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DECLARATION OF CONDOMINIUM OF 1412 CANAL DRIVE
RECORDED & VERIFIED
MARY SUE OOTS
REGISTER OF DEEDS

THIS DECLARATION OF CONDOMINIUM ("Declaration") is made this 18 day of May, 1999 by J & S Miller, Inc. a North Carolina corporation ("Declarant"), pursuant to provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act".

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RECITALS

Declarant is the owner of that certain parcel of real estate located in the Town of Carolina Beach, New Hanover County, North Carolina, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements now or hereafter constructed or located thereon, which may consist of one building containing four (4) residential condominium units, sidewalks, driveways, parking areas and other improvements. Declarant desires to submit the real property described on Exhibit "A" attached hereto and the improvements located thereon to the terms and provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes, and desires and intends, by the filing of this Declaration to so submit said property and improvements.

NOW, THEREFORE, Declarant does hereby publish and declare that the real property described in Exhibit "A" attached hereto and all improvements located thereon are held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved 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 said real estate into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person or entity acquiring or owning an interest in the said real estate and improvements, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I
DEFINITIONS

SECTION 1. Act: "Act" shall mean and refer to N.C.G.S. 47C as the same may be amended from time to time.

SECTION 2. Association: "Association" shall mean and refer to 1412 Canal Drive Homeowners Association, Inc., a corporation organized and existing under the Non-profit Corporation Act of the State of North Carolina pursuant to and in accordance with this Declaration, the By-Laws, and the North Carolina Condominium Act.

SECTION 3. Building: "Building" shall mean and refer to a structure containing condominium units located upon the land.

SECTION 4. By-Laws: "By-Laws" shall mean and refer to the By-Laws of the Association, which are incorporated herein by reference, and all amendments to such By-Laws which may from time to time be adopted.

SECTION 5. Common Elements: "Common Elements" shall mean and refer to all portions of the condominium other than the units, as more particularly described in Article V, Section 1 of this Declaration.

SECTION 6. Commons Expenses: "Common Expenses" shall mean and refer to expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the By-Laws and the North Carolina Condominium Act, as defined in N.C.G.S. 47C-1-103(6).

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SECTION 7. Condominium: "Condominium" means real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

SECTION 8. Condominium Documents: "Condominium Documents" shall mean and refer to this Declaration, the Articles of Incorporation for 1412 Canal Drive Homeowners Association, Inc. and the rules and regulations governing the use of the Property, as amended and supplemented from time to time, and all attachments and exhibits thereto.

SECTION 9. Declarant: "Declarant" shall mean and refer to their successor in fee ownership of all remaining Units unsold to purchasers or as otherwise defined in N.C.G.S. 47C-1-103(9).

SECTION 10. Executive Board: "Executive Board" shall mean and refer to the governing body, also known as the Board of Directors, from time to time of the Association as constituted in accordance with this Declaration, the Articles of Incorporation of the Association, the By-Laws and the North Carolina Condominium Act.

SECTION 11. Land: "Land" shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein.

SECTION 12. Limited Common Elements: "Limited Common Elements" shall mean and refer to those portions of the common Elements allocated by the Declaration or the terms of the North Carolina Condominium Act for the exclusive use and benefit of one or more but fewer than all of the Units, as more fully described in Article V, Section 2, hereinbelow, and as depicted on the Plans.

SECTION 13. Mortgage: "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a lien on a unit.

SECTION 14. Mortgagee: "Mortgagee" shall mean and refer to the owner and holder of a Mortgage.

SECTION 15. Owner; Owners: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation. "Owners" shall mean and refer to all or a portion of such record owners collectively.

SECTION 16. Plans: "Plans" shall mean and refer to the plans and specifications of the Buildings and Property prepared by David S. Hollis recorded under the name of the Condominium in the Condominium Plans Book in the Office of the Register of Deeds of New Hanover County, and which are incorporated herein by reference.

SECTION 17. Property: "Property" shall mean and refer to the Land; the Buildings and all other improvements and structures located on the Land; all easements, rights and appurtenances belonging or appertaining to the Land; and all articles of personal property intended for common use in connection therewith.

SECTION 18. Unit: "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to N.C.G.S. 47C-2-105(a) (5).

SECTION 19. Declaration: "Declaration" means any instruments, however denominated, which create a condominium, and any amendments to those instruments.

SECTION 20. Development Rights: "Development Rights" means any right or combination of rights reserved by a Declarant in the

Declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.

SECTION 21. Special Declarant Rights: "Special Declarant Rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the Declaration (Section 47C-2-11); to maintain sales offices; management offices, signs, advertising the condominium, and models (Section 47C-2-115); to sue easements through the common elements for the purposes of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116); to make the condominium part of a larger condominium (Section 47C-2-121); or to appoint or remove any officer of the Association or any Executive Board Member during any period of Declarant control (Section 47C-3-103(3)).

In addition thereto, those definitions set forth in N.C.G.S. 47C-1-103 are incorporated herein by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents unless expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II
DESIGNATION OF CONDOMINIUM

The land on which the Buildings and other improvements are located is located in the Town of Carolina Beach, New Hanover County, North Carolina, and is particularly described in Exhibit "A" attached hereto and incorporated herein by reference, which land is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is 1412 Canal Drive.

ARTICLE III
DESCRIPTION OF BUILDINGS

1412 Canal Drive shall consist of one (1) building containing four (4) residential condominium units. The units will contain 1150 square feet each. The building shall be constructed on site and is more particularly described in the Plans which are recorded under the name of the condominium in the Condominium Plans Book in the New Hanover County Register of Deeds Office, which plans show all particulars of the building and are incorporated herein by reference. Such plans contain all certifications and information required by N.C.G.S. 47C-2-109.

ARTICLE IV
DESCRIPTION OF UNITS

There are a total of four (4) Units in the building constituting 1412 Canal Drive. The location of the building is shown on the Plans filed in the Office of the Register of Deeds and incorporated herein by reference. The designation of the units, locations, identifying numbers, approximate area, number of room and immediate common elements to which each has access, are also shown on the plans, to which reference is hereby made for a more particular description.

