

RECORDED AND VERIFIED
REGISTERED
NEW HANOVER CO. NC

BOOK

PAGE

1389 1388

SEP 10

2 07 PM '87

187

DECLARATION OF CONDOMINIUM
PURSUANT TO THE PROVISIONS OF NCGS, 47C, THE NORTH CAROLINA
CONDOMINIUM ACT, FOR VALLEYGATE VILLAS, A CONDOMINIUM

THIS DECLARATION, made this 27th day of August
1987, by SHIPYARD DEVELOPMENT, LTD, a North Carolina corporation,
hereinafter referred to as the "DECLARANT", pursuant to the
provisions of Chapter 47C, North Carolina General Statutes,
entitled "North Carolina Condominium Act".

WITNESSETH:

THAT WHEREAS, Declarant is the owner of a certain tract or
parcel of land located in the County of New Hanover, State of
North Carolina, as more particularly described in EXHIBIT A
attached hereto and incorporated herein by reference, the same
being also described on a plat or map of the premises, a copy of
which is filed of record in Condominium Plat Book 8 at
Page 94-97 in the Office of the Register of Deeds of New
Hanover County.

AND WHEREAS, Declarant desires and intends to divide said
real property, and other improvements thereon into eight (8)
condominium units as defined under the provisions of the North
Carolina Condominium Act, and to sell and convey the same to
various purchasers subject to the covenants, conditions,
restrictions, limitations, and obligations herein contained to be
kept and performed in the manner provided for by and not
inconsistent with the North Carolina Condominium Act;

AND WHEREAS, the name of said real property, improvements,
buildings, and condominium units, collectively referred to as the
"Project" is to be and shall be known as "VALLEYGATE VILLAS, PHASE
ONE, A CONDOMINIUM".

AND WHEREAS, Declarant desires and intends, by the filing of
this Declaration, to submit the above-described real property,
improvements, and appurtenances thereunto belonging and therein
contained to Condominium Ownership pursuant to the provisions of
the North Carolina Condominium Act, Chapter 47C, North Carolina
General Statutes;

NOW THEREFORE, Declarant does hereby publish and declare

108852

RETURN TO

SCOTT, PAYNE
BOYLE & SWART
Attorneys at Law
201 Princess Street
Wilmington, N.C. 28401
(919) 763-3881

1389 1389

that all of the property described above, in Exhibit A, and in paragraph 3 below, is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, uses, limitations, and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of a division of said property in the condominium units, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person or entity requiring or owning an interest in the said real property and improvements, their grantees, successors, heirs, devisees, executors, administrators and assigns.

1. DEFINITIONS: Certain terms and provisions as used in this Declaration with its attached and incorporated exhibits shall be defined as follows, unless the context clearly requires and indicates a different meaning:

(a) "Act", "Unit Ownership Act" or "North Carolina Condominium Act" means the Statutory provision set forth in Chapter 47 C of the North Carolina General Statutes under which the condominium is established.

(b) "Additional Real Estate". The real estate described in Exhibit A-1 together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

(c) "Allocated Interest" shall mean the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(d) "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the association.

(e) "Association" or "Unit Owners Association" means the unit owners association organized under North Carolina General Statute 47C-3-101, and shall mean all of the unit owners acting as a group in accordance with this Declaration and the Articles of Incorporation and Bylaws under the name "VALLEYGATE

VILLAS HOMEOWNERS ASSOCIATION, INC."

(f) "Board of Directors" or "Executive Board" or "Board" shall mean the governing body from time to time of VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC., a non-profit corporation whose purpose and function is to manage, maintain, operate, provide, care for, and administer VALLEYGATE VILLAS, PHASE ONE, a Condominium.

(g) "Building" or "buildings" shall mean all structures and improvements now or hereafter erected upon the premises.

(h) "Bylaws" means the Bylaws for the government of VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC. as they exist from time to time. A copy of the initial Bylaws are attached hereto as EXHIBIT D and made a part hereof by reference.

(i) "Common Areas and Facilities" or "Common Elements" means all portions of a condominium other than the units, and as more fully described in paragraph 7 below.

(j) "Common Expenses" shall mean and include the expenses of administration, maintenance, operation, repairs and replacement "including a capital reserve for repair, maintenance and replacement", of the common areas and facilities, and other expenses declared by the association to be common expenses, as further defined by the Act in Section 47C-1-103(5).

(k) "Common Interests" shall mean the aggregate of the undivided interest of the unit owners in the common areas and facilities.

(l) "Condominium" means the condominium created by this Declaration and as defined in North Carolina General Statute 47C-1-103 (7).

(m) "Condominium Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations and all other exhibits attached hereto or thereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

(n) "Declarant" means SHIPYARD DEVELOPMENT, LTD, a North Carolina corporation who (i) as part of a common

promotional plan, offers to dispose of interests in a unit or units not previously disposed of, or (ii) reserves or succeeds to any special declarant rights.

(o) "Delaration" means this instrument as it may be from time to time amended or supplemented.

(p) "Declarant Control" means a period of Declarant Control of the Association, during which period the Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Executive Board which period of Declarant Control terminates no later than the earlier of: (i) 120 days after conveyance of 75% of the units (including units which may be created pursuant to special Declarant rights) to unit owners other than Declarant; (ii) two years after Declarant, its successors or assigns have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised, or (iv) five years following conveyance of the first unit to unit owner other than the Delarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of Excutive Board before termination of the above defined period, but in that event Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(q) "Development Rights" shall mean any right or combination of rights reserved by the 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, and to withdraw real estate from the condominium.

(r) "Limited Common Areas" or "Facilities" shall mean a portion of the common elements allocated by this Declaration or by operation of law for the exclusive use of one or more but fewer than all of the units.

(s) "Mortgage" shall mean a Deed of Trust as well as a

mortgage constituting a lien on a unit together with its undivided percentage interest in the common areas and facilities.

(t) "Mortgagee" shall mean a beneficiary under a mortgage.

(u) "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

(v) "Owner" or "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, having an ownership interest of record in a unit within the property, other than a mortgagee or trustee of a Deed of Trust.

(w) "Plans" shall mean and refer to the plans and specifications of the condominium recorded under the name of VALLEYGATE VILLAS, a Condominium, in the office of the Register of Deeds of New Hanover County, a copy of which is attached hereto as EXHIBIT B and incorporated herein by reference, the same consisting of 4 pages.

(x) "Property" or "Real Property" or "Real Estate" shall mean the real property described on EXHIBIT A, and the real estate or portions thereof described on EXHIBIT A-1, if added by Delarant pursuant to this Declaration, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

(y) "Special Delarant Rights" are the rights reserved herein and in the Bylaws for the benefit of a Declarant, as follows: To complete the improvements indicated on the plats and plans filed with this Declaration; to exercise any development right, including but not limited to the Declarant's right to add additional real estate; to maintain sales offices, management offices, signs advertising the condominium, and models; to use easements through the common elements for purpose of making improvements within the condominium or within real estate which may be added to the condominium; to make the condominium part of

a larger condominium; or to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

(z) "Unit" or "Condominium Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in paragraph 4 below and as designated on the Exhibits attached to this Declaration.

The terms "Association", "Building", "Common Areas and Facilities", "Property", "Recordation", "Unit" or "Condominium Unit", "Unit Designation" and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meanings as set forth in Section 47 C of the North Carolina Condominium Act.

2. NAME OF CONDOMINIUM: The name by which the property shall be known is "VALLEYGATE VILLAS, PHASE ONE, a Condominium".

3. DESCRIPTION OF PROPERTY ON WHICH THE BUILDING AND IMPROVEMENTS ARE TO BE LOCATED: All of that certain tract or parcel of land with the buildings and improvements thereon erected or hereafter erected, situated and lying in New Hanover County, North Carolina and being more particularly described in a metes and bounds description being attached hereto as EXHIBIT A.

Declarant submits only that portion of the land described in EXHIBIT A attached hereto upon which Phase One of Valleygate Villas, a Condominium are to be constructed. The property hereby submitted is more particularly described by that condominium plat recorded in the New Hanover County Registry in Condominium Plat Book 8 at Page 94 through 97. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described on EXHIBIT A-1 to the coverage of this Declaration. If Declarant chooses to expand the property dedicated to condominium ownership, the expansion will contain a maximum of 80 units in addition to those in Phase One.

1389 1394

Any extension shall occur, if at all, by the recordation of one or more Amendments to this Declaration and one or more supplementary condominium plats as required by law. Each Amendment to the Declaration shall be entitled "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such Supplemental Declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

Further terms, conditions, liabilities and rights concerning expansion into further phases of development, are to be found in paragraph 5, Additional Real Estate, of the Declaration.

