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REGISTER OF DEEDS  
NEW HANOVER CO. NC  
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CAPE COTTAGES CONDOMINIUMS

PHASE I

DECLARATION OF CONDOMINIUM

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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF CAPE COTTAGES  
CONDOMINIUMS  
PHASE I

BILTWELL, INC., a North Carolina corporation with its principal place of business in the County of Cumberland, State of North Carolina, (herein "Developer"), does hereby make, declare and establish this Declaration of Condominium as and for the plan of unit ownership of CAPE COTTAGES CONDOMINIUMS being the property and improvements hereinafter described.

ARTICLE I.

ESTABLISHMENT OF CONDOMINIUM

A. Developer is the owner in fee simple of certain real property situated in Wilmington, New Hanover County, North Carolina, which property is more particularly described in Exhibit "A(1)", attached hereto and incorporated herein by reference. Developer does hereby submit the above described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Cape Cottages Condominiums, Phase I." Hereinafter in this Declaration, "Cape Cottages Condominiums" is sometimes referred to as "Condominium".

B. Pursuant to the Act and to establish a plan of condominium ownership for the Condominium, the Declarant does hereby divide the Property into eight (8) condominium living units located in one (1) two-story building as shown on the Plats and Plans and does hereby designate all such units for separate ownership.

C. The total number of Units in all phases will not exceed two hundred thirty-two (232). Phases II through XX, if constructed, will be located on the land described in Exhibit "A(2)", attached hereto and incorporated herein by reference. The methods and procedures for expanding the Condominiums to include these additional buildings and the effects of such expansion are described in Articles IV and XXVII of this Declaration. There shall also be a common area for amenities which will include space for a tennis court, club house, swimming pool, volleyball court and boat storage.

ARTICLE II.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Referenced hereto and expressly made a part hereof as Exhibit "B" consisting of ~~four~~ (4) pages, as recorded in Condominium Book 10, Pages 381 through 384, New Hanover County Registry, is a survey of the land and graphic descriptions and plans of the improvements constituting Phase I of Cape Cottages Condominium, identifying the Condominium Units and Common Areas and Facilities, as said terms are hereinafter defined, and their respective locations, approximate dimensions and principal building materials. Each Condominium Unit is identified by specific alphabetical designation on Exhibit "B" and no Unit bears the same designation as any other Condominium Unit.

ARTICLE III.

DEFINITIONS

The Condominium consists of Condominium Units and Common Area and Facilities as said terms are hereinafter defined:

A. "Condominium Units" (alternately referred to as "Unit") as defined herein

shall comprise the separate alphabetically identified dwelling Units which are designated on attached plats and plans (and any subsequent additions), excluding all spaces and improvements lying:

- (1) Beneath the wood subflooring material of all floors;
- (2) Behind the interior sheet rock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
- (3) Above the interior sheet rock, wallboard or panel surfacing material of the ceilings;

and further, excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to Condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior sheet rock, wallboard or panel surfacing material for walls and ceilings and sub flooring surfacing material for floors. All pipes, ducts, wires, conduits and other such facilities within the referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panes and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Cape Cottages Condominiums as hereinafter defined.

B. Common Areas and Facilities, sometimes referred to herein as "Common Property" shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all Owners of Condominium Units. Limited Common Areas are Common Areas.

C. Limited Common Areas are a portion of the common areas allocated by this Declaration or by operation of N.C.G.S. Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units. As used herein, the term "Limited Common Areas" shall also mean and refer to the following:

a. The patios, porches and or decks which are located immediately adjacent to each unit, access to which shall be only through a Unit. The use of each patio, porch and/or deck shall be limited to the Unit Owner or occupant whose Unit affords interior access to them.

b. As shown on Exhibit "B", the walks, halls and balconies located in each building which are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees.

c. Such other Limited Common Areas as may be shown on the Plats and Plans recorded in Condominium Plat Book 10, Pages 361-384 New Hanover County Registry.

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "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 meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

#### ARTICLE IV.

##### OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY

A. Each Condominium Unit shall be conveyed and treated as an individual property

capable of independent use and fee simple ownership, and the Owner of each shall also own, as an appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit as of the date of this Declaration is set out in Column I of Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each Condominium Unit as shown in Exhibit "C" has been determined by a ratio formulated upon the percentage that each Unit bears to the total number of Units. Each Condominium Unit Estate shall also include the right to use Limited Common Areas as they are defined in Article III and as they are shown on the plats and plans recorded in applicable to each Unit. Every Unit Owner may transfer its interest in Unit ownership free of any right of first refusal reserved in the Declarant.

B. The Condominium is not subject to any zoning, subdivision, building code, or other real estate use law, ordinance or regulation imposing conditions or requirements upon a condominium which are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to N.C.G.S. Section 47C-1-106 for the purpose of providing marketable title to the Units in the Condominium.

#### ARTICLE V.

##### **RESTRICTION AGAINST FURTHER SUBDIVISION OF CONDOMINIUM UNITS; SEPARATE CONVEYANCE OF APPURTENANT COMMON PROPERTY PROHIBITED**

No Condominium Unit may be divided or subdivided into smaller Unit or Units than as shown on Exhibit "B" hereto nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit and the undivided interest in Common Property appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null, void and of no effect so far as the same purports to affect any interest in Common Property, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Property by more than one person or entity as tenants-in-common, joint tenants, or as tenants by entirety.

#### ARTICLE VI.

##### **THE CONDOMINIUM SUBJECT TO RESTRICTIONS**

The Condominium Units, Common Property and Limited Common Areas shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Common Property and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Property, and said Condominium Units, Common Property and Limited Common Areas are further declared to be subject

to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominium. Each Unit owner will be subject to all rights and duties as set out herein and when Declarant is the owner of any unsold units in the Condominium, it will enjoy the same rights of the Unit Owners and assume the same duties of the Unit Owners as they relate to each individual unit, subject to the provisions of Article XXIV B.

**ARTICLE VII.**

**RESTRICTIONS ON USE OF UNITS**

Owners are prohibited from maintaining fires to include, but not limited to, charcoal grills, gas grills or hibachis on any decks, patios, porches, balconies or other appurtenant structures.

**ARTICLE VIII.**

**EASEMENTS**

**A. Perpetual Non-Exclusive Easement in Common Property.** The Common Property shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests, invitees and lessees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. The Common Property shall be subject, also, to an easement of ingress, egress, and regress in favor of Developer, its representatives, employees, and designees for the purpose of construction of succeeding phases, as further defined in Article XXVII hereof. Notwithstanding anything above provided in this Article, the Association hereinafter shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof.

**B. Easement for Unintentional and Non-Negligent Encroachments.** In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance and maintenance of such encroachment upon the Common Property or upon a Condominium Unit for as long as such encroachment shall naturally exist; and in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Property upon any Condominium Unit for as long as such encroachment shall naturally exist. If any Condominium Unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Property in accordance with Article XXII hereof, there exists encroachments of portions of the Common Property upon any Condominium Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the continuation and maintenance thereof shall exist so long as such encroachments shall naturally remain.

**C. Right of Ingress and Egress for Unit Owners.** Every Unit Owner shall have a perpetual right of ingress to and egress from its Unit, such right being appurtenant to the right of Unit Ownership.

D. Easement to the City of Wilmington. Areas designated as common areas on the map referenced hereinabove are hereby made subject to an easement to the City of Wilmington as the same is shown on said map.

**ARTICLE IX.**

**RESTRAINT UPON SEPARATION, PARTITION & LEASE  
OF COMMON PROPERTY**

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 in common 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 proportional undivided interest in the 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. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void unless the unit to which that interest is allocated is also transferred. Further, no part of the Common Areas shall be subject to a lease between the Unit Owners (or the Association) and another party.

**ARTICLE X.**

**ADMINISTRATION OF THE CONDOMINIUM BY  
CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC.**

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known and designated as Cape Cottages Homeowners' Association, Inc. (herein "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of said Bylaws and Articles of Incorporation are annexed hereto and expressly made a part hereof as Exhibits "D" and "E", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of how such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest. Any Unit Owner, as the same is defined herein, is granted a right of action against the Association for failure to comply with the provisions of this declaration or with decisions of the Association which are made pursuant to authority granted the Association.

**ARTICLE XI.**

**RESIDENTIAL USE RESTRICTIONS APPLICABLE TO  
CONDOMINIUM UNITS: EXCEPTIONS TO TITLE**

Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invites and lessees. No Unit Owner may lease less than the

entire Unit. Any lease or rental agreement for a Unit shall be in writing and for a period of at least one hundred and eighty (180) days. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. No Owner of any Condominium Unit shall permit the use of his Unit for transient hotel or for commercial purposes. There shall be no more than four (4) persons residing in any two bedroom unit, and no more than five (5) persons residing in a three bedroom unit. However, this is left up to the discretion of the Board of Directors. Corporate or partnership members, other than the Developer, shall permit the use of a Condominium Unit owned by it only by its principal officers, directors or partners, or other guests or lessees. Such corporate or partnership member shall annually sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Condominium Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration of Condominium and with the rules and regulations which may be promulgated by the Association from time to time and acknowledging that the party's right to use such Condominium Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate or partnership member to remove a party for failure to comply with the terms and provisions of the Declaration of Condominium and/or the rules and regulations of the Association or for any other reason and corporate or partnership member shall forthwith cause such party to be removed, failing which, the Association, as agent of the Owner, shall take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefor upon demand, together with such attorneys' fees as the Association may have incurred in the process of removal.