Each unit consists of all the space bounded horizontally and vertically by its perimeter walls, floors and ceilings. Each unit includes those portions of the Buildings within such boundaries (with the exception of those items specifically listed below) and the space so encompassed. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors, or ceilings are part of the common elements.

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 a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. Subject to the provisions of the immediate preceding paragraph, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of that unit.

Any shutters, awnings, window boxes, door steps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit.

All windows and doors within the walls enclosing a unit shall be a common element of that unit, but the authority and responsibility for maintenance and painting, together with control over the exterior of the building or from any common element, shall remain with the Association. Replacement of any broken glass in a window that is a common element of a unit shall be the sole responsibility and expense of the owner or owners of that unit. Routine maintenance and repair of all lath, furring, wallboard, plasterboard, plaster and subflooring beneath, above, and/or beyond the finished surfaces of the perimeter walls, floor and ceiling of each unit shall be the sole responsibility of the unit owners, although such materials are part of the common elements.

ARTICLE V COMMON ELEMENTS

SECTION 1. Common Elements: The Common Elements include all portions of the condominium that are not part of the Units and as are more particularly described in N.C.G.S. 47C-2-102.

(a) The Land;

(b) All improvements located upon the Land that are not part of the Units, including all foundations, columns, girders, beams, supports, wells, roofs, corridors, lobbies, stairs, fire escapes, and entrances and exits of the buildings;

(c) The yards, gardens, parking areas, and driveways;
and

(d) Installation of central services for the furnishing of utilities and components of the heating and air conditioning systems that serve the Common Elements or serve more than one Unit.

SECTION 2. Limited Common Elements: The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit serving exclusively that Unit shall be Limited Common Elements allocated exclusively to that Unit.

(b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, decks, and all exterior doors, windows, skylights designed to serve a single Unit, but located outside the Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Unit; and

(c) Such other areas designated as limited common areas in the plans.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual owners or Owner having the right to the use and enjoyment of such Limited Common Elements, but the responsibility for maintenance, painting, repair and replacement, together with control over the exterior decoration of the Limited Common Elements, shall remain with the Association. Notwithstanding any other provision of the By-laws or the Unit Ownership Act, the obligations for maintenance, repair, or replacement of any portions of the heating, ventilating and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References herein to Common Elements shall include Limited Common Elements unless the contents clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners.

SECTION 3. Undivided Interest of Owners in Common Elements: Except for minor variations due to rounding the sum of the undivided interest in the Common Elements and Common Expense liabilities allocated at any time to all the Units shall each equal One Hundred (100%) Percent. The percentage of interest in the Common Elements allocated to each Unit shall be Twenty-five (25%) Percent. The percentage of undivided interest in the Common Elements that is allocated to each Unit is Twenty-five (25%) Percent.

ARTICLE VI

PURPOSES FOR WHICH BUILDING AND UNITS ARE INTENDED TO BE USED, AND RESTRICTIONS ON USE

SECTION 1. Unit Use: All Units shall be used for residential purposes only.

SECTION 2. Nuisance: No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners.

SECTION 3. Prohibitions and Use of Common Elements: The Common Elements shall not be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the description of the Executive Board. Stairs, entrances, sidewalks, yards, driveways and parking areas shall not be obstructed in any way. In general, no activity shall be carried on nor conditions maintained by an owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

SECTION 4. Shrubbery: No Owner shall plant or permit to remain on the Property any type of hedge, shrubbery or other plantings except with prior written permission of the Association.

SECTION 5. Parking: No Owner or employee, agent or invitee of any Owners shall park, store, or keep any vehicle except wholly within those portions of the Common Elements designated for such use by the Association.

SECTION 6. Regulations: Reasonable regulations governing the use of the Property may be made and amended from time to time by the Executive Board.

SECTION 7. Hazardous Activities: Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements or any Unit.

SECTION 8. Signs: No signs, flags or banners of any kind shall be displayed to the public view from any Unit or from the Common Elements.

SECTION 9. Declarant's Use of Units: Any provision of the Declaration or the North Carolina Condominium Act to the contrary notwithstanding, Declarant shall have the right to utilize any unit or Units owned by it as a model Unit(s) or sales offices, and to erect and maintain a sign or signs on the Property for the purpose of advertising Units owned by it for sale or lease. These rights shall exist so long as Declarant is a Unit Owner.

ARTICLE VII
SERVICE OF PROCESS

Ned M. Barnes is hereby designated to receive service of process in any action which may be brought against or in relation to the Condominium. Ned M. Barnes' place of business is C-2 Pleasure Island Plaza, Carolina Beach, North Carolina, 28428.

ARTICLE VIII
1412 CANAL DRIVE HOMEOWNER'S ASSOCIATION, INC.

SECTION 1. Organization of Association: A nonprofit North Carolina corporation known and designated as 1412 Canal Drive Homeowners Association, Inc. 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 By-Laws, and the North Carolina Condominium Act. Every Owner shall be required to be and shall automatically be member of the Association by virtue of his ownership interest in a Unit.

SECTION 2. 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 Article IX hereto and to the By-Laws, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Executive Board may deem to be in the best interests of the Association in accordance with the By-Laws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. 47C-116, and shall be enforceable by the Association in accordance with N.C.G.S. 47C-3-116.

SECTION 3. Period of Declarant Control: The Executive Board shall be appointed by the Declarant until the earlier occurs (i) one hundred twenty (120) days after conveyance of Units, to which seventy-five (75%) percent of the total percentage of the ownership appertain; or (ii) two years after the Declarant ceases to offer any Units for sale in the ordinary course of business.

ARTICLE IX
EASEMENTS AND PROPERTY RIGHTS

SECTION 1. Easements of Owners and Executive Board with Respect to Common Elements: Each Owner shall have a perpetual non-exclusive easement in common with all other Owners to use all pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to a perpetual nonexclusive easement in favor of all other Owners to use the pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements serving such other units and located in such Unit. The Executive Board, or any person authorized by it, shall have the right of access to each Unit and

to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair or replacement of the Common Elements.

