seconds West, a grid distance of 293.18 feet, from N.C.G.S. monument "Dollar" having a combined factor = 0.999889 with coordinates x=3050097.820 and y=686544970; thence running South 88 degrees 10 minutes 35 seconds West, a distance of plus or minus 547.26 feet, to the mean high water mark in the eastern shoreline of the Pamlico Sound thence turning and running in a general northerly direction along the meanderings of the eastern shoreline of said Pamlico Sound to a point in said shoreline that marks the Southwestern corner of the property now or formerly owned by Richard Midgett; thence turning and running South 86 degrees 00 minutes 07 seconds East, a distance of plus or minus 301.94 feet, to an iron pipe set in said Western right-of-way boundary of North Carolina Secondary Road 12, 100 foot R/W; thence turning and running along the Western right-of-way boundary of North Carolina Secondary Road 12, 100 foot R/W, South 18 degrees 25 minutes 28 seconds East, a distance of 230.71 feet, to an iron pipe set in said Western right-of-way boundary thence continuing along said Western right-of-way boundary South 16 degrees 41 minutes 45 seconds East, a distance of 101.68 feet, to an iron pipe set in said Western right-of-way boundary, thence continuing along said Western right-of-way boundary South 15 degrees 06 minutes 58 seconds East, a distance of 100.06 feet, TO THE POINT AND PLACE OF BEGINNING.

For further reference see survey entitled "Survey for Michael Wayne Keller and wife, Barbara L. Keller reference made to Deed Book 629, Page 897, Dare County Registry, Rodanthe, Kinnakeet Township, Dare County, North Carolina", surveyed May 6, 1992, prepared by Mason Ray Meekins, R.L.S. recorded in Book 803 at Page 337, Dare County Registry.

31219009_1

|

EXHIBIT "B"

Legal description of Phase One of the Condominium, the same being submitted to the Condominium regime by this Declaration; Phases Two and Three are reserved for future submission by the Declarant pursuant to Declarant's Development and Special Declarant Rights hereunder:

BEING all of Parcel #1 containing 1.85 acres, more or less, as shown on that certain plat entitled "Final Plat, Rodanthe Sunset Resort, PIN # 0648-1297-7048, Atlantic Township, Dare County, North Carolina," dated April 11, 2016 and prepared by Matthew R. Battey, P.L.S. of Quible & Associates, P.C. and recorded in the Office of the Register of Deeds of Dare County, North Carolina at Plat Cabinet I, Slide 268 (Document # 700025263).

|

EXHIBIT "C"

ARTICLES OF INCORPORATION

RODANTHE SUNSET RESORT UNIT OWNERS ASSOCIATION, INC.

|



NORTH CAROLINA
Department of the Secretary of State

To all whom these presents shall come, Greetings:

I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

RODANTHE SUNSET RESORT UNIT OWNERS ASSOCIATION, INC.

the original of which was filed in this office on the 19th day of May, 2016.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 19th day of May, 2016.

Elaine F. Marshall

Secretary of State

Certification# C201613000771-1 Reference# C201613000771-1 Page: 1 of 4
Verify this certificate online at <http://www.sosnc.gov/verification>

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the nonprofit corporation is: **Rodanthe Sunset Resort Unit Owners Association, Inc.**
2. _____ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).
3. The name of the initial registered agent is: **Joha M. Harris.**
4. The street address and county of the initial registered agent's office of the corporation is:

306 West Lake Drive, Unit K
Kill Devil Hills, Dare County, North Carolina 27948

The mailing address *if different from the street address* of the initial registered agent's office is:

PO Box 1839
Nags Head, North Carolina 27959-1839

5. The name and address of each incorporator is as follows:

Wyatt M. Booth, Esq.
Williams Mullen
301 Fayetteville St., Suite 1700
Raleigh, NC 27601

6. (Check either a or b below.)
a. The corporation will have members.
b. _____ The corporation will not have members.
7. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.
SEE APPENDIX "A"
8. Any other provisions which the corporation elects to include are attached.
SEE APPENDIX "A"

CORPORATIONS DIVISION
Revised September, 2013

P. O. BOX 29622

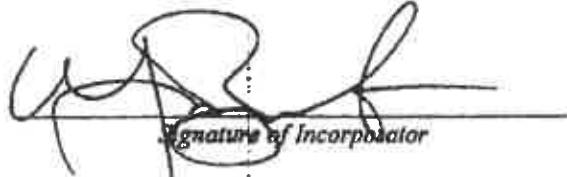
RALEIGH, NC 27626-0622
Form N-01

9. The street address and county of the principal office of the corporation is:

24280 NC Highway 12
Rodanthe, Dare County, North Carolina 27968

10. (Optional): Please provide a business e-mail address Privacy Reduction
The Secretary of State's Office will e-mail the business automatically at the address provided at no charge when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is being offered, please see the instructions for this document.
11. These articles will be effective upon filing.

This is the 18th day of May, 2016.


Signature of Incorporator
Wyatt M. Booth, Incorporator

CORPORATIONS DIVISION
Revised September, 2013

P. O. BOX 29622

RALEIGH, NC 27626-0622
Form N-01

Certification# C201613000771-1 Reference# C201613000771- Page: 3 of 4

APPENDIX "A"

Article 7: Provisions regarding distribution of corporate assets:

Upon dissolution of the corporation, other than as a result of merger or consolidation, the assets of the corporation shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization devoted or to be devoted to similar purposes to those of the corporation.

Article 8: Other provisions which the corporation elects to include in its Articles of Incorporation.

- (a) No part of the net income or net earnings of the corporation shall inure to the benefit of any officer, director or member of the corporation, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the corporation. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.
- (b) Every director, officer, employee or agent of the corporation shall be indemnified by the corporation against all expenses liabilities, including counsel fees, reasonably incurred by or imposed upon him or her in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been a director, officer, employee or agent of the corporation, whether or not he or she is a director, officer, employee or agent of the corporation at the time such expenses are incurred, except in such cases wherein the director, officer, employee or agent is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director, officer, employee or agent seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which a director, officer, employee or agent may be entitled. The indemnification herein provided for is intended to comply in all respects with the provisions of the North Carolina Nonprofit Corporation Act, as same may be amended from time to time, and shall be applied to the fullest extent permitted under North Carolina law. This is a qualified indemnification provision, and may be limited by the requirements of Part 3, Article 8 of Chapter 55A of the North Carolina General Statutes.
- (c) Except as otherwise provided under North Carolina law, no director shall have any personal liability arising out of an action, whether by or in right of the corporation or otherwise, for money damages for breach of their duty as directors. This is qualified immunity, limited by the provisions of NCGS § 55A-2-02(b)(4) and § 55A-8-60.

EXHIBIT "D"

To Declaration

BY-LAWS

OF

RODANTHE SUNSET RESORT UNIT OWNERS' ASSOCIATION, INC.

ARTICLE I

NAME, PURPOSE, APPLICABILITY AND ASSENT

1.1 **Name.** The name of this non-profit, non-stock membership corporation shall be Rodanthe Sunset Resort Unit Owners' Association, Inc., hereinafter referred to as "the Association."

1.2 **Purpose.** The purpose of the Association shall be to administer and manage the affairs of Rodanthe Sunset Resort Condominiums, a Condominium established pursuant to the terms of that Declaration of Condominium for Rodanthe Sunset Resort Condominiums filed in the Public Registry of Dare County, North Carolina as amended, supplemented or restated (the "Declaration") in accordance with the Unit Ownership Act, the Non-profit Corporation Act of North Carolina, this Declaration, and the Articles of Incorporation and these By-Laws, as may be amended from time to time. The Association shall not engage in any activities other than those directly related to administration of the condominium property and the Unit Owners' responsibility with respect to the same.

