

BK 2475 PG 598 - 723 (126) DOC# 700094001  
This Document eRecorded: 03/03/2021 10:18:37 AM  
Fee: \$470.00 Excise Tax: \$0.00  
Dare County, North Carolina Transfer Tax: \$0.00  
Cheryl L. House, REGISTER OF DEEDS

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Appendix "A" to Public Offering

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM**

**FOR**

**WAVES VILLAGE 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.**

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.

**THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM** for Waves Village Condominiums (this "Declaration") is made effective as of the 1st day of February, 2021 by Waves Village, 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." All owners of Units in the Condominium join in execution of this Declaration to evidence their consent hereto.

### BACKGROUND STATEMENT

This Declaration amends and restates that certain Declaration of Condominium for Waves Village Condominiums dated October 9, 2009 and recorded in the Dare County Registry on March 1, 2010 at Deed Book 1826, Page 269 (Document ID #6272141).

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 the Land and the improvements located thereon (collectively the "Property") to the terms and provisions of the North Carolina Condominium Act.

Waves Village Condominiums ("WVC") is presently includes two (2) Buildings with one (1) Buildings consisting of nine (9) residential units each and one (1) commercial Buildings for commercial purposes including retail, restaurant, office space with storage, and employee housing as may be permitted. WVC is expandable for the purpose of the construction of additional Buildings in one or more additional phases. Additional future phases may include, in Declarant's sole discretion, single-family residential construction, additional Buildings containing residential units (which may contain employee and/or student housing), additional commercial Buildings, or additional commercial uses. Future phases will be built upon those building sites designated as convertible land. If the building site designated as Convertible Land is not phased into the Condominium as provided, then the building site shall become part of the General Common Elements. All portions of the Buildings, excepting the Units, shall be Limited Common Elements of a Building subject to assessment as Limited Common Expenses. 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 General Common Elements shall consist of the: roads, parking, concrete, storm water area, 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, pool, soundfront amenities of Pamlico Sound including dock, boat ramp and steps, all of which are of service to all of the Buildings and Units.

The Declarant has deemed it desirable to create a North Carolina non-profit condominium owners' association names the Waves Village Unit Owners' Association, Inc. which was formed on October 16, 2009 and upon expiration of the Declarant Control Period will be delegated and assigned powers of maintaining and administering the General Common Elements on Property, 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 Property. The Bylaws of the Association make provisions for the formation of a Residential Subassociation with a Residential Executive Committee to manage the operation of the Residential Section and a Commercial Subassociation with a Commercial Executive Committee to manage the operation of the Commercial Section. Upon execution of future phases, additional subassociations may be added in the discretion of the Declarant. To accomplish the objectives as referenced within these recitals the Declarant shall maintain a significant role in the implementation of each phase of WVC and in accord, the Declarant has reserved Developmental Rights and will exercise controls throughout the phasing of the Buildings and the conversion of the convertible land.

### 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 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 Waves Village Unit Owners' Association, Inc. filed in the office of the Secretary of State of North Carolina on October 16, 2009, 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 Waves Village Unit Owners' Association, Inc., a North Carolina non-profit condominium 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 on the Property. Phase One Residential consists of that Building identified as Building "C" containing approximately 7,728 square feet and consisting of nine (9) three bedroom Residential Units. Phase One Commercial consists of that Building identified as Building "B" containing approximately 11,616 square feet of retail space on the first floor and a restaurant with office and storage space on the second floor. Building "B" will initially contain one Commercial Unit and is subject to being subdivided into additional Commercial Units. Additional Buildings may be constructed on convertible land in the discretion of the Declarant.

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 elected by the Commercial Subassociation in accordance with the Bylaws who have the exclusive power to make decisions delegated to them by the Commercial Subassociation concerning matter affecting the Commercial Section in accordance with the Bylaws.

1.11 "Commercial Expenses" shall mean and refer to all lawful expenditures made by, or incurred on behalf of, the Commercial Subassociation or 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: (a) liability for Commercial Expenses; (b) interest in surplus funds of the Commercial Subassociation; and (c) votes in the Commercial Subassociation.

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 "Commercial Subassociation" shall mean and refer to the owners of the Commercial Units acting as a group in accordance with the Bylaws.

1.17 "Commercial Unit" shall mean and refer to any Unit which is designated as a "Commercial Unit" within **Building "B"** as shown on the Plans.

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 Property 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 Subassociation ("Residential Expenses"); (c) Commercial Subassociation ("Commercial Expenses"); and (d) one (1) or more but less than all the Units by the Association or a Subassociation ("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

Expenses declared Common Expenses by this Declaration or the Bylaws.

1.22 "Condominium" shall mean and refer to the Waves Village 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 Waves Village, LLC, a North Carolina limited liability company, which is the fee simple owner of the 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 convert Convertible Land, to create Units, Common Elements, or Limited Common Elements within the Condominium, to subdivide Units or convert Units into Common Elements. Declarant's exercise of Development Rights may include, but is not limited to, in Declarant's sole discretion, single-family residential construction, additional Buildings containing residential units (which may contain employee and/or student housing), additional commercial Buildings, or additional commercial uses.

1.29.2 "Development Rights Period" shall mean a period of time twenty-five (25) 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 16.1(h) and 16.1(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.



1.33 "General Common Elements" shall mean and refer to the Common Elements except for the Limited Common Elements that are located on the Property 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 subject to this Declaration, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on **Exhibit "A"** attached hereto.

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 Expense.

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 Property 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 Property.

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 as more particularly set forth in Section 5.15 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.