4. DESCRIPTION OF BUILDING: The Declarant has constructed, or will construct, upon the property described in EXHIBIT A, attached hereto, one eight (8) unit building to be used for residential accommodation purposes. A plat or survey of the property showing the location of said building is attached hereto and made a part hereof as EXHIBIT B. The building is more particularly described in the plans thereof, a copy of which plans are attached hereto as EXHIBIT B and made a part hereof, showing all particulars of the building as required by law.

In general, the building has two stories built on concrete foundation and constructed primarily of wood frame with surewal exterior. The building will contain eight (8) units, each with approximately 994 sq. ft. of heated enclosed area along with a 19 sq. ft. exterior storage area. Each unit will contain two (2) bedrooms, two (2) bathrooms, a kitchen, a diningroom/livingroom/greatroom, a utility room, a front porch and rear deck.

In addition, each unit owner will be designated two parking spaces and will be served by necessary walkways, stairs and other required appurtenances and facilities.

The deed for any particular unit shall convey such unit by its unit and building designation and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the

1389 1395

covenants, conditions, restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

The eight (8) units are and will be designated by their unit designations as is shown upon the plans of the buildings attached hereto as EXHIBIT B, which also shows graphically all particulars of the building and its eight (8) units, including but not limited to, the layout, location, ceiling and floor elevations, dimensions of the units, and the area and location of the common areas and facilities. Reference is hereby made to said plans for the purpose of identifying and locating each unit within the building, as well as identifying its dimensions, approximate areas, and number of rooms. No unit bears the same designation as any other. Any conflict between said plans and this definition shall be resolved by reference to the said plans, which shall control.

All units, as well as the additional areas defined as part of each unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the units perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings and floors of the additional area conveyed as part of each unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the building whether the same now exist or may be caused or created by existing construction, settlement, or movement of the building, or by permissible repairs, construction or alteration. All units shall be substantially the same in design, construction, and material.

Each unit shall be equipped by the Declarant with and is defined to include its own electrical meter, and a heat pump. The air handling equipment for said heat pump shall be housed within the unit within the utility room designated for said purpose in said plans. The condensing units of said heat pumps shall be housed and stored outside and immediately adjacent to the building.

1389 1396

Each unit is hereby defined also to include:

1. All non-load bearing partition walls located entirely within the units;
2. All materials, including, but not limited to, carpet, paint, and vinyl attached to or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the units; and all windowpanes, frames, panes and exterior doors.
3. All air handling and condensing units, ducts and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines, located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as defined hereinabove.

Each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services to the units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for perimeter walls, ceilings and floors of the units. All such pipe, ducts, wires, conduits, and other such facilities are defined as a part of the unit at and from their point of entry into the unit.

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as a part of the units is defined hereby as a part of the common areas and facilities of the condominium.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided interest in common areas and facilities. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be as set forth in EXHIBIT C attached hereto and made a part hereof. The percentage of undivided interest in the common areas and facilities that is appurtenant to each unit has

been determined by a ratio formulated upon the approximate relation that the fair market of each unit at the date of the Declaration bears to the then aggregate fair market value of all the units having an interest in the common areas and facilities. The fair market value of each unit and the aggregate fair market value of all of the units has been determined by the Declarant, and its determination shall be binding upon all units and unit owners. Except as provided in paragraph 5 below, the percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

5. ADDITIONAL REAL ESTATE:

Declarant expressly reserves the right to add the Additional Real Estate to the condominium. All or part of the Additional Real Estate identified and described on EXHIBIT A-1 may be added to the condominium at different times, but no assurances are made in regard to the order in which such portions may be added. Declarant shall have no duty or obligation of any kind to add any or all of the Additional Real Estate. If the Declarant shall exercise its right to add Additional Real Estate, the same shall be accomplished by the Declarant's filing, with the office of the Register of Deeds of New Hanover County, North Carolina, such amendment or amendments to this Declaration as may be required by the act.

In the event that the Declarant creates additional condominium units by exercising its right to add additional real estate to the condominium, the common areas and common facilities will be adjusted and reallocated based upon the relative values assigned by the Declarant solely for this purpose. The value so assigned shall be based upon the approximate relationship that the fair market value of the unit as of the date of the Amendment to this Declaration bears to the then aggregate fair market value of all the units, including the newly created units, as of that date; provided, however, that such values may not necessarily reflect or represent the selling price of such units; and no appraisal, sale or market value transaction at a greater

or lesser price than the assigned value shall be interpreted as requiring or permitting any change in the percentage undivided interest assigned at that time.

The maximum number of additional units that may be created within the additional real estate is eighty (80) units. All of such units will be restricted exclusively to residential use.

Any buildings and units that may be erected upon the additional real estate or a portion thereof will be compatible with other buildings and units in the condominium in terms of architectural style, quality of construction, principle materials employed in construction, and size.

All restrictions in this Declaration and By-laws affecting use, occupancy and alienation of units will apply to any and all additional units that may be created within the Additional Real Estate.

In addition to the buildings and units that may be erected upon the Additional Real Estate or a portion thereof, the other improvements and common elements that may be made or created upon or within the Additional Real Estate or each portion thereof which may be added to the condominium will be generally similar in quality and quantity to the improvements and common elements located in the Condominium.

These Declarations may not be amended or merged to add Additional Real Estate or portions thereof without the prior written approval of the Veteran's Administration.

These assurances will not apply with respect to any additional real estate that is not added to the condominium.

6. SPECIAL DECLARANT RIGHTS:

The Declarant reserves the following special Declarant rights with respect to the condominium:

(a) To complete improvements indicated on plats and plans filed with this Declaration.

(b) To exercise any of the development rights stated in paragraph five (5) above;

(c) To use easements through the common elements (common area) of the condominium for the purpose of making

improvements within the condominium or within real estate which may be added to the condominium (See Exhibit A-1, attached hereto);

(d) To make the condominium part of a larger condominium; and

(e) To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

7. COMMON AREAS AND FACILITIES: The common areas and facilities consists of all of the property other than the units as described in Paragraph 4 and any exhibits attached hereto, including the following:

(a) All central and appurtenant installations for services such as power and light, water and gas, except the heat pumps, compressors, and their applicable wiring and connections, as limited in paragraph 4 above, and such heating and cooling thermostats as are located within the interior perimeter walls, floors, and ceilings of a unit.

(b) All foundation, girders, beams, supports, and other structural members;

(c) All roofs and exterior walls, all interior load-bearing columns and weight-supporting walls beneath and outside of the horizontal and vertical boundaries of the interior surfaces of the perimeter walls, ceilings, and floors of the units, as set forth on EXHIBIT B, the plans of said units;

(d) All other areas shown on the plans, EXHIBIT B, which are not part of the individual units or otherwise designated;

(e) All other parts of the property and all apparatus and installations existing in the buildings and upon the property for common use, or which are necessary or convenient to the existence, maintenance, or safety of the property.

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owners is as set forth in EXHIBIT C, attached hereto and incorporated herein by reference; provided that the percentage of undivided interest

allocated to each unit owner in the common areas and facilities is subject to change if the Declarant adds additional real estate as set forth in paragraph 5 above.

The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described. A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit. The shares in the common areas appurtenant to each unit shall remain undivided and no action for partition of the common element shall lie.

8. LIMITED COMMON AREAS AND FACILITIES: Limited common areas and facilities shall mean and include those common areas and facilities reserved for the exclusive use of one or more but fewer than all of the units, including decks or patios, accessible only from a particular unit, outside stairways and entry ways to second story units and outside entry ways for ground level units. Each unit owner is hereby granted an exclusive and irrevocable license to use and occupy such limited common areas and facilities as are associated with such unit owner's unit, said license to exist in favor of said owner, his invitees and guests. The limited common areas and facilities which are appurtenant to any unit or units, shall not be separated therefrom and shall pass with title to any unit or units, whether or not separately described.

The responsibility for maintenance, painting, repair and replacement together with control over the exterior decoration and appearance of limited common area shall remain with the Association.

9. CONDOMINIUM ASSOCIATION: A non-profit North Carolina corporation known and designated as VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC. (the "Association"), has been or will be organized to provide for the administration of the property; and said corporation 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 By-Laws, a

1389 1401

copy of which is attached hereto as EXHIBIT D. Each unit owner shall automatically become a member of the corporation upon his acquisition of an ownership interest in any unit and its apurtenant undivided interest in the common areas and facilities; and the membership of such unit owner shall terminate automatically upon such unit owner being divested of ownership interest in the title to such unit. In the operation and management of the property, the Board of Directors shall have the power to enforce the provisions of this Declaration; to levy and collect assessments in the manner herein provided; to grant permits, licenses and easements over the common areas for utility, roads and other purposes reasonably necessary for the proper maintenance and operation of the condominium; and to adopt, promulgate and enforce such rules and regulations governing the use of the units and common areas and facilities as the Board of Directors may deem to be in the best interest of the Association in accordance with the By-Laws.