1.3 **Applicability.** These By-Laws are applicable to the property known as Rodanthe Sunset Resort Condominiums, as such property is described in Exhibit "A" and "B" attached to the Declaration.

1.4 **Assent.** These By-Laws are binding on all present and 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, regarding the governing and administration of the Association are incorporated herein by reference. The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that

|

these Bylaws (and any Rules of Conduct made pursuant hereto) and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

ARTICLE II DEFINITIONS

2.1 **Definitions** The definition of words contained in the Declaration, Article I shall apply to those words and terms as used in these By-Laws.

ARTICLE III OFFICES, REGISTERED AGENT, FISCAL YEAR, POWERS

3.1 **Principal Office. Registered Office.** The principal office of the Association shall be located at Rodanthe Sunset Resort Condominiums, N.C. State Road 12, Rodanthe, Hatteras Island, North Carolina 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 _____ . 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 **Fiscal Year.** The fiscal year of the Association shall be January 1 through December 31.

3.4 **Powers.** The Association shall have all the common law and statutory powers of non-profit corporations. The Association shall also have all the powers necessary to implement the purposes of the Association and to provide for the general health and welfare of its membership.

ARTICLE IV UNIT OWNERS' ASSOCIATION

4.1 **Composition.** The Unit Owners Association shall consist of all Unit owners (which shall include all Residential Unit Owners and Commercial Unit Owners as those terms are defined in the Declaration. For all purposes the Unit Owners Association shall act merely as an agent for the Unit Owners as a group. The Unit Owners Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by

the Association by the Condominium Act and the Declaration. Except as to those matters which the Condominium Act specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Board of Directors or Managing Agent, if any.

4.2 Election of Board of Directors. Upon recordation of the Declaration, the members of the Board of Directors shall be designated by Declarant, who shall serve until the first annual meeting of the Association. Not later than the termination of the Declarant Control Period, the Members shall elect a Board of Directors of at least three members of which at least a majority of whom shall be Unit Owners who shall take office upon election. Not later than sixty days of conveyance of twenty-five percent (25%) of the Units (including the Units which may be created pursuant to special rights) to Members other than Declarant, at least one Member and not less than twenty-five percent of the Members of the Board shall be elected by Members other than the Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Members other than Declarant, not less than thirty-three percent (33%) of the Members of the Board shall be elected by Members other than Declarant. Declarant control shall terminate no later than the earlier of; (a) One hundred and twenty days after conveyance of seventy-five percent (75%) of the Units (including the Units which may be created pursuant to Special Declarant Rights) to Members other than the Declarant; (b) two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (c) two years after any development rights to add new Units was last exercised. The Association shall publish the names and addresses of all Directors within 30 days of their election to office.

4.3 Annual Meetings. The annual meetings of the Association shall be held on a weekday (other than a legal holiday) at least thirty (30) days before the beginning of each fiscal year, or such other date as may be deemed advisable by the Board of Directors.

4.4 Place of Meetings. Meetings of the Association shall be held at Rodanthe Sunset Resort Condominiums or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

4.5 Special Meetings. The President shall call a special meeting of the Association: (a) if so directed by resolution of the Board of Directors; (b) after the termination of the Declarant Control Period, upon a petition signed and presented to the Secretary by Members of not less than twenty-five percent (25%) of the aggregate General Common Element Interests; or (c) while the Declarant is a Unit Owner, upon request of the Declarant. Such resolution, petition or request must; (i) specify the time and place at which the meeting is to be held, (ii) either specify a date on which the meeting is to be held which will permit the Secretary to comply with Section 4.6 of these Bylaws, or else specify that the Secretary shall designate the date of the meeting, (iii) specify the purposes for which the meeting is to be held, and (iv) be delivered to the Secretary. 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.

4.6 Notice of Meetings. The Secretary shall notify each Member of any meeting of the Unit Owners at least fifteen (10) but not more than thirty (50) days prior to such meeting, stating the time, place and purpose thereof. The giving of a notice of meeting in the manner provided in this section and Section 19.1 of the Bylaws shall be considered service of notice.

4.7 Quorum and Adjournment of Meetings. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members representing thirty percent (30%) or more of the total General Common Element Interest shall constitute a quorum at all meetings of the Association. If at any meeting of the Association a quorum is not present, Members of a majority of the Common Element Interests who are present at such meeting in person or by proxy may: (a) recess the meeting to such date, time and place as such Unit Owners may agree not more than forty-eight (48) hours after the time the original meeting was called, whereupon the Secretary shall make reasonable efforts to notify Unit Owners of such date time and place.

4.8 Order of Business. The order of business at all meetings of the Association shall be as follows: (a) roll call (proof of quorum); (b) proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of Board of Directors; (f) reports of committees; (g) appointment of inspectors of election (when so required); (h) election of directors (when so required); (i) unfinished business; and (j) new business; provided, however, that balloting for election of directors may commence at any time.

4.9 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Condominium Act or the Condominium Instruments.

4.10 Voting. All voting called for under these Bylaws, the Declaration or the Condominium Instruments shall occur in accordance with the following terms:

- (a) The total votes in the Association are allocated to Units by the Declaration. The votes allocated to a Unit may be cast by the Unit Owner of that Unit. Where the ownership of a Unit is in more than one person, the person who shall be entitled to cast the vote for such Unit shall be the person named in the certificate executed by all of the owners of such a Unit and filed with the Secretary (if such a certificate is on file) or, in the absence of such named person from the meeting the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is

present. If more than one person owning such Unit is present, the votes allocated to that Unit may be cast only in accordance with the vote of a majority in interest of the multiple owners. A fiduciary shall be entitled to cast a vote for a Unit owned in a fiduciary capacity. If a Member is not a natural person, the vote for such Unit may be cast by (i) any natural person having authority to execute deeds on behalf of such person, pursuant to N.C.G.S. Chapter 47, or (ii) any other natural person designated by power of attorney for the natural person referred to herein. Neither of the natural persons referred to in subsections (i) and (ii) above shall, either alone or in conjunction with one (1) or more persons, be a Member. The natural person referred to in subsection (i) above shall be named in a certificate signed by an authorized Officer of the non-natural person, and the natural person referred to in subsection (ii) above shall be named in a power of attorney signed by the natural person. The aforesaid certificate and power of attorney shall be valid until revoked by a subsequent certificate or power of attorney similarly executed and filed.

(b) Except where a greater number is required by the Condominium Act or by the Condominium Instruments, a Majority Vote is required to adopt decisions at any meeting of the Association. If the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Units are entitled.

(c) No Member may vote at any meeting of the Association or be elected to or serve on the Board of Directors if payment by such Member of any financial obligation to the Association is delinquent more than sixty (60) days and the amount necessary to bring the account current has not been paid at the time of such meeting or election.

4.11 Proxies. A vote may be cast in person or by proxy duly executed by a Member. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of that Unit's votes by the other owners of the Unit through a duly executed proxy. A Member may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over the meeting of the Association. A proxy is void if it is not dated and terminates one year after its date, unless it specifies a shorter term. A proxy may be instructed (directing the proxy how to vote) or uninstructed (leaving how to vote to the proxy's discretion). Such proxies may be granted by any Member in favor of only another Member, an officer, the Declarant or such Members' mortgagee, attorney, or additionally in the case of a non-resident Unit Owner, the Unit owners Lessee, attorney or rental agent. Only instructed proxies may be granted by any Unit Owner to the managing agent. No person other than the Declarant, the managing agent or an officer shall cast votes as a proxy for more than one Unit not owned by such person.