SECTION 2. Encroachment Easements: If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such Encroachment shall occur hereafter as a result of the settling or shifting of the Building(s), there shall exist a valid easement for the Encroachment and for the maintenance of same for so long as the building(s) shall stand. In the event the Building(s), any Unit, or any portion of the Common Elements shall be partially or totally destroyed by fire or other casualty or as a result of the condemnation or eminent domain proceedings, and shall thereafter be rebuilt, Encroachment of part of the Common Elements upon any Unit or upon any portion of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building(s) shall stand.

SECTION 3. Granting of Easements by Executive Board: The Executive Board may hereafter grant easements for utility purposes for the benefit of the Property including the right to install, lay, maintain, repair and replace water lines, pipes, ducts; sewer or cable television wires, cables and equipment; electrical conduits, and wires over, under along and on any portion of the Common Elements; and each Owner hereby grants the Executive Board an irrevocable power of attorney to execute, acknowledge and record in the name of each Owner such instruments as may be necessary to effectuate the foregoing.

SECTION 4. Emergency Access: In case of any Emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Executive Board, or any other person authorized by it, shall have the right to enter any Unit for the purposes of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right to entry shall be immediate.

SECTION 5. Easement for Ingress and Egress and Reservation of Alienable Easements by Declarant: Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Elements and facilities; and for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all Unit Owners in 1412 Canal Drive, their guests, invitees and lessees, the Association, the Declarant, their successors and assigns.

SECTION 6. Alterations: Units may be altered pursuant to N.C.G.S. 47C-2-211; provided each of the following conditions are met:

(a) Before commencing any alteration of the Unit the Owner of such Unit shall notify the Association;

(b) The materials and construction methods used in altering the Units must be substantially the same as the materials and construction methods used for existing walls in the Building.

(c) No work shall be performed which would materially and adversely affect the structural soundness and integrity of the Building or any portion thereof.

(d) The Owner of the Unit being altered shall have the sole responsibility for payment of all costs and all work performed, and for assuring that all work is performed in a workmanlike manner. The Owner of the Unit shall

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indemnify and hold the Association and all other Owners harmless from and against any and all loss, cost or damage arising out of such alteration.

SECTION 7. Conveyance of or Lien Against the Common Elements: While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyance of, or liens of any nature shall arise or be created against the Common Elements except with the written consent of all the Owners and the Mortgagees. Every agreement for the performance of labor or the furnishings of materials to Common Elements whether oral or in writing must provide that it is subject to the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the liens of assessments for Common Expenses provided for in Article VIII, Section 2 of this Declaration. Provided, however, that nothing in this Section shall be construed to limit the right of any Owner to convey or to encumber his undivided interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his unit.

SECTION 8. Nature of Interest in Unit: Every Unit, together with its allocated interests in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property and the Owner thereof shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only the covenants, conditions restrictions, easements, uses, limitations, obligations, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be continued herein and in the accompanying By-Laws and in the minutes of the Executive Board of the Association.

SECTION 9. Intent: It is the intent of this Article IX to permit alterations within Units. Further, the intent of this Article IX is to prevent the subdivision of or relocation of boundaries between adjoining Units.

ARTICLE X
ASSESSMENTS

SECTION 1. Taxes: Every Unit, together with its allocated interest in the Common Elements shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law, Each Owner shall be liable solely for the amount taxed against his individual Unit.

SECTION 2. Common Expenses: Each Owner shall contribute a percentage of allocated interest in the Common Element, all in accordance with the definition of Common Expenses set forth in Article I, Section 1.5 hereinabove; the By-Laws; and the provision of the North Carolina Condominium Act. Due dates for payment of such Common Expenses shall be established by the Executive Board and shall be collected at least quarterly.

SECTION 3. Common Surplus: The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in the same proportion that the undivided interest in Common Elements appurtenant to each Owner's Unit bears to the total of all such appurtenant interest in the Common Elements; provided, however, that said Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in accordance with their percentage interests in Common Surplus as declared herein.

SECTION 4. Assessments in General: The Association shall be empowered to levy assessment against the Owners of Units within the Condominium for the payment of expenditures made by the Association for purposes of providing liability insurance, payment of taxes, maintenance of recreation and other facilities located within the Condominium. Any such assessments that remain unpaid by the Owner of any Unit shall constitute a lien on the Unit of the Owners. It shall be further provided that upon default by the Association in the payment to the governmental authority entitled thereto to any ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Unit in the Condominium shall become personally obligated to pay the tax assessing governmental authority a portion of such taxes or assessments in any amount determined by dividing the total taxes and/or assessments dues by the percentage of ownership of each Unit Owner in the Condominium. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Unit of the then Owner, his heirs, devisees, personal representatives and assigns, and the taking or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same or may elect to foreclose the lien against the property of the Owner.

ARTICLE XI
INSURANCE

SECTION 1. Property Insurance: The Executive board shall obtain and maintain at all times insurance on the Building and all other improvements upon the Land, and all personal property included in the Common Elements in an amount, after application of deductibles, equal to the replacement value of the Property at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the cost of the Land, excavation, foundations, streets and parking facilities and other items normally excluded from property policies; provided, that such insurance may be written on a co-insurance basis of not less than ninety percent (90%). The policies evidencing such coverage shall insure against all risks of direct physical loss including fire and extended coverage perils; shall contain clauses providing for waiver of subrogation against any Owner or member of his household and any Owner's employees or agents; shall contain the standard condominium endorsement, and a Replacement Cost Endorsement providing for repair and replacement of the Building and all other improvements located upon the Land from the insurance proceeds; substantially modified without at least thirty (30) days' prior written notice to all insured, including all Mortgagees; and shall provide that no act or omission by any Owners, unless acting within the scope of his authority on behalf of the Association, will preclude recovery upon such policy. All such policies shall provide that adjustment of loss shall be made by the Executive Board as insurance trustee. All policies shall comply with N.C.G.S. 47C-3-113. Each policy shall provide for the issuance of certificates or mortgage endorsements to Mortgagees.