1.51 "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 at Unit Ownership File 6, Page 394 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 Landmark Engineering & Environmental, P.C. which depicts the location of the Buildings and the Units which Condominium Plat is filed with the Plans.

1.53 "Property" shall mean and refer to the real property submitted to the Act by this Declaration as more fully described in attached **Exhibit "A"** and in the Plats and Plans filed in the Unit Ownership File in the Office of the Register of Deeds of Dare County, North Carolina and including all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

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 elected by the Residential Subassociation in accordance with the Bylaws who have exclusive power to make decisions delegated to them by the Residential Subassociation concerning matters affecting the Residential Section in accordance with the Bylaws.

1.56 "Residential Expenses" shall mean and refer to all lawful expenditures made or incurred on behalf of the Residential Subassociation or which are for the exclusive benefit 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: (a) liability for Residential Expenses; (b) interest in surplus funds of the Residential Subassociation; and (c) votes in the Residential Subassociation.

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 "Residential Subassociation" shall mean and refer to the Owners of Residential Units acting as a group in accordance with the Bylaws.

1.62 "Residential Unit" shall mean and refer to any Unit which is located in **Building "C"** or any future Unit added to the Condominium exclusively for residential use.

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 "B"**, which schedule shows the Residential Units in **Building "C"** and the **Commercial Building "B"** and for each Unit its Identifying Number, undivided interest in the General Common Elements, number of votes in the Association, share of liability for General Common Expenses, and either the Residential Percentage Interest or the Commercial Percentage Interest in either the Residential Subassociation or the Commercial Subassociation and number of votes in the Residential or Commercial Subassociation as applicable. The Schedule of Unit Information shall also identify within **Exhibit "B"** a Unit's percentage of Limited Common Assessments within a Building.

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 exercise Development Rights; (b) to convert convertible space; (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 or any Convertible Land; and (e) to appoint or remove any officer or Director of the Association or any Executive Member of either the Residential or Commercial Subassociation during the Declarant Control Period.

1.67.1 "Special Declarant Rights Period" shall mean a period of time twenty-five (25) 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, with the exception of those rights which may only be exercised by Declarant during the Declarant Control Period.

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 sheetrock 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 sheetrock 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.

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, and interior 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.

Notwithstanding the foregoing, the Declarant may, by future amendment to this Declaration, divide any portion of the areas shown on the Plat as Convertible Land into land units for the purpose of single-family residential development or otherwise, whose boundaries will be as provided in such future amendment and which, upon recordation of such future amendment, will become "Units" under this Declaration.

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 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

1.72 "Waves Village Shopping Center" shall mean the owners (and their tenants, invitees and guests) of those buildings containing Commercial Units comprising Waves Village Shopping Center.

## ARTICLE II

### Creation of the Condominium

2.1 Submission to the Act. Declarant hereby submits all that Property described in **Exhibit "A"** to the Act subject to the Development Rights and Special Declarant Rights of the Declarant to add Units and construct additional Buildings within the Convertible Land and subject to the right of the Declarant to further subdivide the Commercial Buildings into additional Commercial Units. The Property 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 the Property, 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 “Waves Village 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 Convertible Land. The Declarant hereby explicitly designates as Convertible Land all of that Property designated on the Plat as **“Convertible Land Outparcel ‘A’ Commercial Building On Piles (Need Not Be Built) Limited Common Elements”** and **“Convertible Land Outparcel ‘D’ Residential Building On Piles (Need Not Be Built) Limited Common Elements”** which are not presently submitted as Units. The Declarant hereby explicitly reserves an option during the Development Rights Period to convert all or any portion of the Convertible Land from time to time without the consent of any Unit Owner or Mortgagee. The option to convert may be terminated prior to such anniversary only in the sole discretion of the Declarant upon the filing of an amendment to the Declaration by the Declarant. The Declarant or any successor in interest reserves the right to convert any or all portions of the Convertible Land at any time, at different times, in any order, without limitations; provided, however, that the Convertible Land shall not exceed the area shown on the Plat. There are no other limitations on the Declarant’s option to convert the Convertible Land; particularly, notwithstanding the language and designation appearing on the Plat, the Declarant may convert the Convertible Land to any use permissible under this Declaration, including, but not limited to, land Units for single-family residential construction, additional Buildings containing Residential Units, additional Buildings containing Commercial Units, or additional commercial uses.

2.5 Assurances. Any Buildings to be constructed within the Convertible Land will be compatible in quality, materials and style with the Buildings 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 Convertible Land 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 Convertible Land 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 "A"** and shown on the Plat, and it includes all improvements thereon and all rights and easements appurtenant thereto. The location and dimension of the Units contained in **Residential Building "B"** and the Commercial Unit contained in **Commercial Building "C"** are shown on the Plats 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 "B"**.

3.3 Location of Convertible Land Sites. The location of the Convertible Land which may be added to the Condominium and developed by the Declarant during the Development Rights Period, is set forth on the Plat, and as more particularly described and reserved to Declarant in Section 2.4 hereof.

3.4 Condominium Units. Phase One consists of **Residential Building "C"** consisting of nine (9) three bedroom residential Condominium Units and Phase One also includes **Commercial Building "B"** presently consisting of one Condominium Unit having a footprint of approximately 11,616 square feet of retail space on the first floor and containing a second floor with a restaurant with approximately 3,300 square feet and approximately 306 square feet of office space. 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 "B"** 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 and respective votes in the applicable Residential or Commercial Subassociation.

Each 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 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 Unit by such Unit Owner.