4.12 Powers of the Association. All powers residing in the Association are expressly reserved to the Association, shall be delegated to and exercised by the Board of

Directors with respect to the Association and the Common Elements and/or any managing agent(s) employed by the Board of Directors.

4.13 Action by Written Consent. Action required or permitted by this Section to be taken at a meeting of Members may be taken without a meeting if the action is taken by all Members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all Members entitled to vote thereon, and delivered to the Association for inclusion in the minutes or filing with the corporate records. The record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

ARTICLE V BOARD OF DIRECTORS

5.1 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by the Condominium Act or the Condominium Instruments required to be exercised and done by the Association. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall on behalf of the Association:

(a) Prepare and adopt an annual budget, in which there shall be expressed the assessments of each Unit Owner for the General Common Expenses, applicable Limited Common Expenses, or for the Common Expenses of the entire Condominium.

(b) Make assessments against Unit Owners to defray the costs and expenses of the Condominium General Common Elements, applicable Limited Common Expenses or the Common Elements, and establish the means and methods of collecting such assessments from the Unit Owners and establish the period of installment payment of the annual assessment for General Common Expenses, and other Common Expenses, if any.

(c) Provide for the operation, care, upkeep and maintenance of all of the Property and services of the Condominium, including the General Common Elements and other Common Elements, if any.

(d) Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the General Common Elements and other Common Elements, if applicable, and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and

material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.

(e) Collect the General Common Expense assessments, and other Common Expense assessments, if applicable, against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Property.

(f) Adopt and amend any rules and regulations; provided, however, that such rules and regulations shall not be in conflict with the Condominium Act or the Condominium Instruments, and it being intended that such rules and regulations so adopted shall be only such rules and regulations which uniformly apply to all Unit owners of the Building without regard for which Section the Unit is located in.

(g) Open bank accounts on behalf of the Association and designate the signatures thereon.

(h) Make, or contract for the making of, repairs, additions and improvements to or alterations of the General Common Elements, and other Common Elements, if applicable, in accordance with these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

(i) Enforce by legal means the provisions of the Declaration, these Bylaws and the rules and regulations, act on behalf of the Members with respect to all matters arising out of any eminent domain proceeding, and notify the Members of and litigation against the Association involving a claim in excess of ten percent of the amount of the annual budget.

(j) Obtain and carry insurance against casualties and liabilities, as provided in these Bylaws, pay the premiums therefore, adjust and settle and claims thereunder.

(k) Keep books with accounts affecting the General Common Elements, and other Common Elements, if applicable, the administration of the General Common Elements, and other Common Elements, if applicable, specifying the expenses of maintenance and repair of such Common Elements and any other expenses incurred. Such books and vouchers accrediting the entries therein shall be available for examination by the Members, their attorneys, accountants, Mortgagees and authorized agents during normal business hours on business days at the times and in the manner set and announced by the Board of Directors for the general knowledge of the Members. The Board, on behalf of the Association, shall also keep current copies of the Declaration, Bylaws and Condominium Rules.

(l) Pay the cost of all authorized services rendered to the Association and not billed to a Unit Owner of individual Units.

(m) Notify a Mortgagee of any default hereunder by the Unit Owner of the Unit subject to such Mortgage, in the event such default continues for a period exceeding sixty days.

(n) Borrow money on behalf of the Condominium when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the General Common Elements and other Common Elements, if applicable; provided, however, that (except during the Declarant Control Period) a vote in writing by Members of Units to which more than fifty one percent (51%) of the votes in the Association appertain shall be required to borrow any sum in excess of ten percent (10%) of the total annual assessment for General Common Expenses for that fiscal year.

(o) Acquire, hold and dispose of Condominium Units and mortgage the same without the prior approval of the Association if such expenditures and hypothecation are included in the budget adopted by the Association.

(p) Do such other things and acts not inconsistent with the Condominium Act or the Condominium Instruments which the Board of Directors may be authorized to do by a resolution of the Association.

5.2 Managing Agent. The Declarant shall be the managing agent until such time as Declarant shall resign as managing agent, and Declarant may delegate its duties as managing agent by hiring or contracting with a third party managing agent. The management fee charged by Declarant (or its employee or contractor) shall be at a rate equal to the average rate customarily charged by managing agents on the Outer Banks of North Carolina. Upon resignation of Declarant as managing agent, the Board of Directors may contract with or employ any person, firm or corporation, including an affiliate or the Declarant, to serve as managing agent for the Project and the Association, at a compensation established by the Board of Directors.

5.3 Number and Term of Office. The Board of Directors shall serve as follows:

(a) **Designated Members:** During the period of Declarant control, the Declarant shall be entitled to designate directors not elected pursuant to Section 4.5 of these Bylaws. The initial Board of Directors shall consist of three (3) persons. The term of each designee shall be fixed by the Declarant. At the special meeting required by Section 4.2, a number of the directors designated by the Declarant shall resign if necessary so that a majority of the requisite percentage of directors shall have

been elected in accordance with Section 4.2. The persons elected shall serve for the remainder of the terms of office of the resigning directors who such persons replace, or if no resignation was required, for the terms of office necessary so that the term of office for generally one-third of the directors shall expire at each of the first three annual meetings after their election. The directors receiving the greatest vote shall be elected for the longest available terms. At the expiration of the term of office of all directors designated by the Declarant or elected at the special meeting held pursuant to Section 4.2, all successor directors shall be elected to serve for a term of three years.

(b) **Elected Members:** At the first annual meeting of the Association following the termination of the Declarant Control Period, and all annual meetings thereafter, the Board of Directors shall be elected by the Members. If there are fewer than twenty (20) total Units in the Condominium, then the Board shall consist of three (3) persons. If there are twenty (20) total Units or greater in the Condominium, the Board shall consist of five (5) persons. At the initial election of the Board of Directors by the Members, the two Members receiving the highest number of votes shall sit for three (3) year terms. The Members receiving the next highest number of votes, however many are required to fill out the Board, shall sit for two (2) year terms. For all elections thereafter, successor Director terms shall be three (3) years. No person shall be elected as a director or continue to serve as a director if he or she is more than sixty (60) days delinquent in meeting bona fide financial obligations to the Association or if a lien has been filed against such person's Unit.

5.4 **Organization Meeting.** The first meeting of the Board of Directors following the annual meeting of the Association shall be held within thirty (30) days thereafter at such time and place as shall be determined by a majority of the directors at the meeting at which such Board of Directors shall have been elected. No notice shall be necessary to the newly-elected directors in order legally to constitute such meeting if a majority of the entire Board of Directors is present at the meeting.

5.5 **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least once every three months during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, electronic mail, or telephone, at least three business days prior to the day named for such meeting.

5.6 **Special Meetings.** Special meetings of the Board of Directors may be called by the President on three (3) business days notice to each director, given personally or by mail, telegraph or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two directors.

5.6.1 Participation. The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may simultaneously hear each other during the meeting. Any Director participating in a meeting by this means is deemed to be present in person at the meeting.

5.7 Waiver of Notice. Any director may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director, in person or by telephone communication, at any meeting of the Board of Directors shall constitute a waiver of notice by such director of the time, place and purpose of such a meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

5.8 Quorum of Board of Directors. At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn or recess the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. A director who participates in a meeting by means of telephone communication shall be deemed present at the meeting for all purposes.

5.9 Compensation. No director shall receive any compensation from the Condominium for acting in such capacity.

5.10 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Condominium Acts or the Condominium Instruments. At regular intervals, the Board shall provide Unit owners an opportunity to attend a portion of a meeting of the Board and to speak to the Board about their issues and concerns, however, at such times the Board may place reasonable restrictions on the number of persons who speak on each side of any issue, and may place time restrictions on persons who speak.