Anything in this Declaration to the contrary notwithstanding, Developer shall have the right to maintain a sales office and model units and to display advertising signs upon the Common Property during the period of Unit Sales. Such right shall terminate when all Units in all phases of the Condominium are sold. Developer, its representatives, employees and designees shall have an easement of ingress, egress and regress upon across the Common Property for construction of succeeding phases, as described in Article XXVII hereof, which easement shall terminate when all Units in all phases are completed and sold.

The liens, defects and encumbrances on the property to which the Unit owners are hereby made subject are set out on Exhibit "F" attached hereto and incorporated herein by reference.

#### ARTICLE XII.

##### USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION

The use of Common Property, including the Limited Common Areas and Facilities, by Owner or Owners of all Condominium Units and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the Association.

#### ARTICLE XIII.

##### THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES: RESTRICTION AGAINST NUISANCES

No immoral, improper offensive or unlawful use shall be made of any condominium Unit or of the Common Property, and all laws, zoning ordinance and

regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of enjoyment of other occupants of the Condominium because of unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

The Board of Directors has the authority to regulate the type, size and number of domestic animals.

**ARTICLE XIV.**

**RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES**

In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the Managing Agent shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such emergency, and such right of entry shall be immediate.

**ARTICLE XV.**

**RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY:  
RIGHTS OF ASSOCIATION FOR PROPER OPERATION OF PROJECT**

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit an agent of Association to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice. The Owner of each Unit further permits the Association the right to grant permits, licenses and easements for utilities, road construction and repair and other necessary items for proper operation of the Condominium project.

**ARTICLE XVI.**

**LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY  
CONDOMINIUM UNITS: NO RIGHT TO ALTER COMMON PROPERTY**

No owners of a Condominium Unit shall permit any structural modification or alteration to such Condominium Unit without first obtaining the written consent of the Association, any consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion at such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety.

The Association, through the Board of Directors (or its Architectural control committee), shall regulate the external design, appearance, use, location and maintenance of the Condominium and of improvements therein, including window treatments and blinds, in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. No owner shall cause any improvements, alteration, repairs or changes to be made on the exterior of the Condominium (including painting or other decoration, the installation of electrical wiring, television or radio antennae or any other objects or devices which may protrude through the walls or roof of the Condominium), or window treatments and blinds, or in any manner alter the other appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No Unit Owner shall cause any object to be fixed to the Common Property or to any Limited Common Area (including the location or construction of fences and the planting or

growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the Common Property or Limited Common Area without the written consent of the Association being first had and obtained.

Any Unit Owner desiring to make improvements, alteration or changes described above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board of Directors which shall evaluate such plans and specifications in light of the purpose of this Article as set forth above. As a condition to the granting of approval of any request made under this article, the Association may require that the Unit Owner requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Unit Owner, and any subsequent Owner of the Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth in Article XXIV subject to the lien rights described in said Article.

#### ARTICLE XVII.

##### RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON PROPERTY AND ASSESSMENT THEREFOR

The Association shall have the right to make or cause to be made such alterations or improvements to Common Property (including the right to grant and establish upon, over and across the Common Property such easements as are necessary or desirable for providing service or utilities to the Units and the Common Property) which do not materially prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations and improvements shall be common expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Condominium Unit or Units requesting the same, then the cost of making, maintaining, repairing and insuring such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefitted, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

#### ARTICLE XVIII.

##### MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which its failure to do so engenders. The Owner of such Condominium Unit shall be liable and responsible for the maintenance, repair and replacement of all heating and air conditioning equipment, regardless of where located, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair, and replacement of the exterior surfaces of any and all walls, ceilings and floors within his Condominium Unit, including painting, decorating and furnishing, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair or replacement of any item for which the Owner is obligated to maintain or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the

Association, the proceeds of the insurance received by the Association shall be used for the purposes of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. . All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners.

**ARTICLE XIX.**

**MAINTENANCE AND REPAIR OF COMMON PROPERTY  
BY THE ASSOCIATION**

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the Common Property and Limited Common Area (except where the Owner of a Condominium Unit has the exclusive use of any Limited Common Area wherein that unit owner shall maintain such at his own expense;) including as part of the Common Area and Limited Common Area those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property. The Association will maintain an adequate reserve fund out of the monthly assessment fees for replacement or improvement of common areas and any limited common areas it is obligated to maintain. Any incidental damage done pursuant to the furnishing of utility, heating and other services to the Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of a Condominium Unit Owner, his immediate family, guests, lessees or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family; guests lessees or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, or by reason of any deductibility provision of such insurance proceeds, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

**ARTICLE XX.**

**AUTHORITY TO PURCHASE INSURANCE**

Insurance policies upon the Common Property, including Limited Common Areas and Facilities (except title insurance) shall be purchased by the Association, as Trustees for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability as may be permitted or required by law but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

**INSURANCE COVERAGE TO BE MAINTAINED: USE AND  
DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS**

A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property:

(1) Casualty insurance covering the building and all improvements upon the land and all personal property included within the Property described in Exhibit "A" hereto or as it may amended from time to time, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage. Such policy shall contain an Agreed Amount Endorsement or an Inflation Guard Endorsement, if available. By the way of illustration and not of limitation, such casualty insurance shall cover fixtures, comprising a part of the building within each individual Condominium Unit (as that term is defined in Article III hereof) in accordance with the original condominium plans and specification. In determining the amount of coverage for such fixtures, installations or additions, the Board of Directors of the Association shall annually set the standard allowance for such items as carpeting, bathroom and kitchen cabinets, wall covering, vinyl floor covering, ceramic tile, kitchen appliances, bookshelves, etc., which were included in the original condominium plans and specifications. By the way of illustration and not of limitation such casualty insurance shall not cover furniture, furnishings or other household or personal property owned by, used by or in the care, custody or control of a Condominium Unit Owner (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Condominium Unit by the Owner thereof at his expense. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

(2) A comprehensive policy of public liability insurance insuring the Association in an amount no less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage.

(3) The Board of Directors shall maintain fidelity coverage against dishonest acts by the Association's officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall provide adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of the paragraph XXI-A-(3), hereinbelow. If the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or directors of the Association can and do directly receive or disburse the monies of the Association), then the Board of Directors shall provide the coverage set forth in this paragraph. Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least but not less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and 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 and to any Institutional Lender who has given the notice required under Article XXIX of this Declaration.

(4) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a condominium Unit Owner.

B. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.

C. All insurance policies purchased by the Association attributable to the Common Property shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of Association, the Condominium Unit Owners and their respective mortgagees as follows:

(1) Proceeds on account of damage to Common Property shall be held by the Association in undivided shares for each condominium Unit Owner and his mortgagee, if any, which shares as to each Condominium Unit are shown on Exhibit "C" attached hereto.

(2) Proceeds on account of damages to Condominium Units shall be held in the following undivided shares:

(a) If the damage is considered partial destruction when the Condominium is to be restored as set out in Article XXII proceeds shall be payable to the Owners of damaged Condominium Unit Owners, the share of each being set forth in Exhibit "C".

(b) In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear.

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

E. Each Condominium Unit Owner shall be deemed to have delegated to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association and to negotiate with governmental authorities any condemnation claims.

#### ARTICLE XXII.

##### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE; DAMAGE TO COMMON PROPERTY: DAMAGE TO CONDOMINIUM UNITS

A. If any part of the Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:

(1) Partial destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) of the Condominium Units untenable. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair. Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the declaration and the original plans and specifications.

(2) Total destruction shall be deemed to mean destruction which renders two thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the

Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Condominium Unit Owners who in the aggregate own three-fourths (3/4) or more of the Condominium Units vote against reconstruction or repair and such vote is approved by the Institutional Lenders as set out in Article XXIX below to which at least 51% of the votes of units subject to mortgages held by the Institutional Lenders are allocated.

B. If the damage is only to those parts of one or more Condominium Units for which the responsibility for maintenance and repair is that of Condominium Unit Owner shall be responsible for reconstruction and repair after casualty or condemnation. In all other instances, the responsibility of reconstruction and repair after casualty or condemnation shall be that of Association as follows:

(1) Immediately after the casualty or condemnation causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in conditions good as that before the casualty or condemnation. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.

(2) When the damage is to both Common Property and Condominium Units or to Common Property only, the insurance or condemnation proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Property and the balance to the Condominium Units.

