

EXHIBIT D TO DECLARATION  
FOR HERON COVE CONDOMINIUMS  
CREATING UNIT OWNERSHIP  
AND ESTABLISHING RESTRICTIONS,  
COVENANTS AND CONDITIONS

BY-LAWS OF  
HERON COVE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, PURPOSE AND APPLICABILITY

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

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

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

ARTICLE II

DEFINITIONS

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

### ARTICLE III

#### OFFICES, REGISTERED AGENT, SEAL, FISCAL YEAR

3.1 Principal Office, Registered Office. The principal office of the Association shall be located at 4417 North Croatan Highway, Kitty Hawk, NC 27949, or such other places as the Board of Directors may designate from time to time.

3.2 Registered Agent. The initial Registered Agent for the Unit Owners for matters incident to the condominium property and the initial Registered Agent for the Association is Daniel D. Khoury, whose address is Post Office Box 1584, Kill Devil Hills, NC 27948. The Registered Agent for the Association shall also be the Registered Agent for the Unit Owners. The individual serving as Registered Agent may be removed from office and replaced at any time by vote of the Board of Directors of the Association.

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

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

### ARTICLE IV

#### MEMBERSHIP

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

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

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

4.4 Special Meetings.

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

(B) Not later than October 1, 1987, a special meeting of the Unit Owners Association shall be held at which a majority of the members of the Board of Directors shall be elected by the Unit Owners.

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

4.6 Quorum; Adjournment if No Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least Sixty-Six and Two Thirds Percent ( $66 \frac{2}{3}\%$ ) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until quorum is present.

4.7 Voting.

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

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

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

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

4.9 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereto. The President may appoint a person to serve as parliamentarian at the meeting of the Association. The then current

edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws or the Condominium Act. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.

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

## ARTICLE V

### DIRECTORS

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

5.2 Number and Qualifications of Directors. The Board shall consist of not less than three (3) nor more than five (5) natural persons, as determined at any annual meeting by the members. Each Director shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

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

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

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

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

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

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

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

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

5.11 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

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

5.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law,

applicable statutes, the Act, the Declaration, the Articles, and these By-Laws, as any thereof may from time to time be amended. such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these By-Laws, and shall include, but not be limited to, the following:

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

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

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

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

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

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

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

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

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

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof for the general welfare and safety of HERON COVE CONDOMINIUMS.

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

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these By-Laws, or the

Act, to be done by the board or the members. Notwithstanding the foregoing, the Property, including each unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a unit without the approval of the Unit Owner.

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

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

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

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

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

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

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

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

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

(p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy



reasonable fines for violations of the Declaration, these By-Laws, or the rules and regulations.

ARTICLE VI

OFFICERS

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

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

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

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

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

6.6 Powers and Duties of Officers.

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

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

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors

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and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

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

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

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

#### ARTICLE VII

##### INDEMNIFICATION OF DIRECTORS AND OFFICERS

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

#### ARTICLE VIII

##### COMMON EXPENSES, ASSESSMENTS AND LIENS

8.1 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these By-Laws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Property until the units are separately assessed; premiums including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees;

costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 5.13(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result or the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VIII hereof.

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

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

8.4 Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning January 1, 1987, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after creation of the Condominium shall be prepared and adopted by the Board only for the balance of the then fiscal year of the Association, commencing on the date of substantial completion of all structural components and mechanical systems serving more than one unit of the initial building to be constructed, shall be prepared and adopted as soon as

practicable after said date of substantial completion, and notice of the amount of the assessment against each unit for such balance of the fiscal year shall be given by the Board to each member as soon as practicable after adoption. Such assessment shall be deemed levied upon notice thereof given by the Board.

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

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

8.7 Lien As Against First Mortgagees. The lien of assessments shall be superior to the lien of a First Mortgage.

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

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

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

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

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

The reserve fund for repairs and replacements shall be established by the Board beginning with the fiscal year beginning January 1, 1988 and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

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

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

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

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

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

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

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the unit, or in equal

shares to the units, to which such Limited Common Element was allocated at the time the expense was incurred.