SECTION 2. Public Liability Insurance: The Executive Board shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of ownership, maintenance or repair of the Common Elements; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$500,000.00 per person and \$1,000,000.00 per occurrence against liability for bodily injury, including death resulting therefrom, and \$50,000.00 per occurrence against liability for damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross liability of the Owners as a

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group or a single Owner. The Executive Board shall comply with the requirements set forth in N.C.G.S. 47C-3-113 (a) and (d) (1) through (4).

SECTION 3. Fidelity Coverage: The Executive Board shall be required to obtain fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount not less than the estimated maximum funds, including reserve funds in the custody of the Association or its duly authorized agent, as the case may be, at any given time, during the term of each bond. In no event, however, may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus the amount of all reserve funds. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to the insured and all Mortgagees.

SECTION 4. Other Insurance Policies: The Executive Board shall be authorized to obtain such other insurance coverage, including workman's compensation, as the Executive Board shall determine from time to time desirable or necessary.

SECTION 5. Premiums: Premiums upon insurance policies purchased by the Executive Board shall be paid by the Executive Board and charged as a Common Expense.

SECTION 6. Distribution of Insurance Proceeds: All insurance policies procured by the Executive Board shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee. The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated interest in the Common Elements.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Owners, which cost shall be determined by the Executive Board.

(2) When the damage is not to be restored an undivided share for each Owner, such share being the same as each such Owner's allocated interest in the Common Elements.

(c) In the event a mortgage endorsement or certificate has been issued with respect to a Unit, the share of the Owners shall be held in trust for the Mortgagee and the Owner as their respective interest may appear.

(d) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed to or for the benefit of Owners in the following manner:

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(1) If it is determined, as provided in Article XII hereinbelow, that the damaged property with respect to which the proceeds are paid shall not be distributed to the owners and their lienholder, if any, as their interest may appear. Notwithstanding the provisions of this subsection, Section 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Lienholder, if any, as their interest may appear.

SECTION 7. Insurance obtained by Owners: It shall be the responsibility (but not the obligation) of each Owner to obtain at his own expense such additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire.

ARTICLE XII
DUTY TO REPAIR OR RECONSTRUCT

SECTION 1. Reconstruction and Repair: In the event of damage to or destruction of the building as a result of fire or other casualty, unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) voted, including one hundred percent (100%) approval of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt, the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Building not including any decoration or covering for walls, ceiling, or floors, or furniture, furnishings, fixtures or equipment unless the subject insurance policy covers a portion or all of such loss, in which the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provision of Section 11.6(d)(2) of this Declaration. Any payment shall constitute a Common Expense. Any Reconstruction or repair shall be in accordance with the Plans or as the Executive Board; shall otherwise approve.

SECTION 2. Obligations of Owners: Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans or as the Executive Board shall otherwise approve, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Executive Board, except as authorized in Article IX, Section 6 of this Declaration. Upon the failure of any Owner to so maintain his Unit, the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws, as said Declaration, By-Laws, and rules and regulations may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and any rules and regulations which may be adopted are accepted and ratified by such Owners, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Units as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XIV
AMENDMENT TO AND SUPPLEMENT OF DECLARATION

Except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of Owners of Units to which at least sixty-seven percent (67%) of the ownership of the Association is allocated, together with the consent of their respective Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws. Any amendment which amends or alters the percentage of allocated interests of any Unit in the Common Elements, increases the number of Units, changes the boundaries of any Unit, creates or increases special declarant rights or changes the use to which any Unit is restricted shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by an officer designated for that purpose or, in the absence of designation, by the president of the Association, and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the Consent of Declarant.

ARTICLE XV
TERMINATION

The Condominium may be terminated only in strict compliance with N.C.G.S. 47C-2-118, as the same may be amended from time to time.

ARTICLE XVI
RIGHTS RESERVED TO MORTGAGEES

SECTION 1. Rights of Mortgagees to Examine Books and Records: Any Mortgagee, and any insurer or guarantor of a 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 Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the 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.

SECTION 2. Mortgagees Rights to Notice: If any Mortgagee, or any guarantor or insurer of a loan secured by a Mortgage, has served written notice of its desire to receive notices under this

Article XVI, Section 2 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:

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

(b) Any loss or damage to condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

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

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

ARTICLE XVII
EMINENT DOMAIN

SECTION 1. Taking of a Unit: If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant of which may not practically or lawfully be sued for any purpose permitted by this Declaration, the award must compensate the Unit Owner of his Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemnor acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

SECTION 2. Taking of Part of a Unit: Except as provided in Article XVII, Section 1, above, if a part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the Declaration, and (2) the portion of the allocated interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

SECTION 3. Taking Part of Common Elements: If part of the Common Elements is acquired by eminent domain, the portion of the award not payable to Unit Owners under Article XVII, Section 1, must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a Limited Common Element must be apportioned among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

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ARTICLE XVIII
MISCELLANEOUS PROVISIONS

SECTION 1. Invalidity: The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

SECTION 2. Waiver: No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

SECTION 3. Captions: The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Declaration or the intent of any provision hereof.

SECTION 4. Conflict of Laws: It is the intent of the Declarant herein that 1412 Canal Drive shall comply with Chapter 47C of the General Statutes of North Carolina as if such development had been submitted to the provisions of that Chapter.

SECTION 5. 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. 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.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed this 18th day of MAY, 1999.

DECLARANT:

J & S Miller, INC.
A North Carolina Corporation

By: [Signature]
President

ATTEST:
[Signature]
Secretary

(Corporate Seal)



STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, V.A. Beury-Helms, a Notary Public in and for the State and County aforesaid, hereby certify that James D. Miller personally appeared before me this day and acknowledged that she is ~~Assistant~~ Secretary of J & S Miller, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her/him as its ~~Assistant~~ Secretary

WITNESS my hand and notarial stamp or seal, this the 17 day of May, 1999

Va Beury Helms
Notary Public

My Commission Expires:
8/5/99



STATE OF NORTH CAROLINA
New Hanover County
The Foregoing/ Annexed Certificate(s) of
V.A. Beury-Helms
Notary (Notaries) Public is/ are certified
to be correct.
This the 30 day of May, 1999
Mary Sue Oots, Register of Deeds
by [Signature]
Deputy/Assistant

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EXHIBIT "A"

BEING all of Lot 17, Block 26, Carolina Beach as the same is shown on a mpa thereof duly recorded in Map Book 3 at Page 67 of the New Hanover County Registry, reference to which is hereby made for a more complete description.