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 metal 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 sheet rock 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, dry-wall, 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 "B"**. Notwithstanding the foregoing, the Declarant may, by future amendment to this Declaration, divide any portion of the areas shown on the Plat as Convertible Land into land units for the purpose of single-family residential development or otherwise, whose boundaries will be as provided in such future amendment and which, upon recordation of such future amendment, will become "Units" under this Declaration.

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 Land;
- (b) Landscaping within the General Common Elements and related lighting;
- (c) All parking and asphalt paving services;
- (d) All stormwater area;
- (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) All exterior lighting, including safety, security, parking and perimeter lighting;
- (k) Reserved; and
- (l) Soundfront amenities of Pamlico Sound including dock, boat ramp and steps.

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;

(c) The exterior walls (not including windows and doors), the stairs and decks leading thereto, and the roof of each Building;

(d) The elevators and stairwells of each Building; and,

The sprinkler systems that serve 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

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. The elevated walkway between Buildings “C” and “D” is a Residential Limited Common Element. Furthermore, the swimming pool shown on the Plans adjacent to Building “C” shall be a Residential Limited Common Element, serving and benefitting the Residential Units exclusively.

3.11 Commercial Limited Common Elements. 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 "B"** 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.

3.13.1 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.

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

3.13.3 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.

3.13.4 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 Waves Village Unit Owners' Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property 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. There shall be at least two subassociations of the Association for the purpose of administering the residential and commercial sections of the Condominium, and the Declarant reserves the right to add additional subassociations as may be necessary for the administration of future phases.

4.2 Residential Subassociation. The Residential Subassociation shall consist of all the Residential Members. For all purposes the Residential Subassociation shall act merely as an agent of the Residential Members as a group. The Residential Subassociation shall have the responsibility of administering the residential section, establishing the means and methods of collecting assessments and charges for Residential Limited Common Expenses associated with the residential section, and all assessments owed by Members of the residential section for General Common Elements, arranging for the management of the residential section and performing all the other acts that may be required or permitted to be performed by the Residential Subassociation by the Condominium Instruments or powers that may be delegated by the Association. The Residential Subassociation shall be administered by an executive body composed of three Members, all of which shall be appointed by the Declarant during the Declarant Control Period and thereafter the Members shall be elected by the residential section.

4.3 Commercial Subassociation. The Commercial Subassociation shall consist of all Members of the Commercial Units. For all purposes the Commercial Subassociation shall act merely as an agent for the Commercial Members as a group. The Commercial Subassociation shall have the responsibility of administering the commercial section, establishing the means and methods of collecting assessments and charges for Commercial Limited Common Expenses associated with the commercial section, and collecting assessments and charges for General Common Expenses owned by the Commercial Members, and performing all other acts that may be required or permitted to be performed by the Commercial Subassociation by the Condominium Instruments or powers that may be delegated by the Association. The Commercial Subassociation shall be administered by an executive body composed of three Members, all of which shall be appointed by the Declarant during the Declarant Control Period and thereafter the Members shall be elected by the residential section.

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 Property including the delegation of respective duties to the Residential Subassociation and the Commercial Subassociation, 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 Property, 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.

4.9.1 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.

4.9.2 Committees. The Association, acting through the Board, may delegate any of its rights, duties or responsibilities as they deem appropriate to the

Residential Subassociation, the Commercial Subassociation, or to any committee or other entity that the Board may choose to form.

4.9.3 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 and Members of the Executive Committee of the residential section and the commercial section will be elected as provided in the Bylaws.

4.12 General Common Expenses.

(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.

(b) Allocation of Expenses.

(1) General Common Expenses will be allocated to Unit Owners based on their Common Element Interest as shown on **Exhibit "B"** to the Declaration.

(2) To the extent there is a conflict between the Subassociations regarding the allocation of costs for any Common Expense, the Association shall determine the correct allocation of those expenses and the Subassociations shall pay those expenses as required by the Association.

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 Unit.

4.14 Operation of the Residential Section.

(a) Payment of Residential Expenses. Each Residential Unit Owner shall pay the Residential Expenses assessed by the Residential Executive Committee. 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.

(b) Collection of Assessments. The Residential Executive Committee, or the Managing Agent at the request of the Residential Executive Committee, shall take prompt action to collect any assessments for Residential Expenses due from any Residential Unit Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof. If a Residential Unit Owner is delinquent for more than sixty (60) days, the Residential Executive Committee may file a lien. Any assessment or installment thereof not paid within ten (10) days after due shall accrue a late charge in the amount of One Hundred Dollars (\$100.00), or such other amount as may be established from time to time by the Residential Executive Committee or actual costs of collection, whichever is more.

(c) Statement of Residential Expenses. Within ten (10) days from the receipt of a written request therefore, the Residential Executive Committee 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 Residential Executive Committee may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

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

(1) By the Residential Subassociation. The Residential Subassociation 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 Residential Subassociation 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 Residential Executive Committee 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 Residential Executive Committee 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 Residential Executive Committee determines that such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Residential Unit Owner, the Residential Subassociation 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 windows, doors, equipment, appliances and appurtenances in good order, condition and repair and 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 Residential Subassociation 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.

(e) Additions, Alternation, Renovations or Improvements by the Residential Executive Committee. Except during the Declarant Control Period, whenever in the judgment of the Residential Executive Committee the Residential Limited Common Elements or Individual Residential Limited Common Elements shall required additions, alterations, renovations or improvements costing in excess of five (5%) percent of the Residential Executive Committee'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 Subassociation, and the Residential Executive Committee 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 Residential Executive Committee's annual budget or less during the preceding fiscal year may be made by the Residential Executive Committee 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 number of Members of the Residential Executive Committee, 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.