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

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

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

8.13 Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against that unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Chapter 47C-3-115 of the Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or

encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien and the Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose.

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

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

All persons, firms or corporations who shall acquire by whatever means, any interest in the ownership of any condominium unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice to the lien rights granted to the Association and shall acquire such interest in any condominium unit expressly subject to such lien rights.

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

ARTICLE IX

RELOCATION AND ALTERATION OF UNITS

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

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

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



9.4 Meeting and Decision of Association. Upon filing of an appeal, a special meeting of the members of the Association shall be called. The notice of meeting shall be sent out within ten (10) days after such filing, and the meeting shall be held within thirty (30) days after such filing. The meeting may be continued from time to time by the chairman. The provisions of Article IV hereof shall apply to such meeting. At such meeting the members shall decide to consent or not to consent to such work. The decision of the Association shall be final.

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

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

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

ARTICLE X

MAINTENANCE, REPAIR AND REPLACEMENT

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

(b) By the Unit Owner. Every Owner shall perform promptly all maintenance and repair work within his condominium unit which, if omitted would affect the Condominium, either in its entirety or in part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each condominium unit shall be

liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his condominium unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of any and all walls, ceilings and floors within his unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his condominium unit. Whenever the maintenance, repair, and replacement of any item for which the Owner of a condominium unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such condominium unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The Owner of a condominium unit who has exclusive use of any Limited Common Area and Facility shall maintain such at his own expense, unless said Limited Common elements have been specifically designated by the board of Directors as maintenance responsibility of the Association. All glass doors, window frames, panes and screens are a part of the respective condominium units and shall be maintained by the respective unit owners.

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

ARTICLE XI

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

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

ALDRIDGE,  
SEAWELL  
&  
TURY  
ATTORNEYS AT LAW  
P. O. BOX 1344  
211 DIXIE HILLS  
NORTH CAROLINA 27668

- (1) Nothing shall be done or kept in any unit or in the Common Elements which will increase the rate of insurance for the Property or any part thereof applicable for residential use without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his unit or in the Common Elements which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste shall be committed on the Common Elements.
- (2) No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Board of Directors.
- (3) The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units.
- (4) No portion of any unit (other than the entire unit) shall be leased for any period. No Unit Owner shall lease a unit other than on a written form of lease: (i) requiring the lessee to comply with the Condominium Instruments and Rules and Regulations; (ii) providing that failure to comply constitutes a default under the lease, and (iii) providing that the Board of Directors has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the lessor thereunder after thirty days (30) prior written notice to the Unit Owner, in the event of a default by the tenant in the performance of the lease. The Board of Directors may provide a suggested standard form lease for use by Unit Owners. Each Unit Owner of a condominium unit shall, promptly following the execution of any lease of a condominium unit, forward a conformed copy thereof to the Board of Directors.
- (5) No trailers, campers, mobile-homes, recreational vehicles, and other large vehicles may be parked on the Property. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements. Vehicle repairs other than ordinary washing and waxing are not permitted on the Property.
- (6) The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within the unit or upon the Common Elements, except that the keeping

- (e) reallocation of interests in the common elements or limited common elements or rights to their use;
- (f) boundaries of any unit;
- (g) convertibility of units into common elements or common elements into units;
- (h) expansion or contraction of the condominium or the addition, annexation or withdrawal of property to or from the condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of units;
- (k) imposition of any restrictions on a unit owner's right to sell, transfer or otherwise convey his unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by any eligible mortgage holder;
- (m) restoration or repair of the condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this declaration or the by-laws;
- (n) any action to terminate the legal status of the condominium after substantial damage or destruction or condemnation; or
- (o) any provisions that expressly benefit first mortgagees or insurers or guarantors of first mortgages.