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EXHIBIT B
TO DECLARATION OF CONDOMINIUM
1412 CANAL DRIVE

<u>UNIT NO.</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN COMMON ELEMENTS</u>	<u>PERCENTAGE OF COMMON EXPENSES</u>	<u>VOTES IN THE ASSOCIATION</u>
A	25%	25%	1
B	25%	25%	1
C	25%	25%	1
D	25%	25%	1

BY-LAWS
OF
1412 CANAL DRIVE HOMEOWNERS ASSOCIATION
(A NON-PROFIT CORPORATION)

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ARTICLE I

GENERAL

Section 1. TITLE TO CONDOMINIUM UNITS. Title to Condominium Units may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants, or as tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 2. APPLICABILITY OF BY-LAWS. The provisions of these By-Laws are applicable to 1412 CANAL DRIVE, and its common elements and to the use and occupancy thereof. The term "1412 CANAL DRIVE" and its common elements as used herein shall include the building and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith.

Section 3. APPLICATION. All present and future owners, mortgagees, lessees and occupants of Condominium Units and their employees and any other persons who may use the facilities in any manner are subject to these By-Laws, the Declaration and Rules and Regulations pertaining to the use and operation of the Condominium Property. The act of occupancy of a unit shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

Section 4. OFFICE. The Office of the Owner's Association and the Board of Directors shall be located at: 5717 Carolina Beach Road, Wilmington, NC 28412

ARTICLE II

BOARD OF DIRECTORS

Section 1. NUMBER AND QUALIFICATION: The affairs of the Condominium Property and the Owners Association shall be managed by a Board of Directors. The Board of Directors shall be composed of two (2) persons, each of whom shall be an owner or spouse of an owner of a separate Condominium Unit, or in the case of partnership owners or mortgagees, shall be members or employees of such partnership, or in the case of corporate owners or mortgagees, shall be officers, shareholders, or employees of such corporations or in the case of fiduciary owners or mortgagees shall be the fiduciaries, or officers or employees of such fiduciaries.

Section 2. POWERS AND DUTIES. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and Common Elements except such powers and duties as by law or by these By-Laws may not be delegated to the Board of Directors by the unit owners. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, the following:

A. Operation, care, upkeep and maintenance of the common elements;

B. Determination of the amounts required for operation, maintenance and other affairs of the Condominium and Common Elements;

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- C. Collection of the common charges from the Unit owners;
- D. Employment and dismissal of personnel as necessary for efficient maintenance and operation;
- E. Adoption and amendment of rules and regulations covering the details of the operation and use of the Condominium and Common Elements;
- F. Opening of bank accounts on behalf of the Owners Association and designating the signatures required therefor;
- G. Obtaining insurance for the Condominium Units and Common Elements pursuant to the provisions of Article V, Section 2 hereof; and
- H. Making repairs, additions and improvements to, or alterations of, the property and repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

Section 3. OWNERS' EASEMENTS OR ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- A. The right of the Association to limit the number of guests of members;
- B. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;
- C. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Except for the grant or conveyance of a standard utility easement in order to obtain utility service to the common area, no such dedication or transfer shall be effective unless an instrument signed by all of each class of members agreeing to such dedication or transfer has been recorded, provided, however, that the Association has the authority to dedicate the streets to the public. With respect to a standard utility easement permitting utility service to the common area, the Board of Directors may authorize the officers to execute such a grant or conveyance of the standard utility easements to the utility company without a vote of the membership of the association;
- D. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

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E. The Declarant for itself, its heirs, successors and assigns, hereby waives any and all actions, causes of actions or claims that may or could arise from any structures located on said maps as hereinabove referenced that encroach onto the common area, and by acceptance of a deed the grantees/unit owners acknowledge and waive any claim or cause of action that may exist as a result of any encroachment of any structure onto the common area as hereinabove referenced.

Section 4. ELECTION AND TERM OF OFFICE. The Board of Directors shall be elected at the first annual meeting of the unit owners, the term of office of the members of the Board of Directors shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Directors, his successor shall be elected to serve for a term of three (3) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the unit owners.

Section 4. VACANCIES. Vacancies in the Board of Directors caused by any reason shall be filled by vote of a majority of the owners at a special meeting of the unit owners held for that purpose promptly after the occurrence of any such vacancy. Each person so elected shall be a member of the Board of Directors for the remainder of the term of the member so removed.

Section 5. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least one such meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors, by mail or telegraph, at least three (3) business days prior to the day named for such meeting.

Section 6. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by any Board member on three (3) business days' notice to each member of the Board of Directors given by mail or telegraph, which notice shall state the time, place and purpose of the meetings.

Section 7. WAIVER OF NOTICE. Any member of the Board of Directors may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 8. QUORUM OF BOARD OF DIRECTORS. At all meetings of the Board of Directors, all members thereof must attend to constitute a quorum for the transaction of business and the votes of all of the members of the Board of Directors shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, the Board members present may conduct any business which might have been transacted at the meeting originally called and any action consented to by the absent manager in writing within ten (10) days of said meeting, shall be deemed valid.

Section 9. COMPENSATION. No member of the Board of Directors shall receive any compensation from the Association for acting as such.

Section 10. DEADLOCK. Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

ARTICLE III

MEETINGS OF UNIT OWNERS

Section 1. PLACE. All meetings of the unit owners shall be held at the office of the Association or such other place as may be stated in the notice.

Section 2. ANNUAL MEETINGS.

a. The annual meeting of the unit owners shall be held at Carolina Beach, North Carolina, in each year commencing in 2000. The first annual meeting will be held on the second Saturday in November, 2000. At such meeting each unit owner shall vote to elect the members of the Board of Directors. Regular annual meetings subsequent to 2000 shall be held on the first Saturday in November of each succeeding year unless otherwise determined by the Board of Directors.

b. All annual meetings shall be held at such hour as is determined by the Board of Directors.

c. At the annual meeting, the members shall elect the new members of the Board of Directors and transact such other business as may properly come before the meeting.