5.11 Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting of all of the directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

5.12 Liability of the Board of Directors, Officers, Unit Owners and Association.

(a) The officers and directors shall not be liable to the Association or any Member for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the officers and directors from and against all contractual liability to others arising out of contracts made by the Officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Condominium Act or the Condominium Instruments, except to the extent that such liability is satisfied by directors and officers liability insurance. Officers and directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Member arising out of any contract made by the Officers or Board of Directors, or out of the indemnification of the Officers or directors, or the damages as a result of injuries arising in connection with the Common Elements solely by virtue of ownership of a Common Element Interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by such Member's Common Element Interest. Every agreement made by the Officers, the Board of Directors or a managing agent on behalf of the Association shall, if obtainable, provide that the Officers, the directors or the managing agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Unit Owners). The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such person is or was an Officer or director or the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by such person in connection with, such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Condominium.

(b) The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a General Common Expense, or for injury or damage to person or property caused by the elements or by the Unit Owner of any Unit, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Unit Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Property. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority.

5.13 Common or Interested Directors. Each director shall exercise such directors powers duties in good faith and with a view to the interests of the Condominium. No contract or other transaction between the Association and any of its directors, or between the Association and any corporation, firm or association (*including the Declarant*) in which any of the directors of the Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because any such director is present at the meeting of the Board or Directors or any committee thereof which authorizes or approves the contract or transaction, or because such directors vote is counted for such purpose, if any of the conditions specified in any of the following subsections exists:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) The fact of the common directorate or interest is disclosed or known to at least a majority of the Unit Owners, and the Unit Owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed. Any common or interested directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote at the meeting to authorize any contract or transaction with like force and effect as if such director of the Association were not an officer or director of such other corporation, firm or association or not so interested.

5.14 Legal Proceedings. The Board of Directors shall have the exclusive right to initiate any form of legal proceedings as it deems necessary and appropriate related to the use, operation, or maintenance of the Property, subject to the following requirements. "Legal Proceedings" as used in this Section shall mean any form of action or suit, including, but not limited to: demands for performance of Declarant obligations hereunder, under the Condominium Instruments, or contained in any statute, regulation or ordinance or at common law; and shall include the assertion, through litigation, arbitration, or otherwise, or the defense of any claims or actions related to the Property. Notwithstanding the foregoing the filing and enforcement of liens, the initiation of legal action for routine General Common Expense, Limited Common Expenses, Commercial Expenses, Residential Expenses, assessment collection matters or legal actions required to enforce provisions of the Declaration. Bylaws or rules and regulations with respect to the Property shall not be deemed Legal Proceedings for purposes of this Section and such actions shall not be subject to the requirements of this Section.

5.15 Removal or Restoration of Directors. Except with respect to directors designated by the Declarant, at any regular or special meeting of the Association, duly called, any one (1) or more of the Directors may be removed with or without cause by a Majority Vote of the Members and a successor may then and there be elected by the Members to fill the vacancy. Any director whose removal has been proposed by the Members shall be given at least seven (7) days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A director may resign at any time and, except for a director designated by the Declarant. A director who was a Member at the time of election shall be deemed to have resigned upon disposition of such director's Unit, or if not in attendance at three (3) consecutive regular meetings of the Board, unless the minutes reflect the Board's consent to such absence.

5.16 Vacancies. Vacancies on the Board of Directors caused by any reason other than the removal of a director by a vote of the Members shall be filled by a vote of the remaining members of the Board of Directors. The aforementioned elections shall take place and the results thereof shall be binding even though the members present at such meeting may constitute less than a quorum. Each person elected in accordance with this Section shall be a member of the Board of Directors for the remainder of the term of the predecessor member, and until a successor shall be elected. The Declarant shall designate the successor to any director previously designated by the Declarant who resigns or is removed.

ARTICLE VI OFFICERS

6.1 Designation and Duties. The principal Officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and such other Officers as in its judgment may be necessary. The Secretary or Treasurer may also serve as Vice President.

6.2 Election of Officers. The officers of the Association shall be elected initially by the Board of Directors at the organization meeting of each new board, and annually thereafter at the Annual meeting of each such board, and those elected shall hold office at the pleasure of the Board of Directors. The Association shall publish the names and addresses of all officers within 30 days of their election to office.

6.3 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

6.4 President. The President shall: (i) be the chief executive officer of the Unit Owners Association; (ii) preside at all meetings of the Association and of the Board of Directors; (iii) have general and active direction of the business of the Association subject to the control of the Board; (iv) see that all orders and resolutions of the Board are carried into effect; and (v) appoint committees from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association.

6.5 Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If the Vice President is unable to act, the Board of Directors shall appoint some other director to act in the place of such Vice President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors or by the President.

6.6 Secretary. The Secretary shall: (i) keep the minutes of all meetings of the Unit Owners Association and of the Board of Directors; (ii) have charge of such books and papers as the Board may direct; (iii) give or cause to be given all notices required to be given by the Association; (iv) maintain a register setting forth the places to which all notices to Unit Owners and Mortgagees hereunder shall be delivered; and (v), in general, perform all the duties incident to the office of secretary.

6.7 Treasurer. The Treasurer shall: (i) be responsible for Association funds and securities; (ii) keep full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepare all required financial data; (iv) deposit all monies and other valuable effects in the name of the Board of Directors, the Association or the managing agent, in such depositories as may from time to time be designated by the Board; and (v), in general, perform all the duties incident to the office of treasurer.

6.8 Execution of Documents. Unless authorized by a resolution of the Board of Directors: (i) all agreements, contracts, deeds, leases, checks and other instruments of the Unit Owners Association for expenditures or obligations in excess of \$500 and all checks drawn upon reserve accounts, shall be executed by any two persons designated by the Board of Directors; and (ii) all such instruments for expenditures or obligations not in excess of \$500 may be executed by any one person designated by the Board of Directors.

6.9 Compensation of Officers. No Officer shall receive any compensation from the Association for acting as such Officer, unless otherwise agreed by the Members representing a majority of the Common Element Interests and which compensation is reasonable and customary. Officers may be reimbursed for expenses incurred in carrying out the functions of their office if later approved by the Board of Directors.

ARTICLE VII
OPERATION AND MANAGEMENT OF THE CONDOMINIUM

7.1 Determination of General Common Expenses and Assessments Against Unit Owners.

(a) Fiscal Year. The fiscal year of the Unit Owners Association shall be the calendar year beginning July 1 and ending June 30 unless otherwise determined by the Board of Directors.

(b) Preparation and Approval of Budgets and Special Assessment:

(i) At least sixty days before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the General Common Elements, the Limited Common Elements, and those parts of the Condominium as to which it is the responsibility of the Association to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be General Common Expenses or Limited Common Expenses not and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the General Common Elements and other parts of the Condominium for which the Association is responsible pursuant to the Condominium Instruments.

(ii) Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. Within thirty (30) days after adoption of any proposed budget, a summary notice shall be sent to each Member which sets forth the amount of the common expenses and any special assessment payable by each Unit Owner and shall set a date for a meeting of the Members to consider ratification of the budget, said meeting to be not less than fourteen nor more than thirty days after mailing of the summary. At said meeting (which shall not require that a quorum be present) the budget shall be considered as ratified unless a majority of all the Members reject the proposed budget. In the event the proposed budget is rejected, the budget last ratified shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors. The budget as ratified shall constitute the basis for determining each Member's assessment for the Common Expenses of the Condominium.