4.15 Operation of the Commercial Section.

(a) Payment of Commercial Expenses. Each Commercial Unit Owner shall pay the Commercial Expenses, including Limited Common Expenses, assessed by the Commercial Executive Committee 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.

(b) Collection of Assessments. The Commercial Executive Committee, or the Managing Agent at the request of the Commercial Executive Committee, shall take prompt action to collect any assessments for Commercial Expenses due from any Commercial Unit Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof. If a Commercial Unit Owner is delinquent for more than sixty (60) days, the Commercial Executive Committee may file a lien. Any assessment or installment thereof not paid within ten (10) days after due shall accrue a late charge in the amount of One Hundred Dollars (\$100.00), or such other amount as may be established from time to time by the Commercial Executive Committee or actual costs of collection, whichever is more.

(c) Statement of Commercial Expenses. Within ten (10) days from the receipt of a written request therefore, the Commercial Executive Committee 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.

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

(1) By the Commercial Subassociation. The Commercial Subassociation 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 Commercial Subassociation 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 Commercial Executive Committee 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 Commercial Executive Committed 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 Commercial Executive Committee determines that such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Commercial Unit Owner, the Commercial Subassociation 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 Commercial Subassociation 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.

(e) Additions, Alternation, Renovations or Improvements by the Commercial Executive Committee. Except during the Declarant Control Period, whenever in the judgment of the Commercial Executive Committee 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 Commercial Executive Committee'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 Subassociation, and the Commercial Executive Committee 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 Commercial Executive Committee, such additions, alterations or improvements are for the benefit of less than all of the Commercial Unit Owners, such Commercial Unit Owners shall be assessed therefore in such proportion established by Section 4.12(f) herein.

4.16 Conflict. In the event of any overlap or conflict of jurisdiction between the Residential Executive Committee or Commercial Executive Committee under this Article, the respective committees shall cooperate with each other in an attempt to resolve any dispute and if such cooperation is unsuccessful in dealing with the overlap or conflict, the Association shall decide the overlap or conflict.

## 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-3-112, 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:

5.2.1 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 Property 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, including, but not limited to, access easements and temporary construction easements, as may be reasonably necessary for the purposes of discharging its obligations and exercising its Development Rights and Special Declarant Rights, which easements shall exist during the Development Rights Period and Special Declarant Rights Period.

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 Common Elements to prospective purchasers and tenants of Units, and to erect on the Property and 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 over portions of the General Common Elements. It is hereby reserved and granted to Kitty Hawk Kites, Inc. ("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 of the Property and in particular those portions of the General Common Elements lying west of the pool and 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, each a "Special Event") which Permitted Activities shall include the right to display kites, feather banners, flags, garden spinners, displays and tents, and the operation and use of a kayak rack. The Association shall not have the right to host third-party Special Events on the General Common Elements, and use of the General Common Elements by the Members for Special Events shall be in coordination with and at the discretion of Kitty Hawk Kites.

## **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. Further, no Unit may be used as a camp, housing, or base of operations for any private school or training program of any sort, including, but not limited to, training programs for kiteboarding, windsurfing, or other water based activities.

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:

(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.

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

(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.

(d) No Commercial Unit shall be used exclusively as a massage parlor, laboratory, child care home or facility, orphanage, laundry or dry cleaning establishment (other than a drop-off and pick-up facility only), theater, religious institution, police or fire station, jail, convent, community recreation center, post office, tourist house, exterminator, locksmith, gunsmith, 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.

(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.

(f) No Commercial Unit shall be used in a manner that generates objectionable odors (including but not limited to cooking odors or chemical odors) 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 Property, 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 Property 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 Property 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 Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Property, 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 Dish. No Owner shall install on any Building 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.

6.8 Odors. 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. No 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, (a) 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, and (b) Kitty Hawk Kites shall be permitted to post signs on the Common Elements in furtherance of Permitted Activities and Special Events under Section 5.15 of this Declaration.

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 Residential Unit, provided they are not kept or maintained for commercial purposes. No individual dog shall exceed one hundred fifty (150) pounds. A Residential Unit Owner may keep up to two (2) dogs or cats. All pets must be spayed or neutered. No aquarium with a capacity greater than seventy-five (75) 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. Each Owner shall be obligated to clean up after any pet that defecates on any Common Element. 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 Association 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 Property 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 Property 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 Property at any time, unless stored entirely within the boundaries a parking space assigned to a Residential Unit. The Declarant may, in its discretion, create parking areas designated for motor home, travel trailer, camper or other recreational vehicle parking, and if such 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 Property, and no inoperable or abandoned vehicle may be kept or stored on the Property 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 continuing easement of Kitty Hawk Kites pursuant to Section 5.15.

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:

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

7.3.2 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;

7.3.3 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 VII

### 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 convert and develop the Convertible Land. 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 GCE Wastewater Facility shown on the Plat. Declarant shall also have the right to modify, alter, or expand the stormwater controls on the Common Elements 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, and to conduct such work within the Common Elements as may be necessary to facilitate utility connections on Convertible Land.

Declarant provides no assurances as to the order in which any Development Rights shall be exercised, or if such rights will be exercised at all.

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 Subassociations, 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 exercise Development Rights, including, but not limited to, the right to construct and complete additional Buildings and Units on the Convertible Land;

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 Property 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:

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

9.5.2 Charge interest from the date of delinquency at the Default Rate;

9.5.3 Suspend the voting rights of the Owner during any period of delinquency;

9.5.4 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;

9.5.5 Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

9.5.6 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 Reserved.