Section 3. SPECIAL MEETINGS. It shall be the duty of the President to call a special meeting of the unit owners if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by unit owners owning a total of at least fifty percent (50%) of the common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. The business transacted at all special meetings shall be confined to the objects stated in the notice unless the Board of Directors unanimously consents to the transaction of business not stated in the notice.

Section 4. NOTICE OF MEETINGS. The Secretary shall mail to each unit owner of record a notice of each annual or special meeting of the unit owners at least ten (10) days but not more than twenty (20) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the building or at such other address as such unit owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this section shall be considered service of notice.

Section 5. ADJOURNMENT OF MEETINGS. If any meeting of unit owners cannot be held because a quorum has not attended, a majority in common interest of the Unit Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not more than forty-eight (48) hours from the time the original meeting was called.

Section 6. ORDER OF BUSINESS. The order of business at all meetings of the Unit Owners shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting;
- c. Reading of minutes of preceding meeting;

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- d. Reports of Officers;
- e. Report of Board of Directors;
- f. Reports of Committees;
- g. Election of members of the Board of Directors (when so required);
- h. Unfinished business;
- i. New business; and
- j. Adjournment.

Robert's Rules of Order shall be applicable to the conduct of all meetings of unit owners.

Section 7. VOTING. The owner or owners of each Unit, or some person designated by such owner or owners to act as proxy on his or their behalf and who must be an owner, shall be entitled to cast the votes appurtenant to such Unit at all meetings of unit owners. The designation of any such proxy shall be made in writing to the Secretary and shall be revocable at any time by written notice to the Secretary by the Owner or Owners so designating. Each unit shall be entitled to cast one (1) vote at all meetings of the unit owners. A fiduciary shall be the voting member with respect to any Condominium Unit owned in a fiduciary capacity.

Section 8. MAJORITY OF UNIT OWNERS. As used in this By-Laws the term "majority of unit owners" shall mean those unit owners having one hundred percent (100%) of the total authorized votes of all unit owners in person or by proxy and voting at any meeting of the unit owners, determined in accordance with the provisions of Section 7 of this Article.

Section 9. QUORUM. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Unit Owners having one hundred percent (100%) of the total authorized votes of all unit owners shall constitute a quorum at all meetings of the unit owners.

Section 10. MAJORITY VOTE. The vote of a majority of unit owners at a meeting at which a quorum shall be present shall be binding upon all unit owners for all purposes.

Section 11. DEADLOCK. Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

ARTICLE IV

OFFICERS

Section 1. DESIGNATION. The principal officers of the Owners Association shall be the President and Secretary and Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary. The President and Secretary and Treasurer must be members of the Board of Directors.

Section 2. ELECTION OF OFFICERS. Officers shall be elected annually by the Board of Directors.

Section 3. REMOVAL OF OFFICERS. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors called for such purpose.

Section 4. PRESIDENT. The President shall be the chief executive officer of the Owners Association. He shall preside at all meetings of the unit owners and Board of Directors. He shall

have all of the general powers and duties which are incident to the office of President of a corporation organized under the Business Corporation Law of the State of North Carolina including, but not limited to, the power to appoint from among the unit owners any committee which he decides is appropriate to assist in the conduct of the affairs of the Owners Association.

Section 5. SECRETARY. The Secretary shall keep the minutes of all meetings of the unit owners and of the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the Business Corporation Law of the State of North Carolina.

Section 6. TREASURER. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Directors, and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the Business Corporation Law of the State of North Carolina.

Section 7. AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC. All agreements, contracts, deeds, leases and other instruments of the Association shall be executed by the President and Secretary of the Association and checks are to be executed by such person or persons as may be designated by the Board of Directors.

Section 8. COMPENSATION OF OFFICERS. No officer shall receive any compensation from the Association for acting as such.

ARTICLE V

OPERATION OF THE PROPERTY

Section 1. DETERMINATION OF COMMON EXPENSES AND COMMON CHARGES. The Board of Directors shall have from time to time and at least annually, prepare a budget for the Association, determine the amount of the common charges required to meet the common expenses of the Association and allocate and assess such common charges against the unit owners according to their respective common interests. The common expenses shall include, among other things, all insurance premiums and expenses related thereto required to be maintained by the Board of Directors pursuant to the provisions of Section 9 of this Article V. The common expenses may also include such amounts as the Board of Directors may deem proper for the operation, maintenance, repair or replacement of the Common Elements including, without limitation, an amount for working capital of the Association, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year, and any other expenses designated by the Board of Directors as common expenses. In addition thereto, each unit owner shall be liable for and pay the annual assessment to the 1412 Canal Drive Homeowners Association for maintenance and upkeep of the common area of 1412 Canal Drive.

Section 2. LIABILITY FOR COMMON CHARGES. All unit owners shall be obligated to pay the common charges assessed by the Board of Directors pursuant to the provisions of Section 1 above at such times and in such manners as may be directed by the Board.

A. SELLER'S LIABILITY. No unit owner shall be liable for the payment of any part of the common charges assessed against his Unit from and after the date of

closing of the sale, transfer, or other conveyance by him of such unit.

B. PURCHASER'S LIABILITY. A purchaser of a Unit shall be liable for payment of any common charges assessed against such unit prior to its acquisition by him, except that a mortgagee or a purchaser of a Unit at a foreclosure sale shall not be liable for and shall not be subject to a lien for the payment of common charges assessed prior to the foreclosure sale.

Section 3. COLLECTION OF ASSESSMENTS. The Board of Directors shall at least annually take prompt action to collect from a unit owner any assessment for common charges which remains unpaid by him for more than thirty (30) days from the due date for its payment.