The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any Officer or Officers of the Association until such time as the first of the following events occurs: (i) 120 days after conveyance of 75% of the units (including units which may be created pursuant to Special Declarant Rights) to unit owners other than a Declarant; (ii) two years after all Declarants cease to offer units for sale in the ordinary course of business; (iii) two years after any development rights to add new units was last exercised; or (iv) five years following conveyance of the first unit to a unit owner other than a Declarant. Declarant may voluntarily surrender this right, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in an express Amendment to this Declaration, duly recorded in the New Hanover County Registry, executed by the Declarant, be approved by the Declarant before they become effective.

The above-referenced Declarant control over the Board of

1389 1402

Directors is limited as follows: Not later than 60 days after conveyance of 25% of the units (including units which may be created pursuant to Special Declarant Rights) to unit owners other than a Declarant, at least one member and not less than 25% of the members of the Executive Board shall be elected by unit owners other than the Declarant. Not later than 60 days after conveyance of 50% of the units (including units which may be created pursuant to Special Declarant Rights) to unit owners other than a Declarant, not less than 33% of the members of the Executive Board shall be elected by unit owners other than the Declarant. Further, not later than the termination of any period of Declarant control, the unit owners shall elect an Executive Board of at least three (3) members and a majority of this Executive Board must be unit owners.

Whenever the Declarant shall be entitled to designate and select any person or persons to serve on the Board of Directors or Executive Board of the Association or as officers of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the By-Laws of the Association; and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board or as officers and to replace such person or persons with another person or persons to act and serve in the place of any Director or Officer so removed for the remainder of the unexpired term of any Director or Officer so removed. Any Director or Officer designated and selected by Declarant need not be a resident in the property or unit owner.

If entered into by or on behalf of the Association before the Executive Board elected by the unit owners as set forth above, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a Declarant or an affiliate of the Declarant or (3) any contract or lease that is not bonafide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after

the Executive Board elected by the unit owners as set forth above takes office upon not less than 90 days notice to the other party. Notice of the substance of the provisions of this section shall be set forth in each contract entered into by or on behalf of the Association before the Executive Board elected by the unit owners takes office.

10. USE OF COMMON AREAS AND FACILITIES: Each unit owner, his lessees, invitees, or guests shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his unit, and such right shall be appurtenant to and run with his unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such a manner as to interfere with or restrict or impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such rules and regulations as may be established from time to time by the Board of Directors.

11. PERSON TO RECEIVE SERVICE OF PROCESS: Edward Maready is hereby designated to receive service of process in any action which may be brought against or in relation to the condominium. Said person's address is: 409 Lansdowne Road, Wilmington, North Carolina, 28403.

12. EASEMENTS:

(a) Each unit owner shall have a perpetual non-exclusive easement in common with all other unit owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to a perpetual non-exclusive easement in favor of all other unit owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors shall have the right of access to each unit to remove violations therefrom and to maintain, repair or replace the common areas and facilities contained therein.

(b) If any portion of the common areas and facilities now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common areas and facilities, or if any such encroachment shall occur hereafter as a result of settling or shifting of the building, there shall exist a valid easement for the encroachment and for the maintenance of same so long as the building shall stand. In the event the building, any portion of any unit, or any portion of the common areas and facilities shall be partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and shall thereafter be rebuilt, encroachment of any part of any unit or upon any portion of the common areas and facilities due to such rebuilding shall be permitted; and valid easements for such encroachments and the maintenance thereof shall exist so long as the building shall stand.

(c) The Board of Directors 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 lines, gas mains, telephone wires and equipment and electrical conduits and wires over, under, along and on any portion of the common areas and facilities; and each unit owner hereby grants to the Board of Directors an irrevocable power of attorney to execute, acknowledge and record for and in the name of each unit owner such instruments as may be necessary to effectuate the foregoing said unit owner hereby binding himself, his grantee(s), heirs, devisees, executors, administrators, successors and assigns.

(d) In case of emergency originating in or threatening any unit or the common areas and facilities, regardless of whether the unit owners are present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

13. PARTITIONING: Recognizing that the proper use of a condominium unit by an owner or owners is dependent upon the use and enjoyment of the common property with the owners of all other condominium units, and that it is in the interest of all owners that the ownership of the common property be retained in common by the owners, it is hereby declared that the proportioned undivided interest in the common areas and facilities and common property appurtenant to each condominium unit shall remain undivided and no unit owner shall bring or have any right to bring any action for partition or division.

Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants by the entirety, or in any other form permitted by law.

14. LIENS:

(a) With the exceptions of liens which may result from the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

(b) No labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Condominium Documents or expressly authorized by the Board, in which event, same might be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

(c) Unless otherwise provided by law, in the event a lien against one or more condominium units becomes effective, each owner thereof may relieve his condominium unit of the lien by paying the proportionate amount attributable to his condominium unit. Upon such payment, it shall be the duty of the

1389 1406

lienor to release the lien of record for such condominium unit.

(d) Assessments against unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as determined by the Board, not to exceed six percent (6%) per annum, and shall create a lien to the extent of such assessment, together with interest thereon, in favor of the Association against the unit of the defaulting owner and shall be enforced as provided by the North Carolina Condominium Act.

(e) To the extent permitted by law, all liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of said first lien mortgage in the Office of the Register of Deeds of New Hanover County.

15. NATURE OF INTEREST IN UNITS: Every unit, together with its undivided interest in the common areas and facilities, 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 to covenants, conditions, regulations, resolutions, and decisions adopted pursuant hereto and as may be contained herein and in the accompanying By-Laws and in the minutes of the Board of Directors of the Association, or any interval ownership.

16. TAXES: If there is any unit owner other than a Declarant, each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in EXHIBIT C hereto attached, shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to, ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual

unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

17. COMMON EXPENSES, COMMON PROFITS: The unit owners are bound to contribute pro rata, in the percentages computed according to Chapter 47 C of the North Carolina General Statutes, which percentages are set forth in EXHIBIT C attached hereto, toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. No unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common area and facilities or by the abandonment of the unit belonging to him.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonable and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the condominium documents, shall be distributed among the unit owners according to the percentages for each unit as set forth in EXHIBIT C.

18. WORKING CAPITAL: At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months estimated common area assessment. Such funds shall be used solely for initial operating capital expenses of the Association, such as prepaid insurance, supplies, and the common areas and facilities furnishings and equipment, ecetera. At the time of selection of the regular management agent, the interim management agent shall pay to the account of the Association all unused funds and shall provide an accounting of all revenue and expenditures. Amounts paid into the working capital fund are not to be considered as advanced payment of regular assessments.

1389 1408

19. PARKING: All parking spaces constituting a portion of the property and as may be designated from time to time by the Board of Directors shall constitute part of the common areas and facilities even though the Board of Directors may, in its discretion, elect to assign specific parking spaces to specific units; and if parking places are so assigned, each unit owner shall be bound by such decision and shall abide by such rules and regulations as may be established in such regard, provided, however, that in no event shall there be less than two (2) parking spaces of reasonable size and access available to each such unit.

20. INSURANCE:

(a) Amount and scope of insurance. All insurance policies upon the property (except personal property within a unit) shall be secured by the Board or by the Managing Agent, if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against for the full replacement value for improvements, without regard for any allowances of depreciation or wear and tear, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and for such amounts as the responsible authority shall determine. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas and legal liability arising out of law suits related to employment contracts of the Owners Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities. In obtaining such coverage the responsible authority shall consider the reasonable requirements

of holders of first liens on individual units.

(b) Insurance Provisions. The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

1. A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association the unit owners and their employees, agents, tenants and invitees.
2. A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
3. Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the named insured and all mortgagees.
4. Coverage will not be prejudiced by act or neglect of the unit owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.
5. The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual unit owners.
6. The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any unit owner or any mortgagee.
7. Each unit owner shall be an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the Association.
8. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance coverage.

(c) Premiums. All insurance policies on the property and for the benefit of the Association purchased by the Board or the Managing Agent and any deductibles payable by the Association upon loss shall be a common expense.

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the By-Laws and for the benefit of the unit owners and their mortgagees, as their interests may appear.