#### ARTICLE XXIII.

##### ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a Register setting forth the names of the Owners of all of the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Condominium Unit. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any Condominium Unit, the amount of such mortgage or mortgagee and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto. The Association is required to make this Register available for inspection to unit owners, and any Institutional Lenders as the same are defined herein.

#### ARTICLE XXIV.

##### ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Condominium Units. To administer properly the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses which are sometimes herein referred to as "Common Expenses". To provide the funds necessary for such proper operation, management and capital improvement, the

Association has heretofore been granted the right to make, levy and collect assessments and fines against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to Association to make, levy and collect assessments and fines to pay the costs and expenses for the operation, management of and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

A. Unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total undivided interest in Common Property appurtenant to all Condominium Units as shown on Exhibit "C" attached hereto.

B. Assessments provided for herein shall be payable in monthly installments as determined by the Board of Directors of the Association. Unit Owners shall be subject to assessment by the Board of Directors upon acquiring title to their Units. The Declarant shall not be liable for assessments for unsold Units contemplated by this declaration until such time as said Unit is (i) completed and a certificate of occupancy issued therefor; and (ii) occupied or used for model, sales or other purposes by the Declarant, or (iii) offered or used for rental purposes by the Declarant. However, all units must be allocated their full assessment share not later than 60 days after the first unit is conveyed.

C. In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment 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 the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Unit Owners owning two-thirds (2/3) of the Common Areas and Facilities who are voting in person or by proxy at a meeting duly called for such purposes.

D. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence, the Association had established a Working Capital Fund. At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12) of the current annual assessment established by the Association. No such payments made into the working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws. Once control of the Homeowners' Association is transferred to the Unit Owners pursuant to Article XXX herein, the Working Capital Fund will be transferred to a segregated fund. Developer may not use any funds designated as Working Capital Funds to defray any of its expenses, reserve contributions or construction costs or to recoup any budget deficits while it retains control of the Board of Directors pursuant to Article XXX, or at any time thereafter.

E. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and the budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with paragraph "G" hereof, items relating to operation and maintenance froth items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Owner of a Condominium Unit and the assessment for said year shall be established based upon such Budget, although the delivery of a copy of said Budget to each Owner shall not affect the liability of any Owner for such assessment.

F. Until January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment shall be Nine Hundred Forty-Eight and No/100 (\$948.00) Dollars per Unit. 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 five percent (5%) by the Board of Directors. Any increase of more than five percent (5%) over the previous year's assessment requires a vote of the Unit Owners owning two-thirds (2/3rds) of the Common Areas and Facilities who are voting in person or by proxy, at a meeting duly called for such purpose.

G. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of any capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his proportionate interest in the Common Property as shown on Exhibit "C" and the Association shall annually notify each Unit Owner of the amount of his balance in the Capital Improvement Account; however, such balance shall not be subject to withdrawal by a Unit Owner.

H. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominium, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by the other Owners of Condominium Units. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.

I. The Association shall have the right from time to time to levy fines against Unit Owners who violate the rules, regulations and restrictive covenants, in such amount as deemed necessary to enforce said rule, regulation and restrictive covenant. The Association shall publish and maintain at it's office a schedule of fines to be levied in accordance with this Declaration.

J. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. when in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at eighteen percent (18%) per annum until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owing to the Association

shall be due and payable at the main office of the Association in the State of North Carolina.

K. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

L. No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the use or enjoyment of any of the Common Property, or by abandonment of the Condominium Unit or in any other way.

M. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and management results in benefit to all of the Owners of Condominium Units, and that the payment of such common expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure interest if any, which may be due on the amount of any delinquent assessments owing to the Association and, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure interest if any, which may be due on the amount of any delinquent assessments owing to the Association and, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit and its appurtenant undivided interest in Common Property. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any Condominium Unit from date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium Unit. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association shall further be entitled to interest at eighteen percent (18%) per annum on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereof, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

N. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the Public Records of New Hanover County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of the lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes

and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied or recorded.

The lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust recorded prior to the lien and any person, firm or corporation acquiring title to any Condominium Unit and its appurtenant undivided interest in Common Property by virtue of any foreclosure of a first deed of trust, deed in lieu of foreclosure of a first deed of trust or judicial sale relating to a first deed of trust, shall not be liable and obligated only for assessments as shall accrue and become due and payable for said Condominium Unit and its appurtenant undivided interest in Common Property subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable and shall be absorbed and paid by all Owners of all Condominium Units as a part of the Common Expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

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

In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Condominium Unit and such Condominium Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds shall be applied by the lessee or purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase to the Owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Condominium Unit, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amounts paid by Purchaser therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to Association.

#### ARTICLE XXV.

#### COMMON SURPLUS

"Common Surplus", meaning all funds and other assets of the Association (including excess of receipts of the Association, including but not limited to assessments, rents, profits and revenues from whatever source) over amount of the Common Expense, shall be owned by the Owners of all Condominium Units in the same proportion that the undivided interest in Common Property appurtenant to all Condominium Units; provided, however, that said Common Surplus shall be held by the Association in the manner

prescribed in, and subject to, the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest as set out in Exhibit "C".

**ARTICLE XXVI.**

**TERMINATION**

The Condominium shall be terminated, if at all, in the following manner:

A. The termination of the Condominium may be affected only by the unanimous agreement of all Condominium Unit Owners and by unanimous consent of the eligible Institutional Lenders as defined in Article XXIX as expressed in an instrument to that effect duly recorded; and provided, that the holders of all liens affecting any of the Condominium Units consent thereto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Condominium Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such Agreement has been recorded in the public records of New Hanover County, North Carolina.

B. If it is determined in the manner elsewhere provided that the Condominium shall not be reconstructed after casualty, the Condominium plan of ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts affecting the termination, which Certificate shall become effective upon being recorded in the public records of New Hanover County, North Carolina.

C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the Common Area and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held for the Unit Owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.

D. Following termination, the property shall be subject to an action for sale for partition at the suit of any Condominium Unit Owner and upon the express agreement of all Unit Owners affected. If the Board of Directors determines by not less than a three-fourths (3/4ths) vote to accept an offer for the sale of the property, and each Unit Owner affected expressly agrees to the sale, each Condominium Unit Owner shall execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such other sale, and upon the consummation thereof shall be discontinued by all parties thereof.

**ARTICLE XXVII.**

**AMENDMENT OF DECLARATION OF CONDOMINIUM:  
AMENDMENT TO ADD REAL ESTATE**

This Declaration of Condominium may be amended in the following manner:

A. Amendment to Declaration. An Amendment or Amendments to this Declaration of Condominium may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members

or by instrument in writing signed by them. Upon any Amendment or Amendments to this Declaration of Condominium being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment or Amendments. It shall be the duty of the Secretary to give each member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of the members owning Units in the Condominium in order for such Amendment or Amendments to become effective. During the twenty-year period beginning with the date of Declaration, an affirmative vote of Unit Owners owning ninety percent (90%) of the undivided interest in the Common Areas and Facilities shall be required to amend this Declaration. From and after the expiration of said twenty-year period, an affirmative vote of Unit Owners in person or by proxy in a meeting duly called, owning seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities shall be required. Upon adoption such Amendment or Amendments of this Declaration of Condominium shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment or Amendments, so certified and executed with the same formalities as a Deed, shall be recorded in the Public Records of New Hanover County, North Carolina, within ten (10) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording date identifying the Declaration of Condominium. Thereafter, a copy of said Amendment or Amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such Amendment or Amendments. At any meeting held to consider such Amendment or Amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented there or by proxy, provided such written notice is delivered to the Secretary of the Association prior to such meeting or at such meeting.

(1) Amendments which require approval of 51% of First Mortgage Holders.

Unless otherwise set forth herein, at least 51% of the Institutional Lenders as the same are defined in Article XXIX of this Declaration and as the same have given notice pursuant to Article XXIX, must approve any material amendments of provisions which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the common elements;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use of Common Elements;
- (f) Responsibility for maintenance and repair of the several portions of the condominiums;
- (g) Expansion or contraction of the condominium or the addition, annexation or withdrawal of property to or from the condominium except as provided in Paragraph B below;
- (h) Boundaries of any unit;
- (i) The interests in the general or limited common elements;
- (j) Convertability of units into common elements or of common elements into units;
- (k) Leasing of units;
- (l) Imposition of the right of first refusal or similar restriction on the right of a unit

- owner to sell transfer or otherwise convey his or her units in the condominium;
- (m) Establishment of self-management by the condominium association where professional management has been required previously;
  - (n) Provisions pertaining to or related to the express benefit of Institutional Lenders as the same are defined herein;

B. Amendment to Add Real Estate. Developer shall have the right to file an amendment to this Declaration at any time and from time to time for a period not to exceed seven (7) years from the date of recordation of these declarations at the New Hanover County Register of Deeds Office, without the further consent of the Unit Owners, to incorporate into the Condominium any and all of the additional land described in Exhibit "A(2)". All or part of the Additional Real Estate identified in Exhibit "A(2)" may be added to the Condominium at different times, but no assurances are made with 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. In the event this Declaration is so amended, the terms "Condominium" and "Property" as used herein shall be deemed to mean and include the property described in Exhibits "A(1)" and "A(2)" as the case may be and all improvements and structures now or hereafter placed by Developer thereon, all easements, rights and appurtenances thereto, and all articles of personal property provided by Developer and intended for use in connection therewith. The materials used in the construction of any additional Units shall be of comparable quality as those used in the original Units. The layout, size and architectural style of the additional Units shall be substantially the same as and compatible with the original Units, and the Units will be substantially completed prior to being incorporated into the Condominium. No amendment made by Developer in accordance with this paragraph shall divest an Owner of any portion of his dwelling Unit without the consent of such Owner and no such amendment shall materially alter the plan of development set forth herein without the consent of all Owners affected thereby.

