

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

**DECLARATION OF UNIT OWNERSHIP**

**CHAPTER 47C, NORTH CAROLINA GENERAL STATUTES**

**CEDARWOOD VILLAGE CONDOMINIUMS**

THIS DECLARATION OF UNIT OWNERSHIP is made and entered into by CWV DEVELOPMENT CORPORATION, a North Carolina corporation (hereinafter "Declarant"), with joinder of First Southern Savings and Loan Association (hereinafter "Lender"), Randolph Financial Services Corporation (hereinafter "Lender Trustee" ), OAK RIDGE COAL CO., INC. (hereinafter "Purchase Money Lender") and H. BUCKMASTER COYNE, JR. (hereinafter "Purchase Money Lender Trustee") this 10<sup>th</sup> day of September, 1987.

**BACKGROUND STATEMENT**

Declarant is the owner of certain real property (The Development Area) situated in Carteret County, North Carolina, and more particularly described in Exhibit A, attached hereto and made a part hereof. Declarant is constructing on the development area a residential condominium development to consist, initially, of one (1) six unit building and, assuming exercise of all Development Rights described herein, an eventual total of sixty-two (62) total units. This condominium development shall be known as Cedarwood Village Condominiums (hereinafter "the Project").

In creating the Project Declarant desires to develop a residential community, with certain common areas and facilities to be used for the benefit of the Project. Declarant desires to provide for the preservation of the values and amenities in the Project and for the maintenance of common areas and facilities in the Project, and therefore desires to subject the development area to this Declaration and the Covenants, restrictions, easements, charges and liens described herein, and to submit the property to the provisions of the North Carolina Condominium Act, North Carolina General Statutes, Chapter 47C.

Declarant has deemed it desirable to create a non-profit incorporated Association which shall be delegated and assignee powers of maintaining and administering the common facilities of the Project, performing certain maintenance on the buildings, of administering and enforcing covenants and restrictions created in this Declaration and of levying, collecting and disbursing the assessments and charges created by this Declaration, and to take any steps or perform any acts deemed necessary or appropriate to promote the recreation, health, safety and welfare of the owners of condominium units and other residents of the Project.

## **STATEMENT OF DECLARATION**

NOW, THEREFORE, Declarant hereby declares that all of Phase I of the Development Area (Phase I described in Exhibit B, attached hereto), is hereby submitted to the provisions of Chapter 47C, North Carolina General Statutes, and shall be held, transferred, sold, conveyed, occupied and used subject to the provisions of said Chapter 47C, and subject to the easements, restrictions, covenants and conditions contained herein, which shall run with the Phase I area and be binding upon, and inure to the benefit of, all parties having any right, title or interest in the Phase I area or any part thereof, their heirs, successors and assigns. Declarant, further, declares said Phase I area to be a condominium to be known and identified as Cedarwood Village Condominium.

### **ARTICLE I**

#### **DEFINITIONS**

The following words, when used in this Declaration or any amendment hereto, shall have the following meanings:

Section 1. "Association" shall mean and refer to CWV Owners Association, Inc., its successors and assigns.

Section 2. "Member" shall mean and refer to all owners who are members of the Association as provided below.

Section 3. "Unit Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any unit (as defined herein) which is a part of the condominium, specifically including contract sellers, but excluding those who have any such interest merely as security for the performance of an obligation.

Section 4. "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to this Declaration.

Section 5. "Common Elements" shall mean and include all of the condominium with the exception of Units as defined above.

Section 6, "Institutional Mortgage" shall mean and refer to a mortgage or deed of trust originally executed and delivered to or held through assignment, or assignments, by a bank or savings and loan Association, or an insurance company, or a title insurance company, or a pension trust, or a real estate investment trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing, or Declarant.

Section 7. "Institutional Lender" shall mean and refer to a bank or savings and loan Association or an insurance company or a title insurance company or a pension trust or real estate investment trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing or a designee of any of the foregoing, which owns an institutional mortgage on one or more units or any of the foregoing which acquires an institutional mortgage as herein defined by assignment or through mesne assignments from a non-institutional lender.