If the entire condominium is not repaired or replaced, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, and /or the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to their lienholders, as their interests may appear, and/or the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's undivided interest is automatically reallocated as if the unit had been condemned, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

In the event a mortgagee endorsement has been issued with respect to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their respective interests may appear.

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the state of North Carolina and

holding a rating of "AAA" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the unit owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustee. The originals of all such policies and the endorsements thereto shall be deposited with the Board of Directors and duplicates of said policies and endorsements and all renewals thereof or certificates thereof, together with proof of payment or premiums, shall be delivered to the unit owners at least ten days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee at any time.

21. DAMAGE AND DESTRUCTION: Except as hereinafter provided, damage to or destruction of the common areas and facilities, shall be promptly repaired and restored by the Board using the proceeds of any insurance available for those purposes, and the unit owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities; provided, however, if more than eighty percent (80%) of the owners of the condominium project units and one hundred percent (100%) of the units not to be rebuilt resolve not to proceed with reconstruction or restoration, then in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47 C-2-118 of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall be substantially in accordance with the plans and specifications of the original building and improvements unless other plans and specifications are approved by the Board and by eligible holders holding mortgages on units which have at least 51% of the votes of units subject to eligible mortgage holders.

22. EMINENT DOMAIN:

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the unit owner for 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 undivided interests are automatically reallocated to the remaining units in proportion to the respective undivided 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 common area.

(b) Except as provided in subsection (a), if 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 undivided 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 undivided interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective undivided interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced undivided interests.

(c) If part of the common area is acquired by eminent domain, the portion of the award not payable to unit owners under subsection (a) must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common area must be apportioned among the owners of the units to which that limited

common area was allocated at the time of acquisition.

(d) The court decree shall be recorded in every county in which any portion of the condominium is located.

23. MAINTENANCE:

(a) All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the owner. Any replacement or substitution of such fixtures and equipment shall be compatible with any common areas and facilities affected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment.

(b) All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance, and each unit owner will promptly comply with any requirements of the insurance underwriters of the insurance for the common areas and facilities when so requested in writing by the Board or its designated Agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the condominium documents or a determination by the Board or its designated Agent that such failure will endanger or impair the value of the common areas and facilities or any unit, may upon written notice to the owner of the nature of the required repair, maintenance or replacement, be repaired or replaced by the Association at the expense of the unit owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

24. UNIT SUBJECT TO DECLARATION, BY-LAWS, RULES AND

REGULATIONS: All present and future unit owners, tenants, and occupants of the units shall be subject to and shall comply with the provisions of this Declaration, By-Laws, and any rules and

regulations as may be amended from time to time. The acceptance of a deed of conveyance or the entering into 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 unit owner, tenant or occupant; and all of 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.

25. AMENDMENT OF DECLARATION: This Declaration may be amended by vote of not less than 67% in common interest of all unit owners, cast at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the office of the Register of Deeds of New Hanover County wherein the property is located. The By-Laws may be amended in accordance with procedures set forth in such By-Laws.

No amendment shall be allowed which acts to the detriment of the Declarant or any right reserved to Declarant by this Declaration, or any concomitant document drawn in connection with this condominium project, without the express written approval of the Declarant.

No amendment to this Declaration shall be effective until approved by the Veterans Administration.

26. TERMINATION: This condominium may be terminated and the condominium property removed from the provisions of the North Carolina Condominium Act by an instrument to that effect executed by all of the unit owners and duly recorded, provided that all the mortgagees of the units have consented thereto or agreed, in either case by instruments duly recorded, that their liens be transferred to the percentage of undivided interest of the unit owner who shall own the property as tenants in common following such termination, which shall be the percentage of undivided interest of such unit owner in the common area.

In the event it is determined in the manner provided in

1389 1415

Paragraph 21 hereof that the property shall not be repaired or reconstructed after fire or other casualty, the condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after fire or other casualty shall be evidenced by a certificate of the Association providing that all liens affecting all of the units are transferred to the percentage of undivided interest of the unit owners as set forth above herein and certifying as to facts affecting the termination, which certificate shall become effective upon being duly recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

The Declarant or the Association, on behalf of the unit owners may contract for the sale of real estate in the condominium, but the contract shall not be binding on the unit owners unless the same is approved by all of the unit owners. If any real estate in the condominium is to be sold following termination, title to that real estate upon termination, vests in the Association as trustee for the holders of all interests in the units. Thereafter, the Declarant or the Association shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association shall continue in existence with all powers it had before termination and the condominium shall continue to operate as it had prior to termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided below. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each unit owner and his successors in interest shall have an exclusive right to occupy the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest shall remain liable for all assessments and other obligations imposed on unit owners by this Declaration or by North Carolina law.

If any real estate is not to be sold following termination,

title shall vest in the unit owners as tenants in common in proportion to their respective interests and, liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest shall have an exclusive right to occupy the portion of the real estate that formerly constituted his unit.

Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for unit owners and holders of liens on the units as their respective interests may appear. The respective interests of unit owners, referred to above, shall be as follows:

(a) Except as provided in subsection (b) below, the respective interests of unit owners are their fractional interest in the common elements, and the fair market value of their units and of their financial interests in their limited common elements, immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the unit owners and shall become final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the Association are allocated. The proportion of any unit owner's interest to that of all unit owners shall be determined by dividing the fair market value of that unit owner's unit and common element interest by the fair market value of all of the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners shall be their respective common element interests immediately before the termination.

Except as provided below, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, shall not withdraw that

portion from that condominium.

27. STATEMENT OF PURPOSES, USE AND RESTRICTIONS: The units and common areas and facilities shall be occupied and used as follows:

(a) The buildings and each of the units, common area and facilities shall be used for residential purposes only, provided, however, that so long as the Declarant, its successors or assigns, shall retain any unsold units within said project, it may utilize any unit or units owned by it for a sales office, model, or other usage for the purpose of selling said units within the project. The Declarant may assign this commercial usage right to such other persons or entities it may choose; provided, however, that when all units have been sold this right of commercial usage by the Declarant, or its assigns, shall immediately cease. Further, one additional unit may, subject to the rule and regulations promulgated by the Board of Directors of VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC., be used as a manager's office and/or for the purpose of conducting a rental program for the benefit of the owners.

(b) There shall be no obstruction of the common areas and facilities. Nothing may be stored in the common areas and facilities without the prior written consent of the Board of Directors.

(c) Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rate of insurance on the common areas and facilities or any other unit 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 areas and facilities which would result in the cancellation of insurance on any unit or any part of the common areas and facilities, or which would be in violation of any law. No waste of the common areas and facilities shall be permitted or committed.

(d) No sign (except such signs as allowed pursuant to special Declarant's rights) of any kind shall be displayed to the public view from any unit or from the common areas and facilities

without prior written consent of the Board of Directors.

(e) No animals (including household pets), livestock or poultry of any kind shall be raised, bred or kept in any unit or in the common areas and facilities except in accordance with the promulgated rules of the Board of Directors.

(f) No noxious, offensive, unlawful, immoral or improper activity shall be carried on in any unit, or in the common areas and facilities; nor shall anything be done therein which will be an annoyance or nuisance to other owners.

(g) Nothing shall be altered or constructed in or removed from the common areas and facilities except with the prior written consent of the Board of Directors.

(h) The Board of Directors of the Association is authorized to adopt rules for the use of the common areas and facilities, said rules to be furnished in writing to the unit owners.

(i) Any lease or temporary rental of any unit shall be in all respects subject to the condominium documents and any rules and regulations promulgated by the Board of Directors.

(j) Except with the written consent of the Board of Directors, no natural barriers in the form of trees, bushes or shrubs; and no man-made structures in the form of fences shall be permitted on or about the common areas and facilities, except such natural barriers and man-made structures existing on the date of this Declaration.

28. RIGHTS OF ELIBLE MORTGAGE HOLDERS: To the extent permitted by law, an Eligible Mortgage Holder upon written request to the Owners Association, identifying the name and address of the holder, will be entitled to timely written notice of:

(a) Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a first mortgage held by such eligible mortgage holder.

(b) Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held, by such eligible holder, which remains uncured for a period

of sixty days.

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

(e) In addition to the foregoing rights, the eligible mortgage holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina Condominium Statutes as they now exist or as they may be amended from time to time.

1. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to the lien or liens of Eligible Mortgage Holders.

2. Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be affected without the prior approval of Eligible Holders holding mortgages on all remaining unit estates whether existing in whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to Eligible Holders of mortgages.