(1) In the event the Developer elects to add additional phases to the Condominium, then the percentage undivided interest in the Common Property appurtenant to each Condominium Unit will be reallocated in proportion to the percentage that each Unit bears to the total number of Units and the voting rights for each additional unit owner shall be reallocated equally to each unit so that each Unit added will have one vote in the Association. In the event Developer elects to add additional phases to the Condominium, Developer shall, in each instance, file an amendment to this Declaration stating that the percentage undivided interest in the Common Area appurtenant to each Unit then a part of the Condominium at the time of such filing is as shown in the appropriate column of Exhibit "C". The Additional Unit Owners shall be subject to assessment by the Board of Directors upon acquiring title to their Units in such amount as their percentage undivided interest in the Common Area in shown on the applicable Exhibit "C". The Declarant shall not be liable for assessments for unsold Units contemplated by the addition of phases to this declaration until such time as said Unit is (1) completed and a certificate of occupancy issued therefor; and (ii) occupied or used for model, sales or other purposes by the Declarant, or (iii) offered or used for rental purposes by the Declarant.

(2) No additional property may be added to the existing Condominium pursuant to Paragraph B Article XXVII of this Declaration without the prior written consent of HUD and FNMA, wherein HUD or FNMA hold, insure or guarantee any mortgage in the existing condominium at the time such property is to be added.

C. Amendment of Common Ownership Percentages. Except as expressly set forth in this Declaration, no alteration in the percentage of ownership in Common Property appurtenant to each Condominium Unit, or alteration of the basis for sharing Common Expenses and other apportionment of assessment which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, shall be made without the prior written consent of all of the Owners of all

Condominium Units and all of the Institutional Lenders holding first mortgages or first deeds of trust on the Condominium Units.

D. In any proceeding arising because of an alleged default by a Unit Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court, but in no event shall any Unit Owner be entitled to such attorney's fees.

E. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

F. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit, pursuant to any terms, provisions, covenants or conditions of the Declaration of Condominium or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

G. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration of Condominium or other above mentioned document shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.

H. The failure of an Institutional Lender or Institutional Lenders, as said term is herein defined, to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by this Declaration of Condominium or other above mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

#### ARTICLE XXVIII.

#### REMEDIES IN EVENT OF DEFAULT

The Owner of Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration of Condominium, and the Articles of Incorporation and By-Laws of the Association, as any of the same are now constituted or as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owner of the other Condominium Units to the following relief:

A. Failure to comply with any of the terms of the Declaration of Condominium or other restrictions and regulations contained in the Articles of Incorporation or By-laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunction, relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of an alleged default by a Unit Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court, but in no event shall any Unit Owner be entitled to such attorney's fees.

D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit, pursuant to any terms, provisions, covenants or conditions of the Declaration of Condominium or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

F. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration of Condominium or other above-mentioned document shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.

G. The failure of an Institutional Lender or Institutional Lenders, as said term is herein defined, to enforce any right, provision, privilege, or covenant or condition which may be granted to it or them by this Declaration of Condominium or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

#### ARTICLE XXIX.

##### RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

A. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by first liens on residences, the Federal Housing Administration, its eligible insurers and governmental guarantors, who holds, guarantees or insures a first mortgage on a Unit and which has requested notice pursuant to the provisions of Paragraph B as set out hereinbelow. In addition to any other rights set forth in this Declaration, so long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any Condominium Unit or Units, or shall be the owner of any Condominium Unit or Units, such Institutional Lender or Institutional Lenders, shall have the following rights:

1. To approve the company or companies with whom casualty insurance is placed, and to be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

2. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant designated by the Association, such financial statement and report to be furnished by the end of each calendar year.

3. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering: (1) any proposed Amendment to this Declaration of Condominium, or the Articles of Incorporation and By Laws of the Association effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements

appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners association appertaining to any unit or (iv) the purposes to which any unit or the common elements are restricted; (2) the proposed termination or abandonment of the Condominium; (3) the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association. Such notice shall state the nature of the Amendment or action being proposed.

4. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Condominium Unit encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or institutional Lenders, or to the place which it or they may designate in writing.

5. To be given notice of any condemnation loss or casualty loss which affects a material portion of the Common Areas or a material portion of any Unit on which there is a first mortgage held, insured or guaranteed by any Institutional Lender.

6. To be given notice of any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

B. Whenever any Institutional Lender or Institutional Lenders desires the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Condominium Units owed by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender or Institutional Lenders.

C. Upon written request from any agency or corporation which has an interest or a prospective interest in the condominium, the Association shall prepare and furnish within a reasonable time, an audited financial statement of the Association for the immediately preceding fiscal year.

#### ARTICLE XXX.

##### DEVELOPER CONTROL PERIOD

A. Developer Representation on Board. The Developer will exercise the right to appoint and remove members of the Board until the end of the period of Developer control ends as specified in Paragraph B. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units which have been created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units (including Units which have been created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant. Not later than the termination of any period of Declarant control, the Unit Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom must be Unit Owners. Whenever Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors 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 Bylaws of the Association, and Developer shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or

Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Developer need not be a resident in the Condominium. However, Developer shall be responsible for the payment of any assessments which may be levied by the Association against any Condominium Unit or Units owned by the said Developer, and for complying with the remaining terms and provisions hereof in the same manner as any other Owner of a Condominium Unit or Units.

B. Termination of Declarant Rights. Developer shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association. However, this period of Declarant control terminates no later than the earlier of : (i) 120 days after conveyance of seventy-five percent (75%) of the Units ( including Units which have been created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant; or (ii) three years after first unit is conveyed by Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event it may require, for the duration of the period of Declarant control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

C. Dissolution. In the event of dissolution of Developer at a time when it is the Owner or a Condominium Unit, then the rights of the Developer shall pass to and may be exercised by its successor receiving ownership of any such Condominium Unit in dissolution.

#### ARTICLE XXXI.

##### SEVERABILITY

In the event that any of the terms, provisions or covenants of this Declaration of Condominium are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

#### ARTICLE XXXII.

##### LIBERAL CONSTRUCTION

The provisions of this Declaration of Condominium shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender shall include the feminine or neuter. The article headings are for convenience of reference only and shall not be consideration terms of this Declaration.

#### ARTICLE XXXIII.

##### DECLARATION OF CONDOMINIUM BINDING ON ASSIGNS AND SUBSEQUENT OWNERS

The restrictions and burdens imposed by the covenants of this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Condominium Unit and its appurtenant undivided interest in Common Property. This Declaration of Condominiums shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become Owners of Condominiums uncured for a period of sixty (60) days by any Owner owning a Condominium Unit in the Condominium, and their respective heirs, legal representatives, successor and assigns.

ARTICLE XXXIV.

AGENT FOR SERVICE OF PROCESS

The following named individual is designated as the person to receive service of process for the Association: Alton Y. Lennon, 101 North Front Street, Suite 409, Wilmington, NC 28402

ARTICLE XXXV.

CONFLICTING PROVISIONS

To the extent the provisions of this Declaration conflict with any applicable provisions of the Wilmington City Code or Chapter 47C of the General Statutes of North Carolina, the conflicting provision of the City Code or the North Carolina Statute shall control. In the event of a conflict between the North Carolina Statute and the City Code, then in that event, the North Carolina General Statute shall control.

ARTICLE XXXVI

DEVELOPER CONTRACTS AND TERMINATION  
OF DEVELOPER CONTRACTS

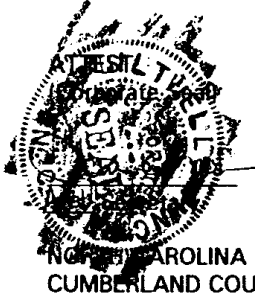
**A. Developer Contracts.** Any management agreement between the Developer or the Association and a professional manager or any other agreement providing for services of the developer, shall not exceed a term of two (2) years and shall be subject to renewal by the consent of parties and shall be consistent with Section B. of this Article. The termination of any professional contract entered into will not require a penalty or advance notice of more than 90 days. The Developer may enter into a professional management agreement before control of the Board of Directors is passed in accordance with Article XXX of this Declaration however the management contract will give the Homeowners' Association the right to terminate the contract without cause which right can be exercised at any time after the transfer of control pursuant to Article XXX.