9.8 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.

9.9 Initial Contribution to Reserves and Replacements. Upon the sale and closing of the purchase of each Unit 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.

9.10 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:

10.3.1 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.

10.3.2 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 9.7 above.

10.3.3 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 Annual Assessments. In accordance with Section 10.3.2 above, the Executive Committee of either the Residential Subassociation or the Commercial Subassociation, as applicable, 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. To the extent reasonably available, 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:

10.4.1 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;

10.4.2 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 Members and Officers of the Subassociations, 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:

10.5.1 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 Property in construction, location, and use.

10.5.2 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 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 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 and furnishings 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.

10.11 Unavailability of Insurance. If the insurance described in Section 10.4, 10.5 or 10.7 of this Declaration is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners.

## **ARTICLE XI**

### Casualty Damage

11.1 The Role of the Board of Directors. Except as provided in Section 11.6, in 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, 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 and fixtures 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, appliances or other personal property of 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 Property 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. The 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 "B"**. 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 Property 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.

## 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 Property 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 Property 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:

14.2.1 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.

14.2.2 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.

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

14.2.4 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.

14.3.1 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.

14.3.2 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.

14.3.3 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 Reserved.

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

### Termination

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:

(a) 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

(b) 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. A 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 shall control. In case of conflict between this Declaration and any notations or other marking on the Plat or Plans, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall 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 and Beneficiary/Lender. H. Taylor Sugg, Jr., in his capacity as "Trustee", and TowneBank in its capacity as "Beneficiary" and "Lender", respectively, under that certain Deed of Trust dated March 27, 2014 and recorded in the Dare County Registry at Book 1954, Page 467 (the "Deed of Trust"), join in the execution of this Declaration to consent to the terms of the same and to subordinate the lien of the Deed of Trust to the provisions of this Declaration

UNOFFICIAL Document

[DECLARANT SIGNATURE PAGE]

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

WAVES VILLAGE, LLC, a North Carolina limited liability company

By: [Signature]  
John M. Harris, Manager

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that John M. Harris personally came before me this day and acknowledged that he is the Manager of Waves Village, LLC, a North Carolina limited liability company, and that by authority duly given and as the act and deed of the limited liability company, the foregoing instrument was signed and sealed in its name by its Manager.

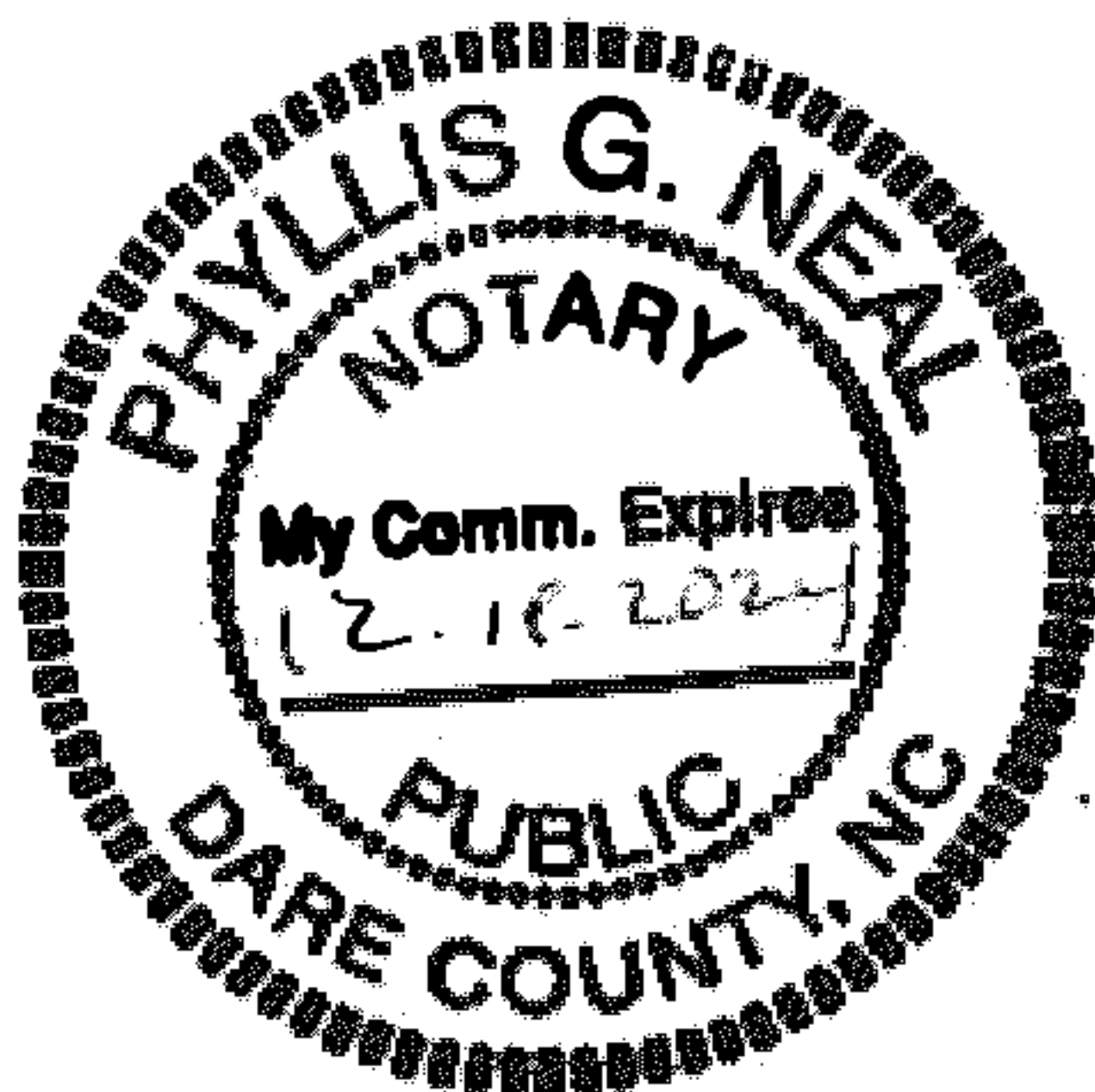
Witness my hand and official stamp or seal, this 25<sup>th</sup> day of February, 2021.