29. FIDELITY BONDS.

(a) General. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

(b) Amounts of Coverage. The total of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including

1389 1420

reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all units plus reserve funds.

(c) Other Requirements. Fidelity bonds required herein must meet the following requirements:

1. Fidelity bonds shall name the Association as obligee.
 2. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.
 3. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.
 4. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association of a condominium project, to any insurance trustee and each eligible mortgage holder.
30. 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 the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.
31. 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.

- 32. 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.
- 33. LAW CONTROLLING: This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina..
- 34. 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.
- 35. All Development Rights and/or Special Declarant rights set forth herein, if exercised, must be exercised by Declarant not later than June 1, 1992.
- 36. VA and/or FHA Approval - so long as the Declarant controls the Association, the following actions will require the prior approval of the Federal Housing Administration or the Veteran's Administration: annexation of additional property, mergers and consolidations, mortgaging of common areas, dedicaton of common areas, dissolution and amendment of these Articles.

IN WITNESS WHEREOF, the Declarants hereunto set their hands and their seals this the 15 day of August, 1987.

SHIPYARD DEVELOPMENT, LTD

BY: Sylvia C. Maready
President

ATTEST

SECRETARY



(CORPORATE SEAL)

North Carolina, New Hanover County.

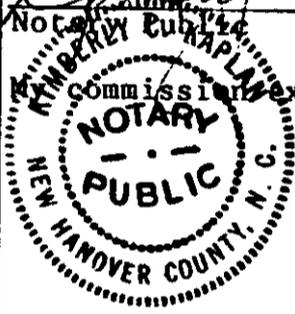
I, a Notary Public of the County and State, aforesaid, certify that Bruce A. Kubeck

personally came before me this day and acknowledged that he is the Secretary of Shipyard Development, LTD.

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 Bruce A. Kubeck its Secretary.

Witness my hand and official stamp or seal, this 18th day of August, 1987.

[Handwritten Signature]



Commission expires: My Commission Expires June 18, 1992

CONSENT OF MORTGAGEE

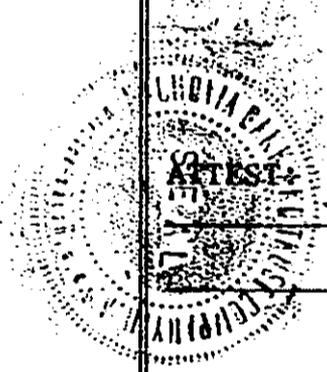
Wachovia Bank and Trust Company, NA, a National Banking Association, is the holder of that certain mortgage on the property as described in the foregoing Declaration for Valleygate Villas, Phase I, a Condominium said mortgage having been filed in Book 1355 at Page 670 in the Office of the Register of Deeds of New Hanover County and as holder of said mortgage does hereby consent to the terms, conditions, and covenants in the foregoing Declaration and the By-Laws subscribed therein, and agrees that the lien of said mortgage, the assignment of leases and rents filed in connection therewith in Book 1355 at Page 674 of the New Hanover County Registry, that certain Financing Statement recorded with the Secretary of State and in the Register of Deeds of New Hanover County in UCC Book 86 D-1898, and the interest of the mortgagee therein, are subject to the terms, conditions, and covenants contained in said Declaration.

IN WITNESS WHEREOF, Wachovia Bank and Trust Company, NA has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized officer and its seal to be hereunto affixed by authority of its Board of Directors, this the 19TH day of August, 1987; and, William H. Joyner, Jr. as Trustee, has hereunto set his hand and seal this the 19TH day of August, 1987.

William H. Joyner, Jr. (SEAL)
William H. Joyner, Jr., Trustee

WACHOVIA BANK AND TRUST COMPANY, NA

BY: Shelby T. Whitsett, Jr.
VICE- President



Shelby T. Whitsett, Jr.
Asst. Secretary (Corporate Seal)

I, a Notary Public for the State and County aforesaid do hereby certify that WILLIAM H. JOYNER, JR. Trustee, personally appeared before me this day and acknowledged the execution of the foregoing Consent of Mortgagee.

WITNESS my hand and Notarial Seal this the 19 day of August, 1987.

Mary S. Casper
Notary Public

My commission expires: June 17, 1990.

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

Mary S. Casper, a Notary Public for the State and County aforesaid, do hereby certify that

John J. Hunt, Jr., personally came before me this day and acknowledged that

he is Assistant Secretary of Wachovia Bank and Trust Company, NA, and that by authority duly given and as an act of the Corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its Corporate Seal and attested by him self as its Assistant Secretary.

WITNESS my hand and Notarial Seal this the 19 day of August, 1987.

Mary S. Casper
Notary Public

My commission expires: June 17, 1990.

CONSENT OF MORTGAGEE

HERBERT P. SCOTT, of New Hanover County, North Carolina, is the holder of that certain Mortgage on the property as described in the foregoing Declaration for Valleygate Villas, Phase I, a Condominium, said Mortgage having been filed in Book 1336 at Page 350 in the New Hanover County Registry, and as holder of said Mortgage does hereby consent to the terms, conditions, covenants in the foregoing Declaration and the By-Laws described therein, and agrees that the lien of said Mortgage and the interest of the Mortgagee therein, are subject to the terms, conditions, and covenants contained in said Declaration.

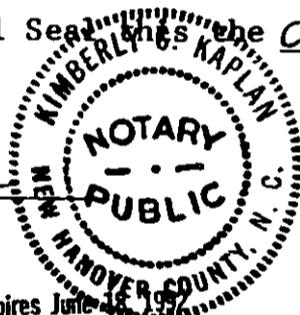
IN WITNESS WHEREOF, HERBERT P. SCOTT, has hereunto set his hand and seal, and JOHN P. SWART, as Trustee, has hereunto set his hand and seal, this the 27th day of August, 1987.

John P. Swart (SEAL)
JOHN P. SWART, Trustee

Herbert P. Scott (SEAL)
HERBERT P. SCOTT, Mortgagee

I, a Notary Public for the State and County aforesaid do hereby certify that JOHN P. SWART, Trustee, and HERBERT P. SCOTT, Mortgagee, personally appeared before me this day and acknowledged the execution of the foregoing Consent of Mortgagee.

WITNESS my hand and Notarial Seal this the 27th day of August, 1987.
Kimberly S. Kaplan
Notary Public



My commission expires: My Commission Expires June 15, 1987

CONSENT OF MORTGAGEE

HERBERT P. SCOTT, of New Hanover County, North Carolina, is the holder of that certain Mortgage on the property as described in the foregoing Declaration for Valleygate Villas, Phase I, a Condominium, said Mortgage having been filed in Book 1336 at Page 353 in the New Hanover County Registry, and as holder of said Mortgage does hereby consent to the terms, conditions, covenants in the foregoing Declaration and the By-Laws described therein, and agrees that the lien of said Mortgage and the interest of the Mortgagee therein, are subject to the terms, conditions, and covenants contained in said Declaration.

IN WITNESS WHEREOF, HERBERT P. SCOTT, has hereunto set his hand and seal, and JOHN P. SWART, as Trustee, has hereunto set his hand and seal, this the 27th day of August, 1987.

John P. Swart (SEAL)
JOHN P. SWART, Trustee

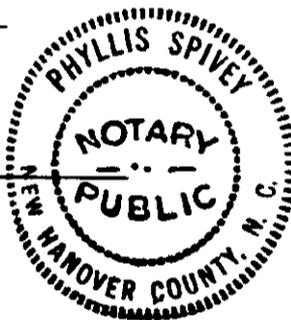
Herbert P. Scott (SEAL)
HERBERT P. SCOTT, Mortgagee

I, a Notary Public for the State and County aforesaid do hereby certify that JOHN P. SWART, Trustee, and HERBERT P. SCOTT, Mortgagee, personally appeared before me this day and acknowledged the execution of the foregoing Consent of Mortgagee.

WITNESS my hand and Notarial Seal this the 27th day of August, 1987.