**B. Termination of Developer Contracts.** Pursuant to N.C.G.S. Section 47-C-3-105, if entered into by or on behalf of the Association before the Board of Directors elected by the Unit Owners pursuant to Section 47C-3-103(f) takes office, (1) any management contract, employment contract or lease of recreational or parking areas or facilities, (2), any other contract or leases between the Association and a developer or an affiliate of a Developer, or (3) any contract or lease that is not bona fide 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 Board elected by the Unit Owners pursuant to Section 47C-3-103(f) takes office upon not less than ninety (90) days' notice to the other party. Notice of the substance of the provisions of this Section shall be set out in each contract entered into by or on behalf of the Association before the Board elected by the Unit Owners pursuant to Section 47C-3-103(f) takes office. Failure of the contract to contain such a provision shall not affect the rights of the Association under this Section. This Section does not apply to any lease the termination of which would terminate the Condominium or reduce its size, unless the real estate subject to that lease was included in the Condominium for the purpose of avoiding the right of the Association to terminate a lease under this Section.

IN WITNESS WHEREOF, BILTWELL, INC. has caused these presents to be executed in its name by its Vice President, attested by its Asst Secretary, and its corporate seal to be hereunto affixed, this 19<sup>th</sup> day of March, 1996.

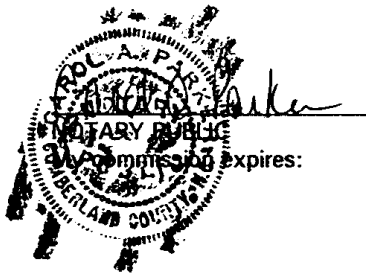
BILTWELL, INC.

By: [Signature]  
Vice President



I, Carola A. Parker, a Notary Public in and for said County and State, do hereby certify that Sean C. Brown personally appeared before me this day and acknowledged that he is the Asst Secretary of BILTWELL, INC., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by as its Asst Secretary.

WITNESS my hand and official stamp or seal, this the 19<sup>th</sup> day of March, 1996.



My Commission Expires  
August 9, 1999

EXHIBIT "A-1"

BOOK	PAGE
2007	0872

March 18, 1996

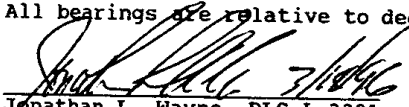
RE: Description of Section One, Phase I at Cape Cottages

A certain tract or parcel of land lying and being in the City of Wilmington, New Hanover County, North Carolina and being part of the Biltwell Inc. property as described in deed book 1885 page 275 records of New Hanover County, North Carolina and being more particularly described as follows:

Beginning on an iron at the southeastern corner of Lot 1, Block D, Section One Hunting Ridge as recorded in map book 18 page 21 records of New Hanover County, North Carolina:

Proceed from said point of beginning and with the eastern line of lot 1 N 42-30-54 W 109.96 ft. to the southeastern corner of lot 2, thence with the eastern line of lot 2 N 02-51-55 E 56.52 ft. to an iron, thence a new line N 38-15-25 E 133.05 ft. to a point, thence S 80-08-17 E 157.58 ft. to a point on the western line of the proposed Lennon Drive East, thence said right of way and a curve to the right having a radius of 721.97 ft. a chord S 36-39-42 W 272.59 ft. to a point, thence N 42-30-54 W 5.00 ft. to the point of beginning and containing 0.771 acre.

All bearings are relative to deed book 1499 page 948

  
Jonathan L. Wayne RLS L-3391

2492p1



BOOK PAGE  
EXHIBIT "A-2"  
2007 0873

March 18, 1996

RE: Description of a portion of the Biltwell Inc. tract

A certain tract or parcel of land lying and being in the City of Wilmington, New Hanover County, North Carolina and being part of that tract as described in deed book 1885 page 275 records of New Hanover County, North Carolina and being more particularly described as follows:

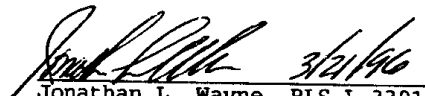
Beginning at an iron at the northeastern corner of Lot 7, Section One, Hunting Ridge Subdivision as recorded at map book 18 page 21 records of New Hanover County, said iron also being located at the northwestern end of the Rolling Road right of way (60 ft. right of way):

Proceed from said point of beginning and with the northern line of lot 7 N 42-21-50 W 110.01 ft. to an iron, thence with the eastern line of lot 6 N 02-37-11 E 112.79 ft. to a iron, thence with the eastern line of lots 4 and 5 N 56-22-41 W 165.01 ft. to an iron, thence with the eastern line of lot 2 and 3 N 35-15-14 W 166.21 ft. to an iron, thence with then northern line of lot 2 S 47-00-29 W 32.40 ft. to an iron, thence with the eastern line of lot 1 N 63-00-50 W 138.55 ft. to an iron on the eastern right of way of Lennon Drive, thence with said right of way and a curve to the left a chord N 20-12-00 E 50.46 ft. to an iron, thence N 72-12-28 W 94.66 ft. to a point, thence N 54-55-14 E 48.90 ft. to a point, thence N 17-45-06 E 21.16 ft. to a point, thence N 85-41-05 W 25.53 ft. to a point, thence N 69-09-30 W 46.12 ft. to a point, thence N 64-12-58 W 36.75 ft. to a point, thence N 21-33-21 W 19.37 ft. to a point, thence N 76-31-42 E 49.55 ft. to a point, thence S 64-23-13 E 36.03 ft. to a point, thence S 86-05-02 E 14.32 ft. to a point, thence N 22-49-34 E 42.29 ft. to a point, thence N 34-40-02 W 20.03 ft. to a point, thence N 51-47-25 E 13.32 ft. to a point, thence N 48-30-26 E 42.33 ft. to a point, thence N 21-38-39 E 34.16 ft. to a point, thence N 22-25-59 W 24.04 ft. to a point, thence N 54-34-40 W 41.39 ft. to a point, thence N 21-25-28 W 20.23 ft. to a point, thence N 01-45-35 W 32.61 ft. to a point on the southern right of way of Smith Creek Parkway, thence with said right of way N 89-05-24 E 257.01 ft. to an iron, thence S 79-36-00 E 101.98 ft. to an iron, thence N 89-05-24 E 812.25 ft. to an iron, thence N 82-06-35 E 76.25 ft. to an right of way monument, thence leaving said right of way and with the western line of the National Service Industries tract (deed book 1610 page 375) S 17-34-27 W 868.85 ft. to a concrete monument, thence S 17-30-36 W 6.64 ft. to a concrete monument, thence with a curve to the right having a radius of 776.97 ft. a chord S 32-32-25 W 402.19 ft. to a concrete monument at the end of the Lennon Drive 60 ft. right of way, thence N 42-30-54 W 30.00 ft.

BOOK PAGE  
2007 0874

to a concrete control monument, thence N 42-30-54 W 25.00 ft. to the southeast corner of Phase One of Cape Cottages, thence with the proposed western right of way of Lennon Drive and a curve to the left having a radius of 721.97 ft. a chord N 36-39-42 E 272.59 ft. to the northeastern corner of Phase One Cape Cottages, thence with the northern line of Phase One N 80-08-17 W 157.58 ft. to a point at the northwestern corner of Phase One, thence S 38-15-25 W 133.05 ft. to an iron on the eastern line of Lot 2 Hunting Ridge, thence with said eastern line of Lot 2 N 87-23-42 W 56.83 ft. to an iron, thence with the eastern line of Lot 3 N 42-21-50 W 110.02 ft. to an iron at the southeastern end of Rolling Road, thence N 42-21-50 W 59.85 ft. to the point of beginning and containing 19.249 acres according to survey by Hanover Design Services, P.A. in March of 1996.