(iii) Whenever, in the judgment of the Board of Directors, the Common Elements shall require additions, alterations, renovations or improvements costing in excess of five percent (5 %) of the Association's annual budget during the preceding

fiscal year or involving the use of Replacement Reserves, the making of such additions, alterations, renovations or improvements shall require a Majority Vote of the Unit Owners, and the Board of Directors shall assess the cost thereof as a Common Expense which shall be a Special Assessment. Any additions, alterations, renovations or improvements costing five percent (5%) of the Association's annual budget or less during the preceding fiscal year, and not involving the use of Replacement Reserves, may be made by the Board of Directors without approval of the Members and the cost thereof shall constitute a Common Expense.

(c) Assessment and Payment of Common Expenses: The total amount of the estimated funds required from assessments for the operation and maintenance of the Common Elements and any other property for which the Association is responsible pursuant to the Condominium Instruments set forth in the budget adopted by the Board of Directors shall be assessed against each Unit Owner in proportion to such Unit Owner's respective Common Element interest. The assessment for General Common Expenses shall be a lien against each Unit Owner's Unit. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven (11) months in such fiscal year, each Unit Owner shall be obligated to pay to the Board of Directors or the managing agent (as determined by the Board) one-twelfth (1/12) of such assessment. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners, and to each Mortgagee requesting the same, an itemized accounting of the General Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be understood by all the parties to be held by the Association as agent for the Unit Owners and shall, at the discretion of the Unit Owners, be placed in reserve accounts or distributed to the Unit Owners. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their Common Element Interests and shall be payable either in full with payment of the next monthly assessment due; or in not more than six (6) equal monthly installments, as the Board of Directors may determine.

(d) Reserves: The Board of Directors shall build up and maintain reasonable reserves for working capital, operations (including losses due to insurance deductibles), contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except for the normal maintenance expenses shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged first against such reserves. Unless otherwise determined by a vote of two-thirds of the directors, the amount held as reserves shall not substantially exceed the amount

reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives. If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to the Unit Owners. If the reserves are inadequate for any reason, including non-payment of any Unit Owners assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Common Element Interests, and which may be payable in a lump sum or in installments as the Board may determine. The Board of Directors shall serve notice of any further assessment on Unit Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than seven days after the delivery of such notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date.

(e) Initial Budget and Initial Capital Payment:

(i) Upon taking office, the first Board of Directors elected or designated pursuant to these Bylaws shall determine the budget, as defined in this section, for the period commencing thirty days after such election and ending on the last day of the fiscal year in which such election occurs. Assessments shall be levied and become a lien against the Unit Owners during such period.

(ii) The Declarant, as the agent of the Board of Directors, may collect from each initial purchaser at the time of settlement an "initial capital payment" equivalent to twice the estimated monthly assessment for General Common Expenses for such purchasers Unit. The Declarant will deliver the funds so collected to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start up costs, and for such other purposes as the Board of Directors may determine.

(f) Effect of Failure to Prepare or Adopt Budget: The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owners obligation to pay the allocable share of the General Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notified of the monthly payment which is due more than ten days after such new annual or adjusted budget is adopted.

(g) Accounts: All sums collected by the Board of Directors with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund. All interest income on all accounts shall be income to and for the use of the Association.

7.2 Restrictions on Use of Units and Common Elements, Rules and Regulations.

(a) Restrictions: Each Unit and Common Elements shall be occupied and used in accord with those Restrictions on use set forth in Article VI of the Declaration.

(b) 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. Changes to the Rules and Regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Unit Owner upon request. Notwithstanding the above, any changes or additions to any of the rules and regulations which respect the leasing of Units shall require unanimous consent of all of the Unit Owners.

7.3 Right of Access. By acceptance of any deed of conveyance, each Unit Owner thereby grants a right of access to the Unit, as provided by the Condominium Act and the Declaration, to the Board of Directors or the managing agent, or any group of the foregoing, for the purpose of enabling the exercise and discharge of their respective powers and responsibilities, including without limitation making inspections, correcting any condition originating in the Unit or in a Common Element to which access is obtained through the Unit threatening another Unit or the Common Elements, performing installations, alterations or repairs to the mechanical electrical systems or the Common Elements in the Unit or elsewhere on the Property or to correct any condition which violated any Mortgage; provided, however, that request for entry is made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present. Each Unit Owner shall provide a working copy of all Unit keys to the Association. The Association shall maintain a depository box containing a copy of all keys and shall make said box accessible to the managing agent, all members of the Board of Directors and emergency personnel.

**ARTICLE VIII
RESIDENTIAL EXECUTIVE COMMITTEE**

8.1 Powers and Duties. The Residential Executive Committee (the "REC") shall be a standing advisory committee to the Board of Directors consisting of at least three (3) members appointed by the Declarant during the Declarant Control Period and appointed by

the Board of Directors thereafter. Following the Declarant Control Period, members of the REC shall be Unit Owners in the Residential Building(s) and must be in good financial standing with the Association. The duties of the REC are as delegated by the Board of Directors, and include but are not limited to the following:

- (a) Prepare a preliminary annual budget for the Residential Building(s), including a proposed annual assessment to Residential Unit Owners for the Residential Expenses;
- (b) Advise the Board of Directors regarding matters impacting the Residential Building(s);
- (c) Serve as the Architectural Review Committee for matters affecting the Residential Building(s).

ARTICLE IX COMMERCIAL EXECUTIVE COMMITTEE

9.1 Powers and Duties. The Commercial Executive Committee (the "CEC") shall be a standing advisory committee to the Board of Directors consisting of at least three (3) members appointed by the Declarant during the Declarant Control Period and appointed by the Board of Directors thereafter. Following the Declarant Control Period, members of the CEC shall be Unit Owners in the Commercial Building and must be in good financial standing with the Association. The duties of the REC are as delegated by the Board of Directors, and include but are not limited to the following:

- (a) Prepare a preliminary annual budget for the Commercial Building, including a proposed annual assessment to Commercial Unit Owners for the Commercial Expenses;
- (b) Advise the Board of Directors regarding matters impacting the Commercial Building(s);
- (c) Serve as the Architectural Review Committee for matters affecting the Commercial Building.

ARTICLE X COMPLIANCE AND DEFAULT

10.1 Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Condominium Act, Condominium Instruments and Rules and Regulations, as

any of the same may be amended from time to time. In addition to the remedies provided in Section 47C-3-116 of the Condominium Act, a default by a Unit Owner shall entitle the Association, acting through its Board of Directors or through the managing agent, to the relief described in this Article XVI.

(a) **Additional Liability:** Each Unit Owner shall be liable to the Association or to any affected Unit Owner for the expense of all maintenance, repair or replacement rendered necessary by such Unit Owners act, neglect or carelessness or the act, neglect or carelessness of any member of such Unit Owners family or such Unit Owners guests, invitees, tenants, agents or employees, but only to the extent that such expense is not covered by an insurance policy carried by the Board of Directors; provided, however, at the discretion of the Board of Directors, the Board may assess such expense directly against the Member rather than, or in addition to, making an insurance claim. Such liability shall include any increased casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation legal fees, incurred as a result of a failure to comply with the Condominium Act, the Condominium Instruments and the Rules and Regulations by any Unit Owner (or any member of such Unit Owners family or such Unit Owners guests, invitees, tenants, agents or employees) may be assessed against such Unit Owners Unit.

(b) **No waiver of rights:** The failure of the Association, the Board of Directors or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments or the Condominium Act shall not constitute a waiver of the right of the Association, the Board or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Condominium Instruments or the Condominium Act or otherwise at law or in equity.