Section 8. Declarant hereby incorporates by reference those definitions contained in N.C.G.S. 47C-1-103.

## **ARTICLE II**

### **IDENTIFICATION AND DESCRIPTION OF UNITS**

There is in Phase I, one building containing six, separate condominium units as shown on the plat and plans attached as Exhibits C and D, hereto. The building is constructed generally, as follows:

- Foundation and ground level to first living floor: masonry and masonry block;
- First floor level up wood frame with built up wooden trusses or joists;
- Walls within units are conventional wood stud with drywall surfaces. Walls separating units are of double stud construction with an air space and sound insulation barrier;
- Floors are 5/8 inch tongue and groove plywood, finished with carpet, vinyl tile or quarry tile;
- Exterior siding is wood or wood byproducts;
- Decks are of fir or rot resistant lumber or masonry; - Roofs are plywood, surfaced with fiberglass shingles.

The specifications attached as part of Exhibit D detail materials more specifically, and they are incorporated by reference.

The units themselves, and the boundaries and floor plan thereof, are as shown on the plans attached hereto as Exhibit D and as detailed by N.C.G.S. Section 47C-2-102 which is hereby incorporated by reference. The unit designations are as shown on the above referred to plat and plans.

## **ARTICLE III**

### **OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON ELEMENTS**

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership. The unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common elements. The undivided interest appurtenant to each condominium unit in Phase I is as detailed on Exhibit E, attached hereto. The percentage of undivided interest appurtenant to each unit shall govern percent of common expenses attributable to each unit and the percent of total voting power attributable to each unit.

The percentage of interest in the common elements (and, thus, the per unit percentage of common expenses and of voting power) will be decreased by the addition of additional units to the condominium pursuant to Article XIII, below. The method of computation of change of said percentage is detailed in Exhibit F, attached hereto.

## **ARTICLE IV**

### **RESTRICTION AGAINST FURTHER SUBDIVISION AND FOR SEPARATE CONVEYANCE OF APPURTENANT COMMON AREA AND UNITS**

No condominium unit may be divided or subdivided into a smaller unit, nor shall any condominium unit or portion thereof be added to or incorporated into any other condominium unit.

The undivided interest in the common elements declared to be appurtenant to each condominium unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said unit, and the undivided interest in the common area appurtenant to each condominium unit shall be deemed conveyed, devised, encumbered or otherwise included with the unit, whether or not such conveyance, method of devise or encumbrance shall so specify. Any instrument conveying, devising or encumbering any unit which describes said unit by the unit designation assigned herein shall be construed to affect the entire condominium unit and its appurtenant undivided interest in the common elements.

## **ARTICLE V**

### **EASEMENTS**

Section 1. The common areas are hereby declared to be subject to a perpetual, non-exclusive easement in favor of all of the unit owners for their use and for the use of their immediate families, guests and invitees, for all proper purposes, and for the furnishing of services and facilities for which they are intended and for the enjoyment of the unit owners. Notwithstanding the foregoing, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the unit owner, his family, guests and invitees may be entitled to use the common areas, including the right to assign parking spaces and to establish regulations concerning their use and maintenance, provided such assignment of parking spaces or establishment of regulations are not adverse to the terms hereof. The Association shall have the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the condominium.

Section 2. Encroachment of any unit or common area on any other unit or common area is governed by N.C.G.S. Section 47C-2-114 and the easement for encroachments described therein, and the same is hereby incorporated by reference.

## **ARTICLE VI**

### **OPERATING ENTITY AND ADMINISTRATION OF THE CONDOMINIUM**

The operating entity of the condominium shall be CWV Owners Association, Inc.