All bearings are relative to deed book 1499 page 948

  
Jonathan L. Wayne RLS L-3391

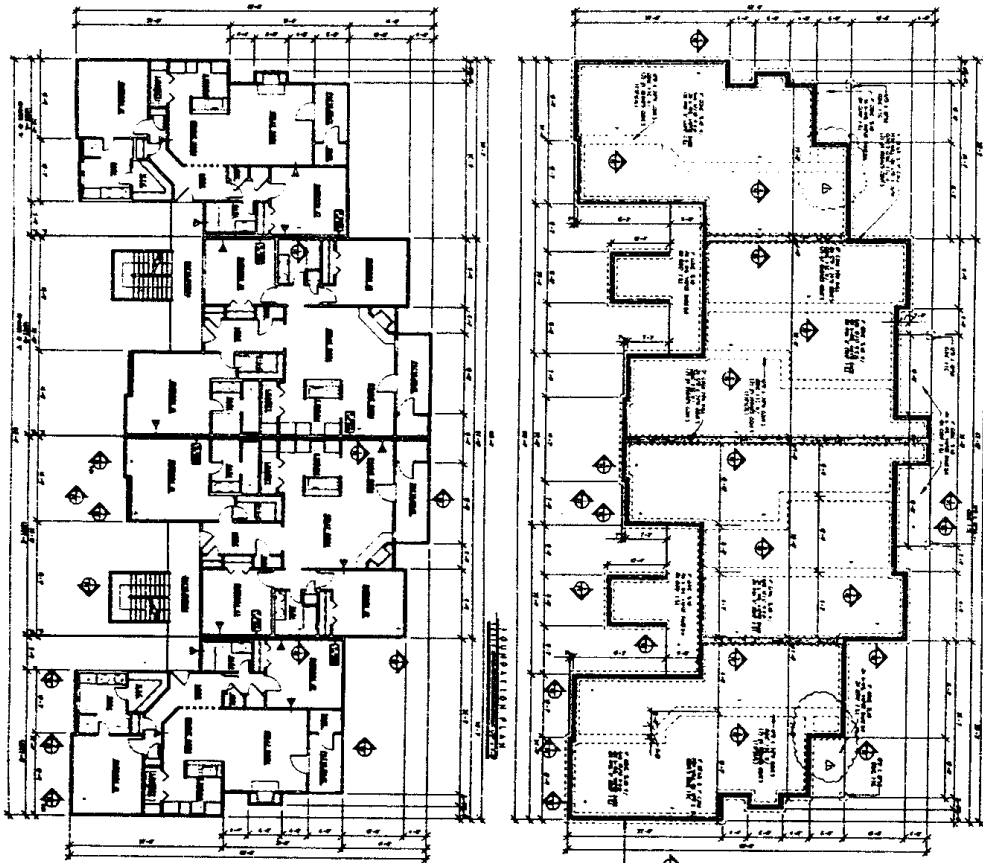
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THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY



1. FOUNDATION PLAN - SEE FOUNDATION PLAN FOR ALL DIMENSIONS AND NOTES.

2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

3. ALL WALLS ARE 12" THICK UNLESS OTHERWISE NOTED.

4. ALL FLOORS ARE 4" THICK UNLESS OTHERWISE NOTED.

5. ALL CEILING ARE 8" THICK UNLESS OTHERWISE NOTED.

6. ALL ROOFS ARE 8" THICK UNLESS OTHERWISE NOTED.

7. ALL STAIRS ARE 8" THICK UNLESS OTHERWISE NOTED.

8. ALL ELEVATIONS ARE TO FACE UNLESS OTHERWISE NOTED.

9. ALL FINISHES ARE TO FACE UNLESS OTHERWISE NOTED.

10. ALL MATERIALS ARE TO BE AS SHOWN ON THE SPECIFICATIONS.

11. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND REGULATIONS.

12. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL BUILDING CODES AND REGULATIONS.

13. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND REGULATIONS.

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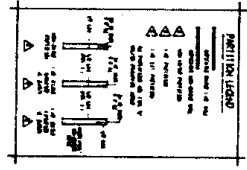
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15. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND REGULATIONS.



IV the office of S. THOMAS SHUMATE, JR. architect

Foundation Plan  
1/8 Building Plan

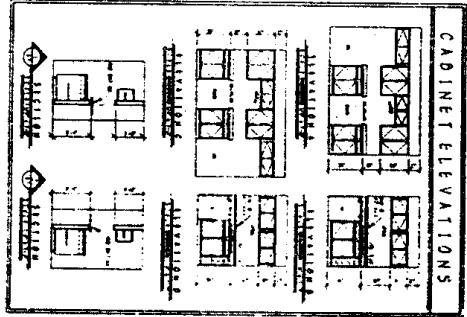
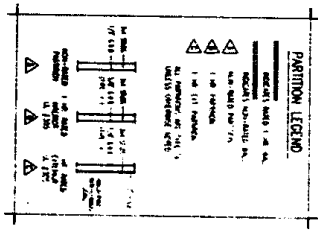
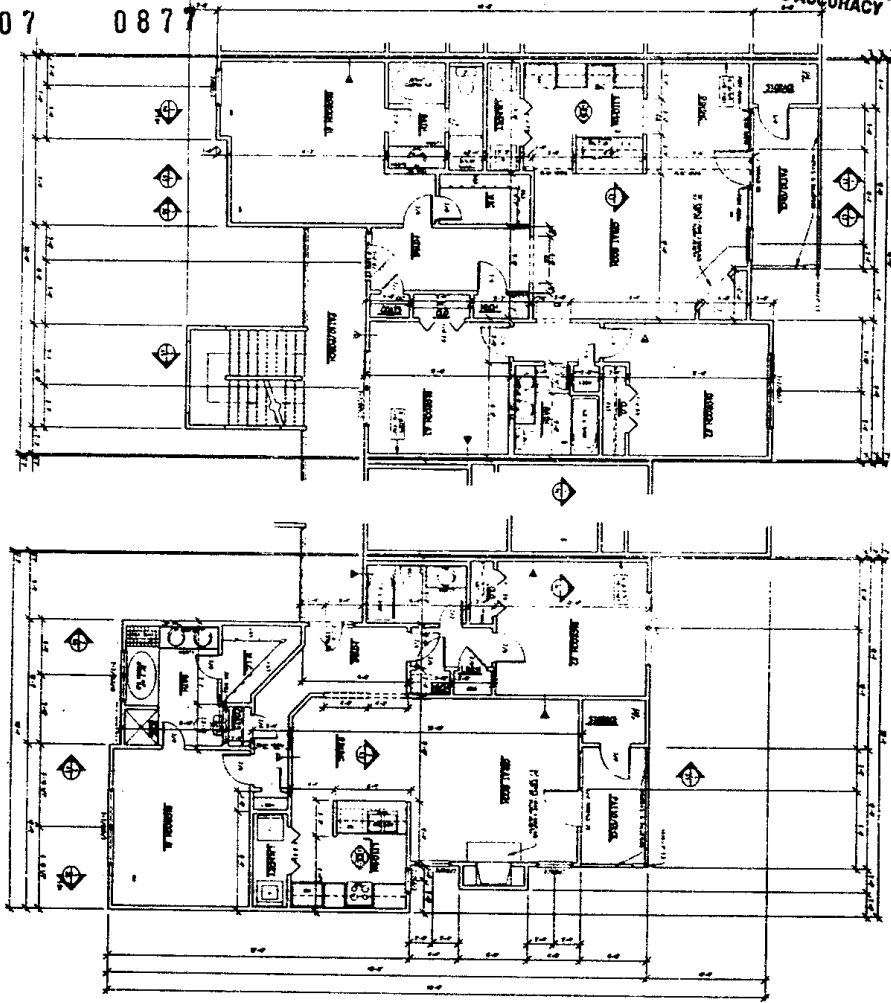
DATE: 1/1/1976  
SCALE: AS SHOWN  
DRAWN BY: [Name]  
CHECKED BY: [Name]

THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY

BOOK 2007 PAGE 0877

WILL & ALBION

WILL & ALBION



AS

the office of S. THOMAS SHUMATE, JR. architect

1/4 Floor Plan





Cape Cottages Condominiums, Phase I  
Percentage of Undivided Interest and Votes

Unit Designation	% of Common Expenses	% of Undivided Interest	Votes
A	1/8	1/8	1
B	1/8	1/8	1
C	1/8	1/8	1
D	1/8	1/8	1
E	1/8	1/8	1
F	1/8	1/8	1
G	1/8	1/8	1
H	1/8	1/8	1

BOOK PAGE  
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BY-LAWS  
OF  
CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC.  
A corporation not for profit under the  
laws of the State of North Carolina

Article I

PURPOSES AND OBJECTIVES

The purpose of the corporation shall be the management of a homeowner's association for the Cape Cottages Homeowners' Association, Inc., including, but not limited to, the management of the use of the common area, the maintenance of the common area and the setting of assessments for the upkeep of same.

Article II

OFFICES

Section 1. PRINCIPAL OFFICE: The principal office of the Corporation shall be located at 825 Lennon Drive, Wilmington, NC.

Section 2. REGISTERED OFFICE: The registered office of the Corporation required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office. The registered office shall be located at 101 North Front Street, Suite 409, Wilmington, NC 28401, New Hanover County.

Article III

BOARD OF DIRECTORS

Section 1. GENERAL POWERS: The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 2. NUMBER, TERM AND QUALIFICATION: The affairs of the Association shall be managed by a Board of three (3) Directors. The original Board of Directors shall consist of three (3) members. At the first annual meeting, subject to the provisions of Article XXX of the Declaration of Cape Cottages Condominiums, Phase I, there shall be elected one Director for a term of one (1) year, one Director for a term of two (2) years, and one Director for a term of three (3) years. Each Director shall hold office until the expiration of his or her term, or until his or her successor is elected and qualified.

No director shall serve more than two (2) consecutive terms (including the initial term).

Section 3. ELECTION OF DIRECTORS: Except as provided in Section 2 of Article III, and specifically subject to Article XXX of the Declaration above noted, the Directors shall be elected at the annual meeting of the Association. Those persons who receive the highest number of votes shall be deemed to have been elected. In the event any vacancy shall occur because of death, resignation, incapacity to act, or removal of a Director, the members shall within a reasonable time, fill the vacancy.