(c) **Interest:** In the event of a default by any Unit Owner in paying any sum assessed against a Unit which continues for a period in excess of fifteen (15) days, interest at a rate of eighteen percent (18%) per annum or such greater rate not to exceed the maximum permissible interest rate allowed by law may be imposed in the discretion of the Board of Directors on the principal amount unpaid from the date due until paid.

(d) **Abating and Enjoining Violations by Unit Owners:** The violation of any of the Rules and Regulations adopted by the Board of Directors, the breach of any provision of the Condominium Instruments or the Condominium Act shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws: (i) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; (ii) to use self-help to remove or cure any violation of the Condominium Instruments or any rules and regulations on the Common Elements or in any Unit; or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, continuance of any breach.

(e) **Legal Proceedings:** Failure to comply with any of the terms of the Condominium Instruments and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the managing agent or, if appropriate, by any aggrieved Unit Owner and shall not constitute an election of remedies.

(f) **Charges:** In accordance with Section 47C-3-102 (11) of the Condominium Act, the Board of Directors may levy reasonable charges against Unit Owners for violations of the Condominium Act, the Condominium Instruments or the Rules and Regulations by the Unit Owner, the members of such Unit Owners family, or such Unit Owners guests, invitees, tenants, agents or employees. Each day a violation continues, after notice is given to the Unit Owner, is a separate violation. If a Unit Owner requests in writing a hearing before the charge is imposed, the imposition of the charge shall be suspended until the hearing is held. Charges are special assessments and shall be collectible as such.

(g) **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the Condominium Instruments, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Condominium Instruments or the restraint of violations of the Condominium Instruments, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees as may be incurred and allowed by N.C.G.S. §47C-3-116(e).

(h) **Mediation.** Each Owner, by accepting a deed to a Unit as an Owner, agrees that any Owner or the Association may require that any Dispute among the Owners

or before the Board of Directors or before the Association be submitted to non-binding mediation, prior to pursuing any other remedies. The fees and expenses of mediation shall be paid by the participants and shall not be a Common Expense unless all Owners so agree in writing.

(i) Arbitration. Each Owner, by accepting a deed to a Unit, agrees that any Owner or Association may require that any Dispute between the Owners or before the Board of Directors or before the Association be submitted to binding arbitration pursuant to the Uniform Arbitration Act set forth in N.C.G.S. §1-567.1 et seq. as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing.

10.2 Lien of Assessments.

(a) Lien. Assessments of each Unit Owner for Common Expenses or any special assessment, or any other sum duly levied, made pursuant to these Bylaws, are hereby declared to be a lien levied against the Unit of such Unit Owner, which lien shall, with respect to annual assessments, be effective as of the earlier of: 1) the first day of each fiscal year of the Condominium and, as to special assessments and other sums duly levied, on the first day of the next month which begins more than ten (10) days after delivery to the Unit Owner of notice of such special assessment or levy, or 2) the first day allowed under applicable law. The Board of Directors or the managing agent, if any, may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien.

(b) Acceleration. In any case where an assessment against a Unit Owner is payable in installments, upon a default by such Unit Owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors or the managing agent, if any, and the entire remaining balance declared immediately due and payable, upon written notice being given to the defaulting Unit Owner.

(c) Enforcement. The lien for assessments may be enforced and foreclosed in any way permitted by applicable law. Such action may be taken in the name of the Board of Directors or the managing agent, if any, acting on behalf of the Association. During the pendency of such suit, the Unit Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale.

(d) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

ARTICLE XI AMENDMENTS

11.1 Amendments. Amendments to these Bylaws shall be proposed and adopted in the following manner. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of 51% of the Members. The notice of the meeting shall set forth the proposed amendment or a summary of the changes to be effected thereby. Notwithstanding that the original Bylaws of the Association are recorded in the Dare County Registry, amendments hereto are not required to be recorded in the public registry in order to be effective; however, any amendment hereto which requires the consent of Declarant shall only be effective upon execution of a written amendment executed by Declarant, and any amendment requiring the consent of the Unit Owners shall only be effective upon execution of a written amendment by the percentage of members required above.

ARTICLE XII NON PROFIT CORPORATION

12.1 Nonprofit Status. The Association is not organized for profit. No Member of the Association, member of the Board of Directors, or person from whom the Association may receive any property or funds will receive or will be lawfully entitled to receive any pecuniary profit from the operations of the Association, and in no event will any part of the funds or assets of the Association be paid as a dividend or be distributed to, or inure to the benefit of, any member of the Board of Directors.

ARTICLE XIII GENERAL PROVISIONS

13.1 Notices. All notices, demands, bills, and statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner, or sent by electronic means, including electronic mail over the Internet, to an electronic mailing address designated in writing by the Unit Owner. Notice of default or lien must be sent by registered or certified United States mail, return receipt requested, postage prepaid. If a Unit is owned by more

than one person, each such person who so designated an address in writing to the Secretary shall be entitled to receive all notices hereunder.

13.2 Conflicts of Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles will control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control.

13.3 Use of Electronic Mail or Meeting. Any action or vote which may be taken or entered by a Director, Unit Owner or Member in person, or by proxy, other than a vote on amendment of the Declaration, may, in the alternative, be accomplished by the use of electronic mail in accordance with rules promulgated by the Board of Directors establishing reasonable safeguards as to the genuineness of the action and notice to the other participants. The action shall be evidenced by a written record describing the action taken, signed before or after such action by all members utilizing said method, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

13.4 Dissolution. The Association may be dissolved only after termination of the Condominium in accordance with the terms of the Declaration and the creation and execution of a plan of dissolution which is in full compliance with all terms of the North Carolina Nonprofit Corporation Act. Any Association assets remaining after satisfying all Association debts will be distributed in accordance with the plan of dissolution and in a manner complying with the North Carolina Nonprofit Corporation Act.

13.5 Construction. These Condominium Instruments are intended to comply with all of the applicable provisions of the Condominium Act and shall be so interpreted and applied. The failure to comply strictly with the time periods required by the Condominium Instruments, unless also required by the Condominium Act, shall not invalidate any action of the Board of Directors or the Association in the absence of a written objection by the Declarant or a Unit Owner within ten (10) days after the failure to comply. Should any of the terms of these Bylaws conflict with any of the provisions of the Act, the provisions of the Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph or clause of these Bylaws or application thereof to any person or circumstance is judicially held to be invalid, such determination shall not affect the enforceability, validity or affect the remainder of these Bylaws, or the application thereof to any other person or circumstance.

13.6 Unit Owners and Members. Unit Owners refers to the holders of the real estate title to the individual Condominium Units. Members refers to the Unit Owners acting in their capacity as Members of the Association. Wherever the context requires, reference to the Unit Owners in one capacity shall be understood to also refer so them in their other capacity.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of Rodanthe Sunset Resort Unit Owners' Association, Inc., a North Carolina corporation, and

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted by written consent of all directors of the Association, effective as of the date hereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association, this ____ day of _____, 20__.

BY: _____
Secretary

NORTH CAROLINA
DARE COUNTY

I, _____ a Notary Public of the aforesaid County and State do hereby certify that _____ Secretary of Rodanthe Sunset Resort Unit Owners' Association, Inc., a North Carolina corporation, appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

(SEAL)

**RULES AND REGULATIONS OF
RODANTHE SUNSET RESORT CONDOMINIUM ASSOCIATION, INC.**

These Rules and Regulations apply to and are binding upon all persons owning, occupying, or otherwise using a Unit or the Common Elements within Rodanthe Sunset Resort Condominiums (the "Condominium"). These Rules and Regulations shall supplement and apply in addition to the restrictions on use of the Units and Common Elements set forth in the Declaration of Condominium for Rodanthe Sunset Resort (the "Declaration"). In the event of a conflict between these Rules and Regulations and the Declaration, the Declaration shall control. Capitalized terms used in these Rules and Regulations shall have the same meaning as those found in the Declaration.