Section 4. DEFAULT IN PAYMENT OF COMMON CHARGES. In the event of default by any unit owner in paying to the Board of Directors the assessed common charges, such unit owner shall be obligated to pay interest at the legal rate on such common charges from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board of Directors in any proceeding brought to collect such unpaid common charges. The Board of Directors shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action brought against such unit owner, or by foreclosure of the lien on such Unit which is hereby granted by all unit owners in favor of the Association for the enforcement of payment of delinquent common charges.

Section 5. FORECLOSURE OF LIENS FOR UNPAID COMMON CHARGES. In any action brought by the Board of Directors to foreclose a lien on a Condominium Unit because of unpaid common charges, the unit owner shall be required to pay a reasonable rental for the use of his Condominium Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect such rental. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 6. STATEMENT OF COMMON CHARGES. The Board of Directors shall promptly provide any unit owner who makes a request in writing with a written statement of his unpaid common charges.

Section 7. ABATEMENT AND ENJOINING OF VIOLATIONS. The violation of any rule or regulation adopted by the Board of Directors or the breach of any By-Law contained herein shall give the Board of Directors the right, in addition to any other rights the Board of Directors to enter the unit owners unit to remedy the violation and they shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

Section 8. MAINTENANCE AND REPAIR.

A. INDIVIDUAL CONDOMINIUM UNITS. All maintenance of and repairs to each individual Condominium Unit, structural or non-structural, ordinary or extraordinary, (other than maintenance of and repairs to any common elements contained therein not necessitated by the negligence, misuse, or neglect of the owner of such Condominium Unit) shall be made by the owner of such Condominium Unit. Each unit owner shall be responsible for all damages to any other Condominium Unit and to the common elements resulting from his failure to effect such maintenance and repairs.

B. COMMON ELEMENTS. All maintenance, repairs and replacements to the common elements, whether located

inside or outside of the Condominium Units (unless necessitated by the negligence, misuse, or neglect of a unit owner, in which case such expense shall be charged to such unit owner), shall be made by the Board of Directors and be charged to all the unit owners as a common expense.

Section 9. INSURANCE. The Board of Directors on behalf of the Association, at its common expense, shall at all times keep THE COMMON AREAS of the 1412 Canal Drive insured against loss or damage by fire, flood or other hazards normally insured against at one hundred percent (100%) of replacement cost, and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the property; any insurance shall be payable in case of loss to the Board or It's Designee as Trustee for all unit owners. The Trustee so named shall have the authority on behalf of the association and unit owners to deal with the insurer in the settlement of claims.

Each unit owner shall keep his unit insured against loss and damage by fire, tornado, wind storm and flood and against such other hazards as the Board of Directors may require in an amount equal to the replacement cost for said unit. Each unit owner agrees upon request of the Board, to provide the Board with satisfactory proof of said insurance. If the unit owner fails or refuses to keep said premises so insured the Board of Directors may obtain such insurance and the cost of said insurance shall be a lien against said unit as hereinabove set out.

Section 10. DAMAGE OR DESTRUCTION. Except as hereinafter provided, damage to or destruction of a Condominium Unit shall be promptly repaired and restored by the Unit owner using the proceeds of any insurance for that purpose.

Section 11. USE OF UNITS. In order to provide for congenial occupancy of the Units and for the protection of their values the use of the Units shall be subject to the following limitations:

- A. The Units shall be used for residential purposes only.
- B. No portion of the Unit other than the entire unit may be rented.

Section 12. ADDITIONS, ALTERATIONS, OR IMPROVEMENTS BY BOARD OF DIRECTORS. Whenever in the judgment of the Board of Directors the common elements shall require additions, alterations, or improvements costing in excess of \$1,000.00, and the making of such additions, alterations, or improvements shall have been approved by the unit owners, the Board of Mangers shall proceed with such additions, alterations, or improvements and shall assess all unit owners for the cost thereof as a common charge. Any additions, alterations, or improvements costing \$1,000.00 or less may be made by the Board of Directors without special approval of the unit owners.

Section 13. ADDITIONS, ALTERATIONS, OR IMPROVEMENTS BY UNIT OWNERS. No unit owner shall make any structural addition, alteration, or improvement in or to his Unit without prior written consent thereto of the Board of Directors. The Board of Directors shall have the obligation to answer any written request by a unit owner for approval of a proposed structural addition, alteration, or improvement in such unit owner's Unit within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed addition, alteration, or improvement. Any association to any governmental authority for a permit to make an addition, alteration, or improvement in or to any Unit shall be executed by the Board of Directors. The Board of Directors shall not be liable

to any contractor, subcontractor, or materialman or to any person sustaining personal injury or property damage, for any claim arising in connection with such addition, alteration, or improvement.

Section 14. LIMITED COMMON ELEMENTS. Those areas designated as Limited Common Elements on the recorded plat of 1412 CANAL DRIVE will be treated in all respects as common elements except that the sole use and control of said Limited Common Elements shall be in the owner of the unit to which said Limited Common Elements are appurtenant as designated on said map.

Section 15. DESCRIPTION OF COMMON ELEMENTS. The Common Elements consist of the entire property not located within any unit. They include, without limitation, the following:

- A. All land, lawns, gardens, roads, parking and other improved or unimproved areas, except for those areas designated as limited common areas.
- B. All installations or power, lights and water existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;
- C. All sewer and drainage pipes;
- D. All other apparatus, equipment and installations existing without the Units for common use or necessary or convenient to the existence, maintenance, or safety of the building and/or common elements.
- E. The windows, doors and screens appurtenant to each unit shall not be common or limited common area and shall be repaired, maintained and replaced as necessary by the individual Unit owner.

Section 16. RIGHT OF ACCESS. A unit owner shall grant a right of access to his Unit to any person authorized by the Board of Directors, to make inspections; to correct any condition originating in his Unit and threatening another Unit or a common element; to install, alter or repair mechanical or electrical services or other common elements in his Unit or elsewhere in the building; and to correct any condition which violates the provisions of any mortgage covering another Unit. Requests for such entry shall be made in advance and such entry shall be scheduled for a time reasonably convenient to the Unit Owner. However, in case of an emergency, such right of entry shall be immediate whether the unit owner is present at the time or not.

ARTICLE VI.