Phyllis Spivey
Notary Public

My commission expires: 5/20/92



SCOTT, PAYNE
BOYLE & SWART
Attorneys at Law
201 Pincates Street
Wilmington, N.C. 28401
(910) 763-3881

STATE OF NORTH CAROLINA, New Hanover County
The Foregoing Certificate(s) of Kimberly C. Kaplan, Mary S. Cooper, Phyllis Spivey,
Notaries Public (is/are) certified to be correct.
This 10 day of September A.D., 19 87.
Rebecca P. Tucker, Register of Deeds
By Phyllis Spivey Deputy

Being all of Phase I of Valley Gate Villas, said Phase I being described as follows; to-wit: Beginning at an Iron Pipe (found) marking the southwest corner of Tract #3, a 5.131 Acre Tract, shown on a map entitled "Map of Division Part of Bruce Cameron Land", dated June 5, 1984 and duly recorded in Map Book 23 at Page 97 of the New Hanover County Registry, said pipe being located in the eastern line of Longstreet Drive (allowing 60 feet in width) at a distance of Seven Hundred Sixty-Nine and 55/100 (769.55) feet, more or less, from the point of intersection of the eastern line of Longstreet Drive with the southern line of Shipyard Boulevard (allowing 130 feet in width); runs thence with and along the eastern line of said Longstreet Drive North 37 degrees 15 minutes West Two Hundred Five and 0/10 (205.0) feet to a point in said eastern line of said Longstreet Drive; runs thence and leaving said Longstreet Drive at a right angle. North 52 degrees 45 minutes East One Hundred Fifty-Three and 0/10 (153.0) feet to a point; runs thence and parallel with the eastern line of said Longstreet Drive South 37 degrees 15 minutes East Sixty and 0/10 (60.0) feet to a point; runs thence North 83 degrees 41 minutes 59 seconds East Twenty and 89/100 (20.89) feet to a point; runs thence and parallel with said eastern line of Longstreet Drive South 37 degrees 15 minutes East One Hundred Fifteen and 0/100 (115.0) feet to a point in the southern most line of Tract #3 as hereinbefore mentioned; runs thence with and along said line South 46 degrees 19 minutes 21 seconds West One Hundred Seventy-Two and 0/10 (172.0) feet to the "Point of Beginning", contains 0.74 Acres, more or less.

Beginning at a point in the eastern right of way line of Longstreet Drive (allowing 60 feet in width), said point being located North 37 degrees 15 minutes West Two Hundred Five and 0/10 (205.0) feet from the southwesterly corner of Tract #3, marked by an Iron Pipe (Found); said Tract #3 being shown on a map duly recorded in Map Book 23 at Page 97 of the New Hanover County Register of Deeds Office; runs thence with and along the western line of Tract #3 and the eastern line of Longstreet Drive North 37 degrees 15 minutes West Three Hundred Thirty-Nine and 17/100 (339.17) feet to a Railroad Spike (found) in the pavement of the exit driveway for "MEDAC" (Tract #1, as shown on a map recorded in Map Book 23 at Page 97 of the aforementioned registry); runs thence with and along the southern line of said "MEDAC" property North 80 degrees 11 minutes 18 seconds East Three Hundred Forty-Three and 04/100 (343.04) feet to an Iron Pipe (found) marking the southeast corner of said "MEDAC" property and the southwest corner of a 20 foot non exclusive easement and/or right of way (described in Deed Book 1266 at Page 1278 of the New Hanover County Registry); runs thence with and along the southern line of said easement and the southern line of Tract #2, as shown on the aforementioned map, North 80 degrees 16 minutes 18 seconds East Four Hundred Forty-Eight and 88/100 (448.88) feet to an Iron Pipe (found) in the western line of the Pine Valley Methodist Church Property, such pipe marks the southeast corner of the hereinbefore mentioned Tract #2; runs thence South 09 degrees 49 minutes 06 seconds East One Hundred Nineteen and 11/100 (119.11) feet, more or less, to an Iron Pipe (found) in the northern line of Lot #256 of Section 4 of Pine Valley Subdivision, shown on a map of record in Map Book 6 at Page 84 of the aforesaid Registry; runs thence with and along the northern line of said subdivision South 46 degrees 19 minutes 21 seconds West Four Hundred Seventy-Nine and 76/100 (479.76) feet, more or less, to a point in said line, marking the southeasterly corner of Phase I; runs thence with and along the eastern line of said phase North 37 degrees 15 minutes West One Hundred Fifteen and 0/10 feet to a point; runs thence South 83 degrees 41 minutes 59 seconds West Twenty and 89/100 (20.89) feet to a point; runs thence North 37 degrees 15 minutes West Sixty and 0/10 (60.0) feet to a point; runs thence South 52 degrees 45 minutes West One Hundred Fifty-Three and 0/10 (153.0) feet to the "Point of Beginning", containing 4.39 Acres, more or less.

EXHIBIT "B"

BOOK

PAGE

1389 1429

The Plans are those certain Plans and Plats recorded in
Condominium Book 8 at Page 94-97 of the New Hanover County
Registry and said Plans and Plats are incorporated herein by reference
as if fully set forth.

EXHIBIT C
TO DECLARATION

Unit No.	Percentage of Undivided Interest In Common Elements	Percentage of Common Expenses	Votes in Association
101	12.5	12.5	1/8th
102	12.5	12.5	1/8th
103	12.5	12.5	1/8th
104	12.5	12.5	1/8th
105	12.5	12.5	1/8th
106	12.5	12.5	1/8th
107	12.5	12.5	1/8th
108	12.5	12.5	1/8th

Note: The allocated percentage and votes as set forth above are subject to change and reallocation if Declarant shall add Additional Real Estate as provided and allowed in the Declaration.

BY-LAWS
OF
VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC.
A Non-Profit North Carolina Corporation

ARTICLE I
GENERAL

Section 1. THE NAME: The name of the corporation shall be VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, LTD.

Section 2. THE PRINCIPAL OFFICE: The principal office of the corporation shall be at Valleygate Villas in, Wilmington, North Carolina, or at such other place as may be subsequently designated by the Board of Directors.

ARTICLE II
MEMBERSHIP

Section 1. DEFINITION: Each owner of a unit of VALLEYGATE VILLAS, a Condominium shall be a member of the corporation, and membership in the corporation shall be limited to owners of such condominium units.

Section 2. TRANSFER OF MEMBERSHIP AND OWNERSHIP: Membership in the corporation may be transferred only as an incident to the transfer of the transferor's condominium unit and his undivided interest in the common areas and facilities of the condominium, and such transfer shall be subject to the procedures set forth in the Condominium Documents.

ARTICLE III
MEETINGS OF MEMBERSHIP

Section 1. PLACE: All meetings of the corporate membership shall be held at the office of the corporation or such other place as may be stated in the notice.

Section 2. ANNUAL MEETING:

A. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of

the members shall be held on the same day of the same month of each year thereafter at 8:00 P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same time on the first day following which is not a legal holiday.

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

C Written notice of the annual meeting shall be served upon or mailed to each member entitled to vote thereat such address as appears on the books of the corporation, at least ten but not more than fifty days prior to the meeting. Each member shall notify the Secretary of any address change, and the giving of said notice shall be in all respects sufficient if sent to the address of the member which is then on file with the Secretary.

Section 3. MEMBERSHIP LIST: At least ten (10) but not more than fifty (50) days before every election of Directors, a complete list of members entitled to vote at said election, arranged numerically by condominium units, with residence of each, shall be prepared by the Secretary. Such list shall be produced and kept for said ten (10) days and throughout the election at the office of the corporation, and shall be open to examination by any member throughout such time.

Section 4. SPECIAL MEETINGS:

A. Special Meetings of the members, for any purpose or purposes unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Board or at the request, in writing, of twenty per cent (20%) of the members. Such request shall state the purpose or purposes of the proposed meeting.

B. Written notice of a Special Meeting of members, stating the time, place and object thereof, shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of

the corporation, at least ten (10) and no more than fifty (50) days before such meeting.

- C. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof, unless sixty (60%) percent of the members present at such meeting in person or by proxy consent to the transaction of business not stated in the notice.

Section 5. QUORUM: Over fifty (50%) percent of the total number of members of the corporation, present in person or represented by written proxy, shall be requisite to and shall constitute a quorum at all meetings of the members for the transaction of business, except as otherwise provided by statute, by the Certificate of Incorporation or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 6. VOTE REQUIRED TO TRANSACT BUSINESS: When a quorum is present at any meeting, a majority of the votes cast, in person or represented by written proxy filed with the Secretary in advance of the meeting, shall decide any question brought before the meeting, unless the question is one upon which, by express provisions of the statutes, the Condominium Documents or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. There shall be no cumulative voting.

Section 7. RIGHT TO VOTE: Each owner shall be entitled to one vote. At any meeting of the members, every member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof. If more than one (1) person or

entity own a unit, they shall file a certificate with the secretary naming the person authorized to cast votes for said unit. If same is not on file, the vote of any co-owner present who is acceptable to other co-owners shall be accepted as the vote of all co-owners. Any legal entity which is an owner shall have the right to membership in the Corporation.