1. Unit Owners are responsible and accountable for the conduct of their families, guests, invitees, tenants & lessees, employees, and other persons occupying their Unit or visiting the Condominium. All such persons are required to abide by these Rules and Regulations.
2. Common Element walkways, hallways, stairs and stairwells, and entrance areas may not be obstructed or encumbered or used for any purpose other than ingress and egress.
3. Except for the parking of motor vehicles in parking spaces and the use of Individual Residential Common Element balconies and storage closets, no portion of the Common Elements may be used for the storage of a Unit Owner's or Occupant's personal property.
4. No planting or gardening or other landscaping shall be done or maintained upon the Common Elements other than landscaping installed by the Declarant or the Association.
5. Objects, including hanging or box container plantings and bird feeders, shall not be permitted to hang from or be attached to balcony walls, railings, or ceilings or otherwise protrude outside the vertical plane formed by the exterior boundary of the Unit balcony.
6. No pet shall be left on any balcony or tied to any structure outside a Unit when the Unit Owner or other responsible person is not present. Litter boxes are not permitted on the balcony or any other portion of the Common Elements. All pet owners shall be responsible for cleaning up after their pets.
7. Carrying, storing, keeping or using flammable, combustible, explosive, toxic, or otherwise harmful fluids, chemicals, or substances within the Condominium is prohibited, with the exception of household cleaning products for everyday use within the Units.

8. Barbecues and grills of any kind are prohibited on any balcony.
9. Garbage and trash shall be regularly removed from the Unit and disposed of properly and promptly in Association dumpsters. The placement or storage of trash in hallways, on balconies, or on the Common Elements is prohibited.
10. The display or discharge of fireworks and firearms within the Common Elements or Limited Common Elements is prohibited; provided, the display of lawful firearms during transport (and for no other purpose) to or from a Unit is permitted.
11. No Unit Owner or guest of a Unit Owner shall make or permit any disturbing noise or activity in the Condominium or do anything or permit anything to be done therein which will interfere with the rights, conveniences or quiet enjoyment of other Unit Owners and their guests. Quiet hours are between 10:00pm and 8:00am the following day.
12. Swimming is permitted only during the open hours of the pool, as may be posted and amended from time to time by the Declarant or the Association. The Declarant and the Association Board may also establish times when the pool area, gazebo, and sound walkway areas are off limits.
13. Glass objects, drinking glasses, and sharp objects are not permitted in the pool area. Smoking is prohibited in the pool area. Animals of any kind, other than service animals, are prohibited in the pool area.
14. Smoking is prohibited on Unit Balconies and on Common Element walkways, hallways, stairs and stairwells, and entrance areas.

|

EXHIBIT "E"

Schedule of Unit Information

Rodanthe Sunset Resort Condominiums

Building	Unit Number	Square Footage	Percentage of GCE and GCEX	Vote In Association	Residential % Interest of LCE
A	Unit 2A	1,423	16.6%	16.6	16.6%
	Unit 2B	1,437	16.8%	16.8	16.8%
	Unit 2C	1,423	16.6%	16.6	16.6%
	Unit 3A	1,423	16.6%	16.6	16.6%
	Unit 3B	1,437	16.8%	16.8	16.8%
	Unit 3C	1,423	16.6%	16.6	16.6%
TOTAL		8,566	100%	100	

In the event that additional Buildings in future Phases are added to the Condominium, percentage ownership of the Common Elements and Limited Common Elements shall be proportionally reduced by the number of additional Units added. Revised ownership percentages and voting rights in the Association shall be as reflected in a revised Schedule of Unit Information recorded with a Supplemental Declaration adding additional Units to the Condominium.

BK 2143 PG 314 - 319 (6)

DOC# 700034335

This Document eRecorded:

01/06/2017 12:05:01 PM

Fee: \$26.00

Excise Tax: \$0.00

Dare County, North Carolina

Vanzolla McMurrin, REGISTER OF DEEDS

Prepared by & return to:
Wyatt M. Booth, Esq.
Williams Mullen
PO Box 1000
Raleigh, NC 27602

**FIRST AMENDMENT
TO
DECLARATION OF CONDOMINIUM**

FOR

**RODANTHE SUNSET RESORT CONDOMINIUMS
an expandable condominium**

THIS FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM for Rodanthe Sunset Resort Condominiums (this "First Amendment") is made as of this the 20th day of December, 2016 by Rodanthe Sunset Resort, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

Submitted electronically by "williams mullen"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Dare County Register of Deeds.

RECITALS:

R1. Declarant is the owner and developer of that certain development located in the Village of Rodanthe on Hatteras Island, North Carolina known as Rodanthe Sunset Resort Condominiums (the "Condominium").

R2. Declarant recorded the Declaration of Condominium for the Condominium on June 1, 2016 (Document No. 700026120) at Book 2097, Page 255 of the Dare County Registry (the "Declaration").

R3. Pursuant to Section 6.23 of the Declaration, the Declarant may amend the Declaration during the Declarant Control Period, which has not expired.

R4. Declarant desires to amend Section 14.2 of the Declaration to increase the period of time during which First Mortgagees may respond to certain notices as provided therein.

NOW, THEREFORE, Declarant hereby amends the final paragraph of Section 14.2 of the Declaration to state as follows:

The failure of any First Mortgagee to respond within sixty (60) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Instruments wherever First Mortgagee approval is required shall constitute an approval by that mortgagee of the proposed addition or amendment.

Except as amended hereby, the Declaration shall remain in full force and effect.

Trustee and Beneficiary join in the execution of this First Amendment to consent to the terms of the same.

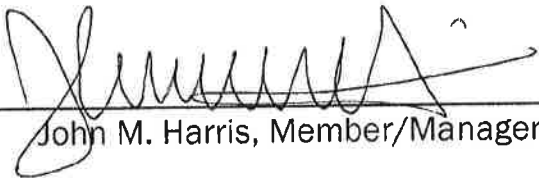
IN WITNESS WHEREOF, the Declarant has caused this First Amendment to be duly executed as of the day and year first set forth above.

[SIGNATURE AND NOTARY ACKNOWLEDGMENT]
[APPEAR ON FOLLOWING PAGE]

[Signature Page - First Amendment - John Harris]

DECLARANT:

RODANTHE SUNSET RESORT, LLC, a North Carolina limited liability company

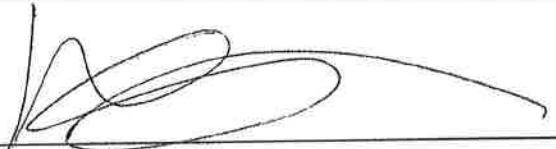
By:  (SEAL)
John M. Harris, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF DARE

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John M. Harris, Member/Manager of Rodanthe Sunset Resort, LLC, a North Carolina limited liability company.

Date: December 28th, 2016


Signature of Notary Public

DEBORAH S. WITTERS
Notary Printed Name

My Commission Expires: 7.7.20



[Signature Page – First Amendment – Jeff Fabrikant]

By: [Signature] (SEAL)
Jeffrey Fabrikant, Member

STATE OF District of Columbia
COUNTY OF [Signature]

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jeffrey Fabrikant Member of Rodanthe Sunset Resort, LLC, a North Carolina limited liability company.