My commission expires: December 10, 2024

[Signature]

Notary Public

[SEAL/STAMP]



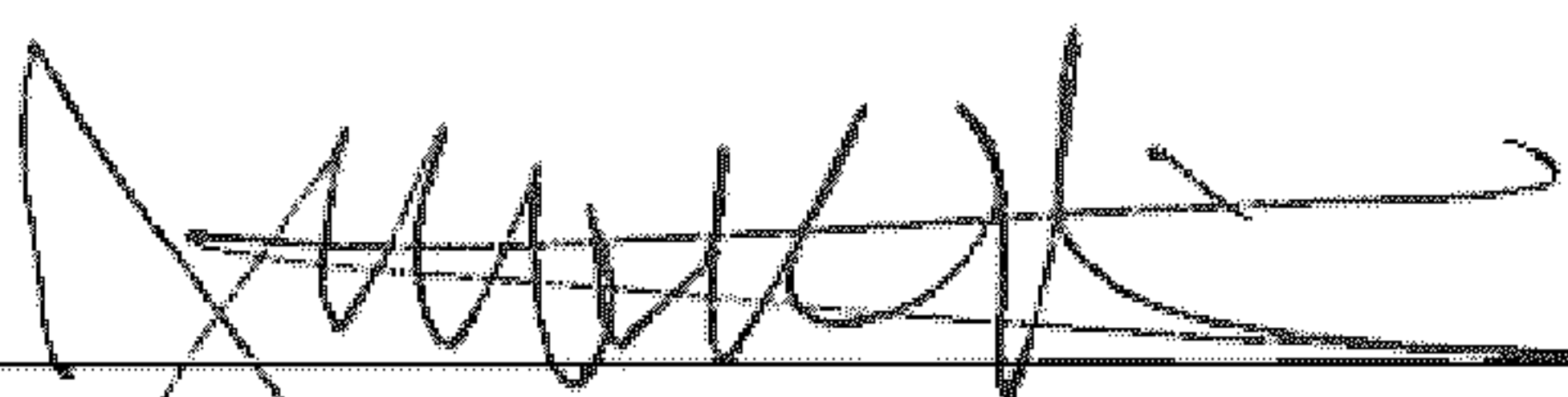
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[UNIT OWNER CONSENT PAGE]

IN WITNESS WHEREOF, the undersigned, being the sole Unit Owner of the Condominium, has executed this Declaration effective as of the day and year first set forth above.