#### Section 8.8 Consent of First Mortgagees or Unit Owners

This Section 8.8 shall be effective only if, at the time this Section would apply, at least one unit is subject to FNMA/FHLMC financing. Unless first mortgagees holding at least 66 2/3% of the votes allocated to first mortgagees (except first mortgagees having one vote per unit financed), or such higher percentage as is required by law, of the first mortgagees (based upon one vote for each first mortgage owned) and unit owners (other than the Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the condominium;

servants, lessees and persons over whom they exercise control and/or supervision. These rules pertaining to the use of the swimming pool shall be mailed to each of the Unit Owners after the same have been adopted by the Board of Directors.

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

## ARTICLE XII

### INSURANCE

#### 12.1 Authority to Purchase; Notice.

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

(b) Each such policy shall provide that:

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

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

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

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

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

## 12.2 Physical Damage Insurance.

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

(b) Such policy shall also provide:

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

(2) The following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be

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

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

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

12.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) and property damage insurance in such limits as the Board of Directors may from time to time determine,

insuring any member of the board of Directors, the Managing Agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owner (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and contain:

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

(b) hired and non-owner vehicle coverage;

(c) host liquor liability coverage with respect to events sponsored by the Association;

(d) deletion of the normal products exclusion with respect to events sponsored by the Association; and

(e) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Board of Directors shall review such limits once a year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than Three Million Dollars (\$3,000,000.00).

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

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

(1) name the Association as an obligee;

(2) be written in an amount not less than one-half (1/2) the total annual condominium assessments for the year or the amount required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; and



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(3) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

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

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

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

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

#### 12.6 Insurance Trustee.

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

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

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

ARTICLE XIII

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

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

13.2 Procedure for Reconstruction and Repair.

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

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

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any modifications required by changes in

applicable governmental regulations, and using compatible building materials and technology to the extent feasible.

### 13.3 Disbursements of Construction Funds.

(a) The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors as Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

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

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

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

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

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

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

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

13.4 When Reconstruction Is Not Required. In the event the Board of Directors elects not to repair insubstantial damage to the Common Elements, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Condominium and the balance of any insurance proceeds received on account of such damage shall be distributed among all Unit Owners in proportion to their respective Percentage Interest. If the Condominium shall be terminated pursuant to "Act", the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors as Insurance Trustee among all Unit Owners in proportion to their respective Percentage Interests, after first paying out of the share of each Unit Owner, to the extent sufficient therefore, the amount of any unpaid liens on his unit in the order of priority of such liens.

#### ARTICLE XIV

#### COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

14.1 Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these by-Laws, the

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

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

mortgagee which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

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

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

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

14.6 Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these By-Laws, the Articles, the rules and regulations or the Act, as the same may from

time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

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

ARTICLE XV

AMENDMENT

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

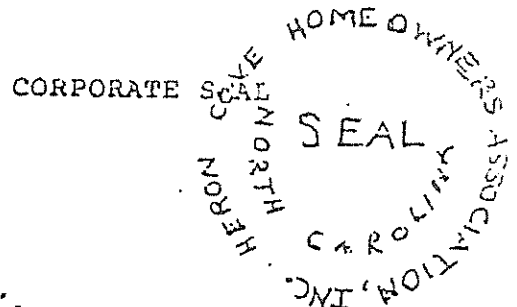
IN WITNESS WHEREOF, the Declarant has caused these By-Laws to be signed and sealed by its duly authorized officers, as its act and deed, on that date set forth within the acknowledgement hereof.

HERON COVE HOMEOWNERS ASSOCIATION, INC.

BY: Charles R. Jones (SEAL)  
President

ATTEST:

Melba H. Jones (SEAL)  
Secretary



STATE OF NORTH CAROLINA  
COUNTY OF DARE

This the 19th day of April, 1988,  
Charles R. Jones personally came before me,  
who being by me duly sworn  
says that he is the President of HERON COVE HOMEOWNERS  
ASSOCIATION, INC., that the seal affixed to the foregoing

instrument in writing is the <sup>EX 562 PC 0453</sup> corporate seal of said corporation, said writing was signed and sealed by him in the office of said corporation by authority duly given him, and the said Secretary acknowledged the said writing to be the act and deed of said corporation.

Jenny L. Fairfield  
Notary Public

11-22-92  
My Commission Expires