Section 4. REMOVAL: Directors may be removed from office with or without cause by a vote of three-fifths (3/5) of the majority of the members of the Association. If any Directors are so removed, new Directors may be elected at the same meeting.

Section 5. VACANCIES: A vacancy occurring in the Board of Directors shall be filled by a majority of the members of the Association, even though less than a quorum. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 6. COMPENSATION: The members of the Board of Directors may not be compensated for their services in fulfilling their duties to the corporation.

Section 7. INDEMNIFICATION OF DIRECTORS AND OFFICERS: Each present and former Director and officer of the corporation shall be indemnified by the corporation against expenses reasonably incurred by him or her in connection with any threatened, pending, or completed action, suit or proceeding to which he or she may be made a party by reason of his or her being or having been an officer or Director of the corporation (whether or not he or she continues in that capacity at the time of incurring such expenses), except in disputes between himself or herself and the corporation; and in those events, he or she shall be entitled to indemnification should a court of competent jurisdiction find the corporation to be at fault. The foregoing right of indemnification shall inure to the benefit of the legal representatives of any such person, and shall not be exclusive of other rights to which any Director or officer may be entitled as a matter of law.

Section 8. EXECUTIVE COMMITTEE: There shall be elected annually by the members of the association, three (3) members thereof, who with the Chairman, Secretary, Treasurer and any Executive Committee shall act on behalf of the corporation in any manner (except as provided in Article VII) when the Board of Directors is not in session, reporting to the Board of Directors for its ratification of their action at each regular or special meeting called for that purpose. Four (4) members shall constitute a quorum for the transaction of business. Meetings may be called by the Chairman or by two (2) members.

Section 9. SPECIAL COMMITTEES: The Chairman may, at any time, appoint other committees on any subject for which there are no standing committees, or terminate any standing committee which does not serve any purpose. Each committee shall

consist of at least one (1) Director.

Section 10. COMMITTEE QUORUM: A majority of any committee of the corporation shall constitute a quorum for the transaction of business, unless any committee shall by majority vote of its entire membership decide otherwise.

Section 11. All Sections of this Article III shall be expressly subject to the provisions of Article XXX of the Declaration of Cape Cottges Condominiums, Phase I, the terms and conditions of which are incorporated herein by reference.

#### Article IV

#### MEETINGS OF THE DIRECTORS

Section 1. REGULAR MEETINGS: Regular meetings of the Board of Directors shall be held at 7:30 p.m. on the first Wednesday of each month at a time and place designated by a majority of the Directors.

Section 2. ANNUAL MEETINGS: The annual meetings of the Board of Directors shall be held at 7:30 p.m. on the first Wednesday in March of each year, if not a legal holiday, for the purpose of electing Directors of the corporation and for the transaction of such other business as may be properly brought before the meeting.

Section 3. SUBSTITUTE ANNUAL MEETINGS: If the annual meeting shall not be held on the day designated by these by-laws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4. SPECIAL MEETINGS: Special meetings of the shareholders may be called at any time by the President, on or at such other place, as shall be designated in the notice of the meeting agreed upon by a majority of the Directors entitled to vote thereat.

Section 5. NOTICE OF MEETINGS: Written or printed notice stating the time and place of the meeting shall be delivered not less than five or more than fifty days before the date thereof, either personally or by mail, by or at the direction of each President, Secretary or other person calling the meeting, to each member of record entitled to vote at such meeting. In case of an annual or substitute meeting, the notice of meeting need not specifically state the business to be transacted. In case of a special meeting, the notice of meeting shall not necessarily state the purpose or purposes for which the meeting is called. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty days in any one adjournment, it is not necessary to give notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Attendance by a Director at a meeting shall constitute a waiver of notice of such

meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

Section 6. QUORUM: A majority of the duly elected or appointed and qualified Directors of the corporation shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting from time to time without notice, other than announcement at the meeting, until a quorum shall attend.

Section 7. MANNER OF ACTING: Except as otherwise provided in this Section, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. INFORMAL ACTION BY DIRECTORS: Action taken by a majority of the Directors without meeting is nevertheless Board action if written consent to the action in question is signed by all the Directors, and filed with the Minutes of the proceedings of the Board, whether done before or after the action is so taken.

Article V

OFFICERS

Section 1. NUMBER: The Corporation shall have a Chairman, Secretary, Treasurer and such Vice-Chairman, Assistant Secretaries, Assistant Treasurers and other officers as the members may from time to time elect. Any two or more offices may be held by the same person, except the office of Chairman and Secretary. However, no officer may act in more than one capacity where the action of two (2) or more offices is required.

Section 2. ELECTION AND TERM: The officers of the Corporation shall be elected by the Board of Directors. Such elections may be held at any regular or special meeting of the membership. Each officer shall hold office for one (1) year, or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified, unless otherwise specified by the members. The members may fill any vacancy in any office occurring for whatever reason.

Section 3. REMOVAL: Any officer or agent elected or appointed by the members may be removed by the members with or without cause, except that in the case of the Chairman, he shall not be removed by less than a three-fourths (3/4) majority of the members.

Section 4. CHAIRMAN: The Chairman shall be the chief executive officer of the corporation and shall preside at all meetings of the members and the Board of Directors. Subject to the direction and control of the Board of Directors, he shall have general charge and authority over the business of the corporation. He shall make reports of the business of the corporation for the preceding fiscal year to the Directors at each annual meeting. He shall sign with any other proper officer any deeds, mortgages, bonds, contracts, or other instrument which may be lawfully executed on behalf of the corporation, except where the signing and execution thereof shall be delegated by the Board of Directors to some other office or agent. In general, he shall perform all duties as may be prescribed by the Board of Directors from time to time, including the appointment of various committees from the membership in order to carry out the business of the corporation as approved by the Board of Directors.

Section 5. VICE-CHAIRMAN: The Vice-Chairman shall perform the duties of the Chairman in his absence or during his inability to act. The Vice-Chairman (or Vice-Chairmen) shall have such other duties and powers as may be assigned to or vested in them by the Board of Directors.

Section 6. SECRETARY: The Secretary shall keep accurate records of the acts and proceedings of all meetings of shareholders and Directors. He shall give all notices required by law and by these by-laws. He shall have general charge of all corporate books and records and of the corporate seal, and he shall affix the corporate seal to any lawfully executed instrument requiring it. He shall then sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may be assigned to him from time to time by the Chairman, the Executive Committee, or by the Board of Directors.

Section 7. TREASURER: The Treasurer shall have custody of all funds and securities belonging to the Corporation and shall receive, deposit or disburse the same under the direction of the Board of Directors or the Executive Committee. The Board of Directors or the Executive Committee may appoint a custodian or a depository for any such funds and securities and may designate those persons upon whose signature or authority such fund and securities may be disbursed or transferred. He shall keep full and accurate accounts of the finances of the Corporation in books especially provided for that purpose; and he shall cause a true statement of its assets and liabilities as of the close of each fiscal year within four (4) months after the end of such fiscal year. The Treasurer shall, in general, perform all duties incident to this office and such other duties as may be assigned to him from time to time by the Chairman, the Board of Directors, or the Executive Committee.

Section 8. ASSISTANT SECRETARIES AND TREASURERS: The Assistant Secretaries and Assistant Treasurers shall, in the absence of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices,

and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or Treasurer, respectively, or by the Chairman, Board of Directors, or Executive Committee.

Section 9. EXECUTION OF DOCUMENTS: The following officers are hereby authorized, empowered and directed to prepare, execute, certify and record amendments to the declaration of condominium on behalf of the corporation:

Execution of documents by the Chairman or Vice Chairman  
Attestation of documents by the Secretary or Assistant Secretary.

Article VI

MEMBERS

Section 1. This corporation shall be a non-profit corporation organized and existing under all Laws of the State of North Carolina, being governed by a Board of Directors as set forth in Article III of the By-laws, and shall be with voting members.

Section 2. Any person owning a Unit in Cape Cottages Condominiums will be a member of the corporation.

Section 3. ANNUAL MEETING: There shall be an annual meeting of the members of this corporation to hear the annual report of the corporation and to transact other business in accordance with the decision of the Board of Directors. Unless otherwise determined by the Board of Directors, the annual meeting of members shall be held on the first Wednesday in May at a time and place designated by the Chairman of the corporation; provided, however, that should said day fall upon a legal holiday, then any such meeting shall be held at the same time and place to be determined by the Board of Directors. Notice of the annual meeting shall be given to all members of the Board of Directors and members of the corporation. The notice required by this Section shall, in all respects, comply with the notice required by Article IV, Section 4 of these By-laws for notice to members of the Board of Directors in case of a special meeting of said Board.

Article VI

CONTRACTS, LOANS, DEPOSITS, AND MISCELLANEOUS PROVISIONS

Section 1. CONTRACTS: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. LOANS: No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the members. Such authorization may be general or confined to specific instances.