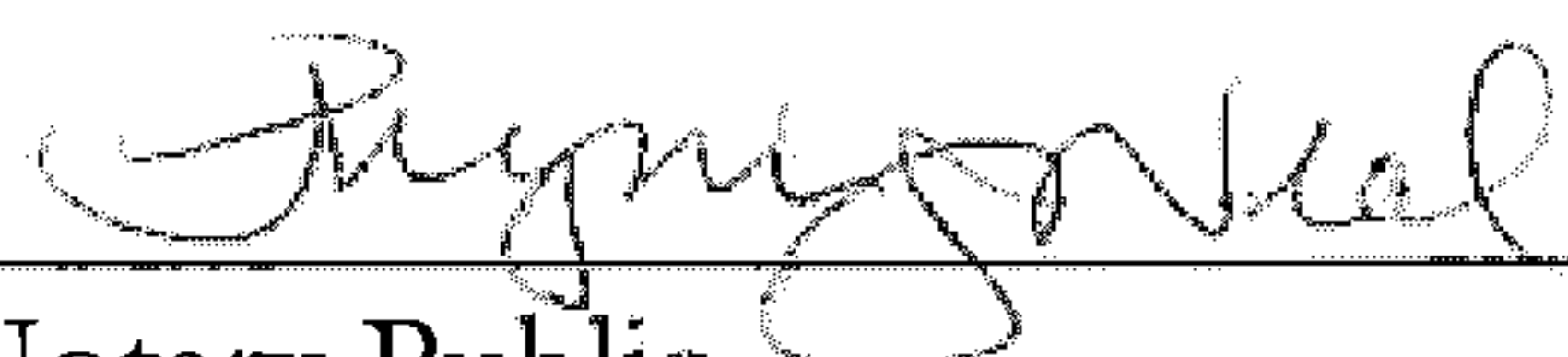
  
\_\_\_\_\_  
John M. Harris, Individual

STATE OF NORTH CAROLINA  
COUNTY OF DARE

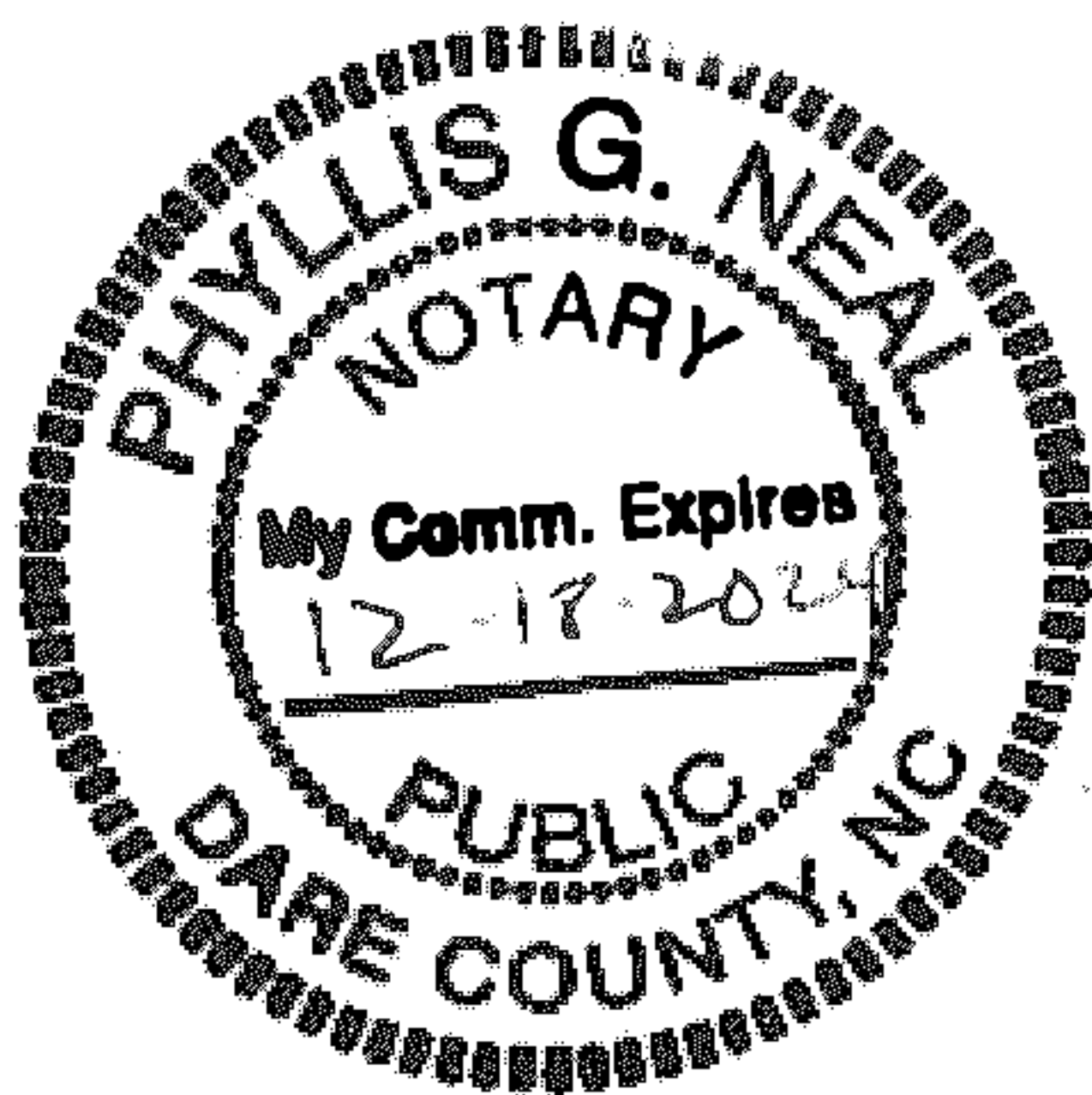
I, the undersigned, a Notary Public of the County and State aforesaid, certify that John M. Harris personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 25<sup>th</sup> day of February, 2021.

My commission expires: December 18, 2024

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

[SEAL/STAMP]



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[TRUSTEE & LENDER CONSENT PAGE]

IN WITNESS WHEREOF, the undersigned Trustee and Lender have executed this Declaration effective as of the day and year first set forth above.

TRUSTEE:

LENDER:

TOWNEBANK

H. Taylor Sugg, Jr., M.  
H. Taylor Sugg, Jr., Trustee

By: H. Taylor Sugg, Jr., M.  
H. Taylor Sugg, Jr.  
President, Currituck & Outer Banks