Date: 12/20/ 2016

[Signature]
Signature of Notary Public

ANNA MASSEY
Notary Printed Name

My Commission Expires: My Commission Expires
June 30, 2018

(Official Seal)



[Signature Page - First Amendment - Trustee]

TRUSTEE:

H. Taylor Sugg, Jr. (SEAL)
H. Taylor Sugg, Jr.

STATE OF NC

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: H. Taylor Sugg, Jr., Trustee.

Date: 11/3/2017, 2016

Kelly J Pierce
Signature of Notary Public

KELLY J PIERCE
Notary Printed Name

My Commission Expires: 7/4/2021

(Official Seal)



[Signature Page – First Amendment – Beneficiary]

BENEFICIARY:

TOWNEBANK

By: *H. Taylor Sugg* (SEAL)
H. Taylor Sugg, President

STATE OF NC

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: H. Taylor Sugg, President of TowneBank, a Virginia banking corporation.

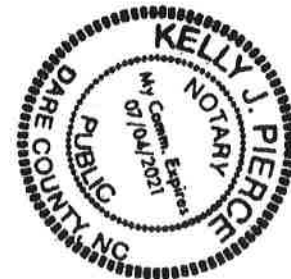
Date: 1/3/2017, 2018

Kelly J. Pierce
Signature of Notary Public

KELLY J. PIERCE
Notary Printed Name

My Commission Expires: 7/4/2021

(Official Seal)



Recorded: 09/07/2017 12:02:33 PM
BY: SHAREE WILDER
Vanzolla McMurrin, Register of Deeds
Dare County, NC

Fee Amt: \$26.00 NC Excise Tax: \$0.00

BOOK 2190 PAGE 698 (7)

700043395



Prepared by & return to:
Wyatt M. Booth, Esq.
Williams Mullen
PO Box 1000
Raleigh, NC 27602

**SECOND AMENDMENT
TO
DECLARATION OF CONDOMINIUM
FOR**

**RODANTHE SUNSET RESORT CONDOMINIUMS
an expandable condominium**

THIS SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM for Rodanthe Sunset Resort Condominiums (this "Second Amendment") is made as of this the 19th day of June, 2017 by Rodanthe Sunset Resort, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

RECITALS:

R1. Declarant is the owner and developer of that certain development located in the Village of Rodanthe on Hatteras Island, North Carolina known as Rodanthe Sunset Resort Condominiums (the "Condominium").

R2. Declarant recorded the Declaration of Condominium for the Condominium on June 1, 2016 (Document No. 700026120) at Book 2097, Page 255 of the Dare County Registry (the "Declaration") as amended by that certain First Amendment to the Declaration recorded on January 6, 2017 (Document No. 700034335) at Book 2143, Page 314 of the Dare County Registry.

R3. Pursuant to Section 6.23 of the Declaration, the Declarant may amend the Declaration during the Declarant Control Period, which has not expired.

R4. Declarant desires to amend the Declaration as provided herein.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The parenthetical in the first sentence of the second paragraph of Page 3 of the Declaration is amended to delete "Rodanthe Sunset Resort Owners Association, Inc." and replace with "Rodanthe Sunset Resort Unit Owners Association, Inc."

2. Section 1.6 is amended to delete "Rodanthe Sunset Resort Owners Association, Inc." and replace with "Rodanthe Sunset Resort Unit Owners Association, Inc." Section 1.6 is further amended to replace the reference to "Exhibit 'D'" with "Exhibit 'C'".

3. Section 1.9 is amended to replace the reference to "Exhibit 'C'" with "Exhibit 'D'".

4. Section 1.19(b) is amended to delete "Shared Limited Common Elements" and replace with "[Intentionally Omitted]".

5. Sections 1.65, 3.2, 3.4, 3.5, 3.12, 4.12(b), and 11.6 are each amended to replace the references to "Exhibit 'C'" with "Exhibit 'E'".

6. Section 5.15 is amended to replace the term "Limited Common Elements", appearing twice in Lines 3 through 5, with the term "Residential Limited Common Elements".

7. Section 6.15 is amended to delete the text "No individual dog shall exceed eighty (80) pounds," and to delete the text "provided that no individual animal exceeds forty (40) pounds."

Except as amended hereby, the Declaration shall remain in full force and effect.

Trustee and Beneficiary join in the execution of this Second Amendment to consent to the terms of the same.

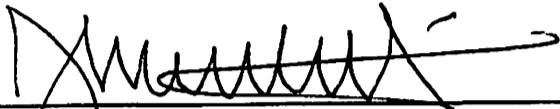
IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to be duly executed as of the day and year first set forth above.

[SIGNATURE AND NOTARY ACKNOWLEDGMENT]
[APPEAR ON FOLLOWING PAGE]

[Signature Page – Second Amendment – John Harris]

DECLARANT:

RODANTHE SUNSET RESORT, LLC, a North Carolina limited liability company

By:  (SEAL)
John M. Harris, Member/Manager

STATE OF North Carolina
COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John M. Harris, Member/Manager of Rodanthe Sunset Resort, LLC, a North Carolina limited liability company.

Date: July 18, 2017


Signature of Notary Public

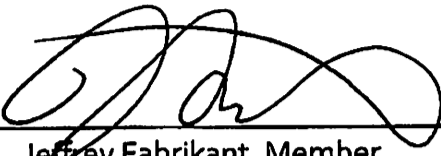
Elizabeth E. Robbins
Notary Printed Name

My Commission Expires: November 3, 2018

(Official Seal)

Elizabeth E Robbins
Notary Public
Dare County, North Carolina
My Commission Expires November 3, 2018

[Signature Page – Second Amendment – Jeff Fabrikant]

By:  (SEAL)
Jeffrey Fabrikant, Member

STATE OF District of Columbia

COUNTY OF _____

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jeffrey Fabrikant Member of Rodanthe Sunset Resort, LLC, a North Carolina limited liability company.

Date: July 17th, 2017

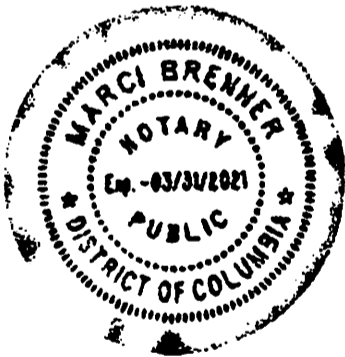

Signature of Notary Public

Marci Brenner
Notary Printed Name

My Commission Expires: _____

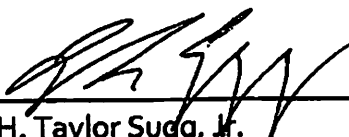
MARCI BRENNER
Notary Public, District of Columbia
My Commission Expires March 31, 2021

(Official Seal)



[Signature Page – Second Amendment – Trustee]

TRUSTEE:


_____(SEAL)
H. Taylor Sugg, Jr.

STATE OF NC

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: H. Taylor Sugg, Jr., Trustee.

Date: 6/23, 2017



Signature of Notary Public

Casey C. Rawles

Notary Printed Name

My Commission Expires: 2/24/2018

(Official Seal)



[Signature Page – Second Amendment – Beneficiary]

BENEFICIARY:

TOWNEBANK

By:  (SEAL)
H. Taylor Sugg, President

STATE OF NC

COUNTY OF Dare

I, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: H. Taylor Sugg, President of TowneBank, a Virginia banking corporation.

Date: 6/23, 2017


Signature of Notary Public

Casey C Rawles
Notary Printed Name

My Commission Expires: 2/24/2018

(Official Seal)