Section 3. CHECKS AND DRAFTS: All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. DEPOSITS: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as the Board of Directors shall direct.

Section 5. FISCAL YEAR: Unless otherwise ordered by the Board of Directors, the fiscal year of the corporation shall be from January 1 through December 31 of each calendar year.

Section 6. AMENDMENTS: Except as otherwise provided herein, these By-laws may be amended or repealed and new By-laws may be adopted by the affirmative vote of 3/5 of the votes cast pursuant to Article VI of the Articles of Incorporation.

Section 7. SEAL: The corporate seal of the corporation shall consist of two concentric circles between which is the name of the corporation and in the center of which is inscribed "Seal"

#### Article VIII

#### PROHIBITED ACTIVITIES

Other provisions of these By-laws notwithstanding, the corporation shall not engage in any act of self-dealing as defined in Section 4941, Subdivision (d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal excise law; nor retain any excessive business holdings as defined in Section 4943 Subdivision (c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws; nor make any investment in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945, Subdivision (d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

The corporation shall distribute its income for each taxable year at such time and in

such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954, or the corresponding provisions of any subsequent federal tax laws.

Article IX

501(c)(3) REQUIREMENTS

Section 1. EARNINGS: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, Directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth in the Articles hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of a candidate for public office.

Section 2. EXEMPT FUNDS: Notwithstanding any other provisions of these Articles, this corporation shall not carry on any other activities not permitted to be carried on by (a) corporation exempt from federal income tax under Section 501(a)(3) of the Internal Revenue Code of 1954, or the corresponding provisions of any future United States Internal Revenue Law, or, (b) corporation, contributions to which are deductible under Section 170(a)(2) of the Internal Revenue Code of 1954, or any other corresponding provisions of any future United States Internal Revenue law.

Section 3. DISSOLUTION: Upon the dissolution of the corporation, the Board of Directors shall, after paying and making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (a)(3) of the Internal Revenue Code of 1954 (or corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such asset not so disposed of shall be disposed of by the Superior Court of the county in which the principal office of the corporation is then located exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

IN TESTIMONY WHEREOF, the foregoing were adopted as the bylaws of  
**CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC.** at the first meeting of  
the Board Of Directors on the 15<sup>th</sup> day of March, 1996.

James H. Smith (SEAL)  
Director

Raymond M. Smith (SEAL)  
Director

[Signature] (SEAL)  
Director

STATE OF  
NORTH  
CAROLINA



Department of The  
Secretary of State

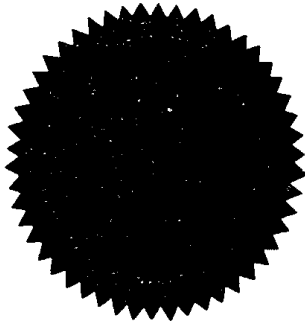
To all whom these presents shall come, Greetings:

I, Rufus L. Edmisten, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION  
OF  
CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC.

the original of which was filed in this office on the 1st day of March, 1996.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 1st day of March, 1996.



*Rufus L. Edmisten*

Secretary of State

C-0390165  
**FILED**

12:35 pm  
MAR 01 1996

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**ARTICLES OF INCORPORATION  
OF  
CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC.**

EFFECTIVE  
RUFUS L. EDMISTEN  
SECRETARY OF STATE  
NORTH CAROLINA

IN COMPLIANCE with the requirements of Chapter 55A of the General Statutes of North Carolina, the undersigned, all of whom are residents of the State of North Carolina and all of whom are of full age have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

**ARTICLE I**

The name of the corporation is CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC., hereinafter called the "Association".

**ARTICLE II**

The principal office and the registered office of the Association is located at 101 N. Front St., Ste. 409, Wilmington, NC, New Hanover County, North Carolina, 28401.

**ARTICLE III**

Alton Y. Lennon whose address is 101 N. Front Street, Suite 409, Wilmington, NC, New Hanover County is hereby appointed the initial registered agent of this Association.

**ARTICLE IV**

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for rules and regulations for the use of and maintenance of CAPE COTTAGES HOMEOWNERS' ASSOCIATION, INC., New Hanover County, North Carolina, and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restriction, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the office of the Register of Deeds of New Hanover County, North Carolina, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if fully set forth at length:

(b) fix, levy, collect and enforce payment by any lawful means, all charges or

assessments pursuant to the terms of the Declaration to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) acquire (by gift, purchase or otherwise) own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) borrow money, and with the assent of two thirds (2/3) of the members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the members, agreeing to such dedication, sale or transfer;

(f) participate in mergers and consolidations with other nonprofit organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the members;

(g) to have and to exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise.

(h) to exercise all other powers as set forth in North Carolina General Statute Section 47C-3-102 as the same is in effect at the time of filing of these articles

#### ARTICLE V

Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association.

**ARTICLE VI**  
**VOTING RIGHTS**

All Owners shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

**ARTICLE VII**  
**BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a Board of three (3) Directors, who need not be members of the Association.

The number of Directors may be changed by amendment of the By-laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

James H. Smith	238 North McPherson Church Road Fayetteville, NC 28303
Layne McNeill	P.O. Drawer 59 Wilmington, NC 28402
Alton Lennon	P.O. Drawer 59 Wilmington, NC 28402

At the first annual meeting, and specifically subject to Article XXX of the Declaration of Cape Cottages Condominiums, Phase I, there shall be elected one (1) Director for a term of one (1) year, one (1) Director for a term of two (2) years, and one (1) Director for a term of three (3) years.

**ARTICLE VIII**  
**DISSOLUTION**

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

**ARTICLE IX**  
**DURATION**

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The corporation shall exist perpetually.	2007	0893

**ARTICLE X**  
**AMENDMENTS**

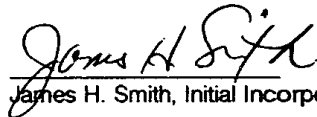
Amendment of these Articles shall require the assent of seventy five percent (75%) of the entire membership.

**ARTICLE XI**  
**INCORPORATION**

The name and address of each incorporator is as follows:

James H. Smith    238 North McPherson Church Road  
Fayetteville, NC 28303

IN WITNESS WHEREOF, for the purposes of forming this corporation under the laws of the State of North Carolina, I, the undersigned, constituting the sole incorporator of this Association, have executed these Articles of Incorporation this the 26<sup>th</sup> day of February, 1996

  
James H. Smith, Initial Incorporator

NORTH CAROLINA

NEW HANOVER COUNTY

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I, Denise L. Baker <sup>of Onslow</sup>, a Notary Public in and for said County and State, do hereby certify that JAMES H. SMITH did personally appear before me this day and acknowledged the due execution of the foregoing document for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 26<sup>th</sup> day of February, 1996



Denise L. Baker  
NOTARY PUBLIC  
My Commission Expires: July 8, 1998

STATE OF NORTH CAROLINA

New Hanover County

The Foregoing / Annexed Certificate(s) of  
CAROL A. PARKER

DENISE L. BAKER

Notary (Notaries) Public is/ are certified  
to be correct.

This the 28 day of MARCH 1996

Mary Sue Oots, Register of Deeds

by Jacqueline Helms  
(Deputy/Assistant)

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EXHIBIT "F" TO DECLARATION

Cape Cottages Condominiums, Phase I

Liens, Defects, and Encumbrances

- a) Building and zoning laws and ordinances and state and federal regulations.
- b) The terms and provisions of the Declaration of Condominium, Phase I.
- c) Utility easements and other easements of record, including, but not limited to, the following:
  - 1) Easements and any other facts as shown on map recorded in Map Book 27, Page 77; and Map Book 28, Page 129, New Hanover County Registry.
  - 2) General Utility Easement and Release to the City of Wilmington recorded in Book 1414 Page 386, New Hanover County Registry.
  - 3) Easement to BellSouth Telecommunications, Inc. recorded in Book 1997 Pages 9 and 11, New Hanover County Registry.
  - 4) Stormwater Management Facility Inspection and Maintenance Agreement recorded in Book 1890 Page 164, New Hanover County Registry.
  - 5) Easement to North Carolina Department of Transportation recorded in Book 1078, Page 230, New Hanover County Registry;
  - 6) Easements to Carolina Power & Light Company recorded in Book 885, Page 604; Book 600, Page 706; Book 1593 Page 1265; Book 1966 Page 748; New Hanover County Registry;
  - 7) Proposed thoroughfare for Smith Creek Parkway, as shown on thoroughfare plan for the City of Wilmington.
  - 8) Rights of others in and to the continued and uninterrupted flow of small branches serving as a portion of the boundaries of insured property as shown on survey by Robert H. Goslee, R.L.S., dated October, 1985.
  - 9) Regulatory Agreement recorded in Book 1316, Page 1997, New Hanover County Registry.
- d) New Hanover County and the City of Wilmington ad valorem property taxes.
- e) Homeowners' assessment due to Cape Cottages Homeowners' Association.
- f) The provisions of N.C.G.S. Chapter 47C, as amended.