Section 8. WAIVER AND CONSENT: Whenever the vote of members at a meeting is required or permitted by any provision of the statutes, the Condominium Documents, or these By-Laws to be taken in connection with any action of the corporation, the meeting and vote of members may be dispensed with if all members who would have been entitled to vote upon the action of such meeting if such meeting were held shall consent in writing to such action being taken.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. NUMBER AND TERM: The number of directors which shall constitute the whole Board of Directors (the "Board") shall be five, except that the first Board of Directors shall be three. Until succeeded by directors elected at the first annual meeting of members, directors need not be members. Within the limits above specified, the number of directors shall be determined by the members at the annual meeting; the directors shall initially be elected to serve staggered terms, two for three years, two for two years, one for one year, and they shall serve until their successors shall be elected for a term of two years.

Section 2. VACANCY AND REPLACEMENT: If the office of any director becomes vacant by reason of transfer of ownership, death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 3. REMOVAL: Directors may be removed with or

without cause, by an affirmative vote of a majority of the total membership.

Section 4. FIRST BOARD OF DIRECTORS: The first Board shall consist of Edward Maready, Bruce Kubeck and Walter Winter, who shall hold office and exercise all powers of the Board until the initial annual membership meeting, provided, any or all of said directors shall be subject to replacement in the event of resignation or death as above provided.

Not later than sixty days after conveyance of twenty-five percent (25%) of the units (including units which may be created by expansion of the condominium project) to unit owners other than the Declarant, the initial Board shall be expanded to four members, with the new member being a unit owner elected by unit owners other than the Declarant. Further, not later than sixty days after conveyance of fifty percent (50%) of the units (including units which may be created by expansion of the condominium project) to unit owners other than the Declarant, the initial Board shall be expanded to five members, two of which will be unit owners elected by the unit owners other than the Declarant.

Section 5. POWERS: The property and business of the corporation shall be managed by the Board, which may exercise all corporate powers not specifically prohibited by statute, the Certificate of Incorporation, or the Declaration to which these By-Laws are attached. The powers of the Board shall specifically include, but not be limited to, the following:

- A. To make and collect regular and special assessments and establish the time within which payment of same are due.
- B. To use and expend the assessments collected to maintain, care for and preserve the units and condominium property, except those portions thereof which are required to be maintained, cared for and preserved by the owners.
- C. To insure and keep insured said condominium property in the manner set forth in the Declaration against

- loss from fire and/or other casualty, and the unit owners against public liability, and to purchase such other insurance as the Board may deem advisable.
- D. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from owners for violations of these By-Laws and the terms and conditions of the Condominium Documents.
 - E. To employ and compensate such personnel as may be required for the maintenance and preservation of the property.
 - F. To make appropriate changes in the Rules and Regulations for the occupancy of the condominium units as may be deemed necessary.
 - G. To acquire and/or rent and/or lease a condominium unit in the name of the corporation or a designee.
 - H. To contract for management of the condominium and to delegate to such other party all powers and duties of the Corporation except those specifically required by the Condominium Documents to have specific approval of the Board or membership.
 - I. To carry out the obligations of the Corporation under any restrictions and/or covenants running with any land submitted to the Condominium ownership of this Corporation or its members.
 - J. To designate, as the Board deems appropriate, assigned parking spaces for each unit and a driveway area for service vehicles.
 - K. To adopt Rules and Regulations pursuant to Article IX of the By-Laws.
 - L. To impose a special assessment (against any owner), not to exceed \$150.00 for each occurrence, for the violation by the owner or his guests of any rule or regulation adopted by the Board of the breach of any By-Law contained herein, or the breach of any provision of the Declaration.
 - M. To terminate any lease or rentals whether by written

or oral agreement; and to remove from any unit, any lessee, renter or guest who fails to comply with the terms of the Condominium Documents.

- N. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above.
- O. To enter into and upon the units when necessary and at as little inconvenience to the owner as possible in connection with such maintenance, care and preservation.
- P. To propose and adopt an annual budget for the property. Summaries of the adopted proposed budget shall be provided to all unit owners within thirty days from adoption and the Board shall set a date not less than fourteen nor more than thirty days after delivery of the summary for a meeting of the unit owners to consider ratification of the proposed budget.
- Q. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium.
- R. Make contracts and incur liabilities
- S. Cause additional improvements to be made as part of the common elements.
- T. Grant easements, leases, licenses, and concessions through or over the common elements.

Section 6. LIABILITY: The Directors shall not be liable to the owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, bad faith, or gross negligence.

Section 7. COMPENSATION: Neither Directors nor officers shall receive compensation for their services as such.

Section 8. MEETINGS:

- A. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a

quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general members' meeting, and immediately before or after the adjournment of same.

- B. Special meetings shall be held whenever called by the direction of the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally, by mail or telegram, at least three (3) days before the date of such meeting, but the directors may, in writing, waive notice of the calling of the meeting, before or after such meeting.
- C. A majority of the Board shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business and the act of a majority present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at the meeting, the Directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

Section 9. ANNUAL STATEMENTS: The Board shall present, no less often than at the annual meeting, a full and clear statement of the business and condition of the corporation, including a report of the operating expenses of the corporation and the assessments paid by each member.

ARTICLE V
OFFICERS

Section 1. The four executive officers of the corporation shall be a President, Vice-President and Secretary and Treasurer, all of whom shall be elected annually by and from the Board.

Section 2. SUBORDINATE OFFICERS: The Board may appoint such other officers and agents from the membership as they may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by said Board.

Section 3. THE PRESIDENT:

- A. The President shall preside at all meetings of the members and directors; he shall have general and active management of the business of the corporation; he shall see that all orders and resolutions of the Board are carried into effect; he shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation.
- B. He shall have general superintendance and direction of all the other officers of the corporation, and shall see that their duties are performed properly.
- C. He shall submit a report of the operations of the corporation for the fiscal year to the Directors whenever called for by them, and to the members at the annual meeting, and from time to time shall report to the Board all matters within his knowledge which the interest of the corporation may require to be brought to their notice.
- D. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

Section 4. THE VICE-PRESIDENT: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Section 5. THE SECRETARY:

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meeting of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Section 6. THE TREASURER:

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the resolution of the Board of Directors; shall sign all checks of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

Section 7. VACANCIES: If the offices of any Director or officer becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining Directors, by a majority vote of the remaining Directors provided for in these By-Laws, may choose a successor or successors who shall hold office for the unexpired term.

Section 8. RESIGNATIONS: Any Director or officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Board of Directors, unless some time may be fixed in the resignation, and then from that date. The acceptance of a resignation by the Board shall not be required to make it effective.

ARTICLE VI

NOTICES

Section 1. DEFINITION: Whenever under the provisions of the statutes, the Condominium Documents, the Certificate of Incorporation, or these By-Laws, notice is required to be given to any Director or member, it shall not be construed to mean personal notice; but such notice may be given in writing by mail, by depositing the same in a post office or letter box in a postpaid, sealed envelope, addressed as appears on the books of the corporation.

Section 2. SERVICE OF NOTICE-WAIVER: Whenever any notice is required to be given under the provisions of the statutes, Condominium Documents, the Certificate of Incorporation, or the

1389 1441

By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VII

FINANCES

Section 1. FISCAL YEAR: The fiscal year shall be the calender year unless changed by action of the Board of Directors.

Section 2. CHECKS: All checks or demands for money and notes of the corporation shall be signed by the Treasurer or by such officers or such other person or persons as the Board of Directors may from time to time designate. Any check over \$2,500.00 shall require the signature of another officer.

Section 3. DETERMINATION OF ASSESSMENTS:

A. Each member of the Association is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 6 per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided herein by nonuse of the Common Areas or abandonment of his Unit. Each assessment, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the owner of such property when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

B. Purpose of Assessments:

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Condominium and for the improvement and maintainance of the Common Area.

In determining the amount of the assessments, the Associaton shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those limited common areas which the Association is obligated to maintain. The reserve fund shall be maintained out of the regular monthly assessments for common expenses.

C. Maximum Assessment.

Until January 1 of the new year immediately following the conveyance of the first Unit to an Owner, the maximum assessment shall be \$52.85 per unit per month.

(1) From and after January 1, of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(2) From and after January 1 of the year following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of the members voting in person or by proxy, at a meeting duly called for this purpose.

(3) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(4) Funds for the payment of common expenses shall be assessed against the unit owners in proportions or percentages of sharing common expenses provided in the Declartion

D. In addition to the annual assessments authorized above, the Associaton may levy in any assessment year, a special asessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any

construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members voting in person or by proxy at a meeting duly called for this purpose.