SALES AND LEASES OF UNITS

Section 1. NO SEVERANCE OF OWNERSHIP. No unit owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein the appurtenant interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interest, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interests of any Unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the appurtenant interests of all Condominium Units.

Section 2. PAYMENT OF ASSESSMENTS. No unit owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until he shall have paid in full to the Board of Directors all unpaid common charges theretofore assessed by the Board of Directors against his Unit and until he shall have satisfied all unpaid liens against such Unit, except permitted mortgages.

ARTICLE VII.

CONDEMNATION

Section 1. CONDEMNATION. In the event of a taking in condemnation or by eminent domain of part or all of the common elements, the award made for such taking shall be payable to the Board of Directors who shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of damage, as provided in Section 10 of Article V of these By-Laws.

ARTICLE VIII.

MISCELLANEOUS

Section 1. NOTICES. All notices to the Board of Directors shall be sent by registered or certified mail, to the office of the Board of Directors, c/o STEPHEN M. MILLER at 5717 Carolina Beach Road, Wilmington, NC, 28412, or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. All notices to mortgagees of Condominium Units shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. INVALIDITY. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect the balance of these By-Laws.

Section 3. CAPTIONS. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 4. GENDER. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. WAIVER. No restrictions, conditions, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE IX.

RECORDS

Section 1. RECORDS AND AUDITS. The Board of Directors shall keep detailed records of the actions of the Board of Directors, minutes of the meetings of the Board of Directors, minutes of the meetings of the unit owners, and financial records and books of account of the Association, including a chronological listing of receipts and expenditures, as well as a separate account for each Condominium Unit which, among other things, shall contain the

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amount of each assessment of common charges against such Condominium Unit, the date when due, the amounts paid thereon and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Association shall be rendered by the Board of Directors to all unit owners at least annually. All of the above records and information shall be made available to either owner at any time upon reasonable notice.

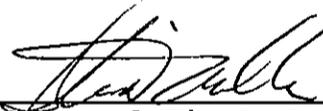
ARTICLE X.

AMENDMENT TO BY-LAWS

Section 1. AMENDMENT TO BY-LAWS. At any time prior to December 31, 1999, these Restrictions may be amended by the developer/declarant at its discretion, but not to impair the property value of the Unit owners. Thereafter, these restrictions may be amended by vote of the owners of all (100%) of the members of the Homeowners Association, provided, however, no amendment shall be made to the last paragraph of Article IV Section 1 without unanimous consent of the Homeowners Association and the declarant/developer.

The foregoing were adopted as the By-Laws of 1412 CANAL DRIVE HOMEOWNERS ASSOCIATION at the meeting of its Board of Directors held on the 18th day of MAY, 1999.

Certified to be correct, this the 18th day of MAY, 1999.



Secretary of First Meeting of
Board of Directors of
1412 CANAL DRIVE
HOMEOWNERS ASSOCIATION

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SCHEDULE A

RULES AND REGULATIONS
OF
1412 CANAL DRIVE

1. The walkways in front of the Condominium and the entranceways to the Building and the common areas shall not be obstructed or used for any purpose other than ingress to and egress from the Units.

2. No exterior of any Unit shall be decorated by any owner in any manner without prior consent of the Board of Directors.

3. No boats, trailers, bicycles, scooters, baby carriages, or similar vehicles or toys or other personal articles shall be allowed to stand in any of the common areas without consent of the Board of Directors.

4. No owner shall make or permit any noises that will disturb or annoy the occupants of any of the Units in the development or do or permit anything to be done which will interfere with the rights, comfort or convenience of other owners.

5. Each owner shall keep such owner's Unit in a good state of preservation and cleanliness and shall not sweep or throw or permit anything to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance.

6. No shades, awnings, window guards, ventilators, fans, or air conditioning devices shall be used in or about the building except such as shall have been approved by the Board of Directors.

7. All garbage and refuse from the Units shall be deposited with care in garbage containers intended for such purpose only at such times and in such manner as the Board of Directors may direct.

8. Nothing shall be altered or constructed in or removed from the General Common Area or Elements, except upon the written consent of the Board of Directors.

9. All radio, television or other electrical equipment of any kind or nature installed or used in each unit shall fully comply with all rules, regulations, requirements, or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the unit owner alone shall be liable for any damage or injury caused by any radio, television, or other electrical equipment in such unit.

10. The agents of the Board of Directors and any contractor or workman authorized by the Board of Managers may enter any room or unit in the building at any reasonable hour of the day after notification (except in case of emergency) for the presence of any vermin, insects, or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests.

11. No vehicle belonging to an owner or to a member of the family or guest, tenant, or employee of an owner shall be parked in such a manner as to impede or prevent ready access to another owner's unit. The owners, their employees, servants, agents, visitors, licensees and the owner's family will obey the parking regulation posted on the private streets and drives and any other traffic regulations promulgated in the future for the safety, comfort and convenience of the owners.

12. All damage to the Units caused by the moving or carrying of any article therein shall be paid by the owner responsible for the presence of such article.

13. No owner shall use or permit to be brought into the Units any inflammable oils or fluids such as gasoline, kerosene, naphtha, or benzene or other explosives or articles deemed extra hazardous to life, limb or property, without in each case obtaining written consent of the Board of Directors.

14. The owners shall not be allowed to put their names on any entry of the Units except in the proper places provided for such purpose.

15. No owner shall do any painting of the exterior of the Units without the written consent of the Board of Directors.

16. Draperies, blinds, or curtains must be installed by each Unit Owner on all windows of his unit and must be maintained in such windows at all times.

17. Any owner wishing to plant flowers, trees or shrubs outside of his Limited Common Area must obtain written permission from the Board of Directors before doing so.

18. Any damage to the buildings, recreational facilities, or other common areas or equipment caused by children or their guests shall be repaired at the expense of the unit owner/parent.

19. Any consent or approval given under these Community rules by the Board of Mangers shall be revocable at any time.

20. These Community Rules may be added to or repealed at any time by the Board of Directors.

21. No commercial business may be conducted from any unit in accordance with the Carolina Beach Town ordinances.