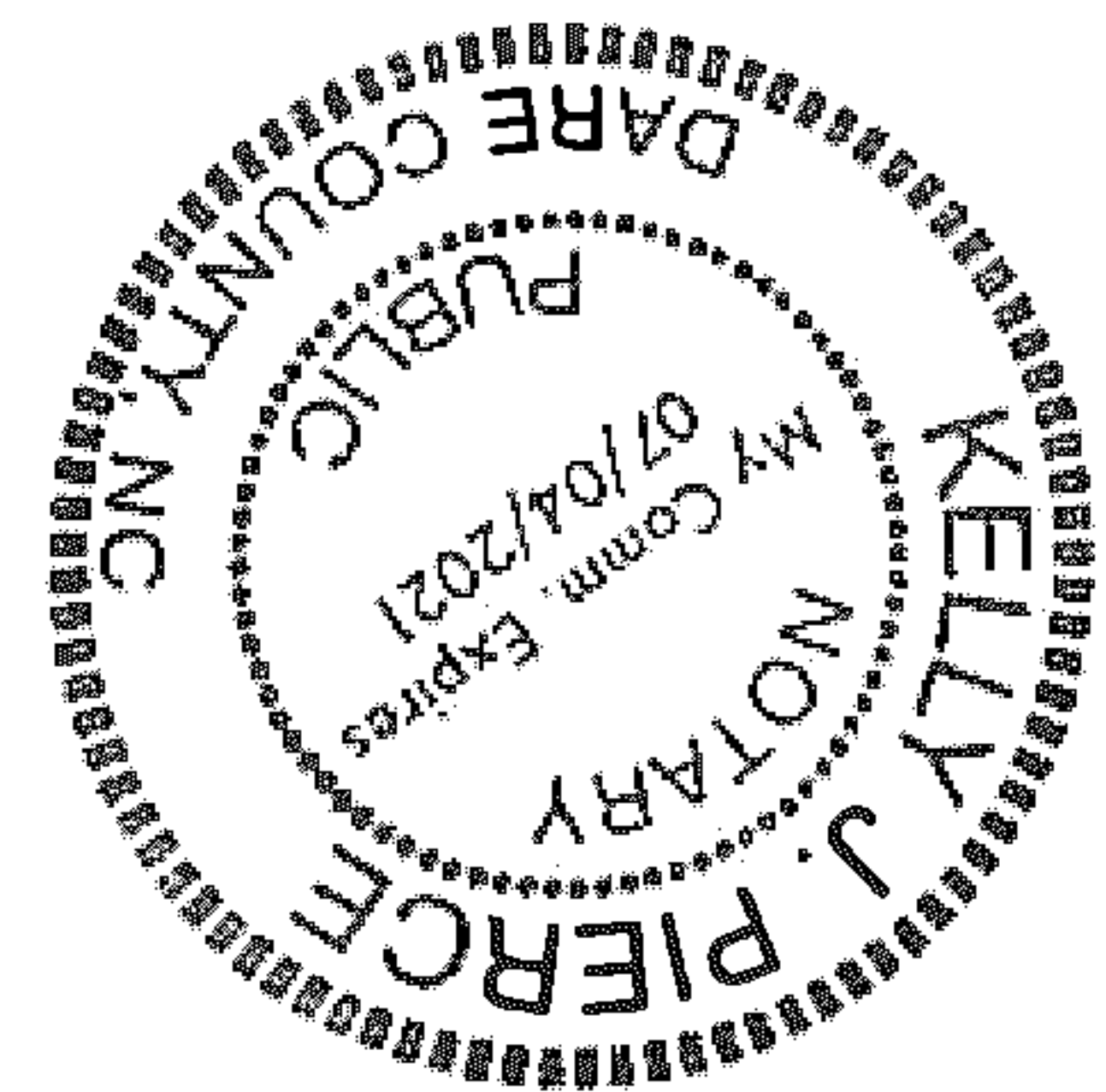
STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that H. Taylor Sugg, Jr. personally came before me this day and acknowledged the due execution of the foregoing instrument in his capacity as Trustee under the Deed of Trust referenced in the foregoing instrument and in his capacity as President, Currituck & Outer Banks of TowneBank.

Witness my hand and official stamp or seal, this 24<sup>th</sup> day of February, 2021.

My commission expires: 7/4/2021  
Kelly J. Pierce  
Notary Public

[SEAL/STAMP]



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**EXHIBIT "A"**

All those certain lots known as, designated and being Lots 1, 2, 3, 4 and 5, of Section 1, as shown on that plat entitled "Plat of Sections One and Two of Soundview Estates" prepared by W. M. Meekins, Jr. and Associates, Surveyors, appearing of record in Plat Cabinet A, Slide 148, in the Office of the Register of Deed of Dare County, North Carolina and more particularly described in Deed Book 1583, Page 178.

Being the same property shown on that certain plat entitled "Survey For Waves Village L.L.C., Waves Village Condominiums, Lots 1-5, Section 1, Soundview Estates" dated December 13, 2009, prepared by Martin Barnette, PLS of Barnette Integrated Land Development and recorded at Unit Ownership File 6, Page 394 of the Dare County Registry.

**EXHIBIT "B"**

**Schedule of Unit Information**

<b>Building</b>	<b>Unit Number</b>	<b>Square Footage</b>	<b>Percentage of GCE and GCEX</b>	<b>Vote in Association (GCE)</b>	<b>Residential % Interest of LCE</b>	<b>Vote in Residential Subassociation</b>	<b>Commercial % Interest of LCE &amp; vote in Com. Subassociation</b>
<b>C</b>	Unit 31	1,658	5.02%	5.02	11.11%	11.11	
	Unit 32	1,606	5.02%	5.02	11.11%	11.11	
	Unit 33	1,658	5.02%	5.02	11.11%	11.11	
	Unit 24	1,658	5.02%	5.02	11.11%	11.11	
	Unit 25	1,606	5.02%	5.02	11.11%	11.11	
	Unit 26	1,658	5.02%	5.02	11.11%	11.11	
	Unit 17	1,658	5.02%	5.02	11.11%	11.11	
	Unit 18	1,606	5.02%	5.02	11.11%	11.11	
	Unit 19	1,658	5.02%	5.02	11.11%	11.11	
	<b>B</b>	Unit 50 [projected 1 unit- subject to being subdivided]	11,616	54.81%	54.81		
<b>TOTAL</b>			<b>100%</b>	<b>100</b>	<b>100%</b>	<b>100</b>	<b>100%</b>

In the event that additional Buildings and Units are added to the Condominium and built on the Convertible Land, the allocations to each Unit of a percentage of undivided interest in the General Common Elements, the percentage of Common Expenses, the Unit % of LCE and of votes in the Association shall be as set forth in an amendment hereto to be filed by Declarant.

\* **GCE = General Common Elements**  
**GCEX = General Common Elements Expenses**