E. When the amount of the assessments have been determined as set forth above, the Secretary-Treasurer of the corporation shall mail or present a statement of the assessment to each of the assessed owners. All assessments shall be payable to the corporation, and upon request, the Secretary-Treasurer or his designated agent shall give a receipt for each payment made. Assessments shall be collected by the Association on a monthly bases.

F. The Board may enter into a management contract with third parties to whom the Board may delegate its power to levy and collect the assessments determined as set forth above.

Section 4. NON-PROFIT CORPORATION: The seal of the corporation shall have inscribed thereon the name of the corporation and the year of its organization. Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced, or otherwise.

Section 5. EXCESS OF ASSESSMENTS. In any year in which there is an excess of assessments received over amounts actually used or payable for the purposes described in these By-Laws, and in the Declaration, such excess shall, unless otherwise determined by the Board of Directors of the Association, be deposited in a capital reserve account for use in replacement, repair or maintainance of the common areas and facilities of the Association.

ARTICLE VIII

DEFAULT

Section 1. ENFORCEMENT OF LIEN FOR ASSESSMENTS: In the event an owner does not pay any sums, charges, or assessments required to be paid to the corporation by the due date, the

corporation, acting on its own behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges or assessments, including attorney's fees, to which it is entitled, in accordance with the Declaration and the statutes made and provided or both.

Section 2. CHARGES FOR LATE PAYMENTS, FINES: The Board may appoint an adjudicatory panel to determine if a unit owner should be fined, not to exceed one hundred fifty dollars (\$150.00), for a violation of the Declaration, By-Laws or rules and regulations of the Association. The panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien as set forth in the Declaration.

Section 3 GOVERNMENTAL LIENS AND ASSESSMENTS: In the event that an owner fails to pay any tax or assessment lawfully assessed by any governmental subdivision within which the property is situated, by the date such tax or assessment is due, the Board may pay the same from the funds of the corporation and assess such owner for the amount paid, plus interest thereon.

Section 4. LEGAL COSTS: In the event such legal action is brought against an owner and results in a judgment for the corporation, the owner shall pay the corporation's reasonable attorney's fees, costs of collection and court costs.

Section 5. FORECLOSURE: If the corporation becomes the owner of a unit by reason of foreclosure, it shall offer said unit for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the unit, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the unit in question. All monies remaining after deducting the foregoing items of expenses shall be returned to the former owner of subject unit.

Section 6. OTHER REMEDIES: In the event of violation of the provisions of the Condominium Documents as the same are defined in the Declaration, for thirty (30) days after notice from the Association to the unit owners to correct said violation, the corporation, on its own behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of said Condominium Documents, or may sue for damages, or take such other courses of action, or other legal remedy as it or they may deem appropriate.

Section 7. INTENT: Each owner, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of nuisance, regardless of the harshness of the remedy available to the corporation and regardless of the availability of the other equally adequate legal procedures. It is the intent of all owners of family units to give to the corporation a method and procedure which will enable it at all times to operate on a business-like basis, to collect those monies due and owing it from the owners of units, and to preserve each unit owner's right to enjoy his unit, free from unreasonable restraint and nuisance.

ARTICLE IX

RULES AND REGULATIONS

In addition to the other provisions of these By-Laws, the Rules and Regulations (attached hereto as Exhibit A, but not incorporated in the By-Laws) together with any subsequent changes, shall govern the use of the units located in the property and the conduct of all residents and guests. Such Rules and Regulations shall be in effect until the first Board of Directors Meeting at which time they shall be adopted subject to such changes as may be deemed appropriate. Any further modifications in the Rules and Regulations may be made by the Board of Directors in accordance with Article IV, Section 5, of these By-Laws.

ARTICLE X

JOINT OWNERSHIP

Membership may be held in the name of more than one

owner. In the event ownership is in more than one person, all of the joint owners shall be entitled collectively to only one voice or ballot in the management of the affairs of the corporation, and the vote may not be divided between plural owners. The manner of determining who shall cast such vote shall be as set forth in Article III, Section 7.

ARTICLE XI
INDEMNIFICATION

The corporation may indemnify any person made a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of his being or having been a director or officer of the corporation, against the reasonable expenses including attorney's fees actually or necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the corporation.

ARTICLE XII
AMENDMENT

These By-Laws may only be altered, amended or added to at any duly called meeting of the members; provided (1) that the notice of the meeting shall contain a full statement of the proposed amendment; and (2) that the quorum required for such purposes shall be a majority of all the then members, in person or by proxy. It shall be necessary that there be an affirmative vote of owners holding not less than two-thirds (2/3) of the qualified votes of members represented at such quorum, in order to amend the By-Laws. Article III, Section 2A may not be amended without express approval of Declarant, as defined in the Declaration. No amendment to these By-Laws shall be passed which would operate to impair or prejudice the rights and/or liabilities of any mortgagee, and no amendment shall become operative unless set forth in an amended Declaration and duly recorded. All unit owners shall be bound to abide by any amendment upon the same being passed and duly set forth in an

amended Declaration, duly recorded in the Office of the Register of Deeds of New Hanover County, North Carolina. So long as the Declarant controls the Association, the Veteran's Administration and/or the Federal Housing Administration shall have the right to veto amendments to these By-Laws.

ARTICLE XIII

CONSTRUCTION

Wherever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so required.

Should any of the covenants herein imposed be void or be or become enforceable by law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

ARTICLE XIV

CONTRACTS NOT BINDING

The Homeowners Association shall not be bound, either directly or indirectly, to contracts or leases, including management contracts, unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control of the Homeowners Association from the initial directors to the unit owners, and upon not more than 90 days' notice to the other party.

ARTICLE XV

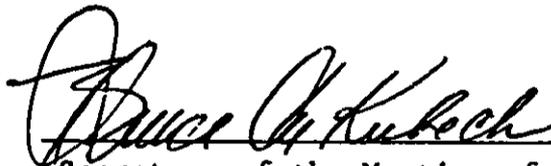
RIGHT TO INFORMATION AND FINANCIAL STATEMENT

The Homeowners Association shall make available to any unit owner, any lender, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, and other rules concerning the Project, and the books, records, and financial statements of the Association.

Upon development of 50 or more units, any holder of a first mortgage is entitled, upon written request, to a financial statement of the Homeowners Association for the immediately preceding fiscal year.

The foregoing were adopted as the By-Laws of VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC. at the first meeting of its Board of Directors.

Certified to be correct, this the 21th day of August, 1987.



Secretary of the Meeting of the
First Board of Directors of
Valleygate Villas Homeowners
Association, Inc.

RULES AND REGULATIONS OF VALLEYGATE VILLAS

1. The walkways in front of the units and the entranceways to the units shall not be obstructed or used for any purpose other than ingress 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 bicycles, scooters, baby carriages, and other items or toys shall be allowed to stand in any of the common areas. No boats, trailers, RV's or similar vehicles shall be allowed to stand in any of the common areas, except in one of the owners allotted parking spaces.
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 the 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 out or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or substance.
6. No shades, awnings, window guards, ventilators, fans, or air conditioning devices shall be used in or about the buildings 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, and only at such times and in such manner as the Board of Directors may direct.
8. No bird or animal shall be kept or harbored in the development unless the same in each instance be expressly permitted in writing by the Board of Directors. In no event shall dogs be permitted in any of the public or common area portions of the development unless carried or on leash. The owner shall indemnify the Board of Directors and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal in the development.
9. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, or otherwise, shall be conducted, maintained, or permitted on any part of the property, nor shall any window displays or advertising, except for a "For Sale" or "For Rent" sign in a window, be maintained or permitted on any part of the property, or in any unit therein, except as allowed to Declarant via special Declarant rights in the Declaration.
10. 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.

11. 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.
12. The agents of the Board of Directors and any contractor or workman authorized by the Board of Directors 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 purpose of inspecting such unit 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.
13. 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 regulations posted on the private streets and drives and other traffic regulations promulgated in the future for the safety, comfort and convenience of the owners.
14. All damage to the units caused by the moving or carrying out of any article therein shall be paid by the owner responsible for the presence of such article.
15. No owner shall use or permit to be brought into the units any inflammable fluids such as gasoline, naphtha, benzine 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.
16. Blinds shall be originally installed by Seller in each unit and thereafter must be maintained in such windows at all times as originally installed unless written permission for variance is allowed by the Board of Directors.
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, other common areas or equipment caused by children, guests or children of guests shall be repaired at the expense of the unit owner.
19. Any consent or approval given under these Rules and Regulations by the Board of Directors shall be revocable at any time.

1389 1451

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