Section 1. Powers. The Association shall have all the powers and duties set forth in Chapter 47C, North Carolina General Statutes, as well as all the powers and duties granted to or imposed upon it by this Declaration, the Bylaws of the Association, and its Articles of Incorporation, a copy of which Articles of Incorporation and Bylaws being attached to this Declaration as Exhibits G and H, respectively, and made a part hereof.

All of the affairs of the Association shall be conducted by the Board of Directors who shall be designated in accordance with the Bylaws of the Association. The Association, by its Directors, may delegate its powers of maintenance, operation, administration, management and care of the project to a management firm.

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 collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units, common areas and limited common areas as its Board of Directors may deem to be in the best interest of the condominium.

## Section 2. Members.

A. Qualifications. The members of the Association shall consist of all the record unit owners of units in the condominium.

B. Change of Membership. Change of membership in the Association shall be established by the recording in the Office of the Register of Deeds of Carteret County, North Carolina, a deed or other instrument establishing a record title to a unit or units in the condominium and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner of the unit shall be thereby terminated.

C. Voting Rights. There shall be one person with respect to each unit who shall be entitled to vote at any meeting of the Association and such person shall be known and is hereinafter referred to as the "Voting Member". If a unit is owned by more than one person, the owners of said unit shall designate one of them as the Voting Member, or in the case of a corporate owner, a designated officer or employee of the corporation shall be the Voting Member. The Voting Member may designate some person to act as proxy on his behalf who need not be an owner. Such designation of Voting Members shall be made in writing to the Board of Directors and shall be revocable at any time by actual notice to the Board of Directors. The total number of votes of all Voting Members shall be one hundred and each owner or group of owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the common elements applicable to his unit ownership as set forth in Article III, above.

Section 3. Property in Trust. All funds and the title of all properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of this Declaration and the Bylaws of the Association.

## ARTICLE VII

### COMMON EXPENSE AND COMMON SURPLUS

The common expenses of the condominium shall be shared by the unit owners in the same proportion that the undivided interest in the common areas appurtenant to each owner's unit bears to the total of all undivided interest in the common areas appurtenant to all condominium units. Any common surplus of the Association shall be owned by the owners of all condominium units in the same proportion that the undivided interest in the common areas appurtenant to each owner's unit bears to the total of all undivided interest in the common areas appurtenant to all condominium units; provided, however, that said common surplus

shall be held by the Association in the manner, and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for the distribution of any insurance indemnity herein provided, or upon termination of the condominium, any attribution or distribution of the common surplus which may be made from time to time shall be made to the then owners of the condominium units in accordance with their interest in the common surplus as declared herein. The share of a unit owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

## **ARTICLE VIII**

### **COVENANT FOR ASSESSMENTS**

Section 1. **CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** Declarant, for each unit within the project, herein covenants, and each owner, his heirs, successors and assigns, of any unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) regular assessments or charges, and (2) special assessments as provided below, such assessments to be established and collected as hereinafter provided. The regular and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the unit against which each assessment is made. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the owner of such unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title (other than as a lien on the unit) unless expressly assumed by such successors.

Section 2. **PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners and other residents of the development area and in particular for the improvement, maintenance and operation of the condominium project, common area and the easements appurtenant thereto; services and facilities devoted to this purpose and related to the use and enjoyment of the common area; and certain insurance on the condominium project, the cost of labor, equipment, materials, management and supervision thereof; provision of a reserve fund for replacement, the employment of attorneys and accountants to represent the Association when appropriate; costs of utilities and fuel used in operating facilities in the common area; the maintenance and upkeep of all streets, roadways and parking areas in the project area, and such other needs as may arise.

Section 3. **MAXIMUM REGULAR ASSESSMENT.** Until December 31, 1988, the maximum regular assessment for each Type Unit (A, B, C or D Type Unit) shall be the amount shown as "initial monthly dues structure" in Exhibit F, attached hereto and incorporated by reference.

A. From and after December 31, 1988, the maximum regular assessment may be increased by the Board of Directors of the Association each year, without the vote of the membership, by not more than five percent above the maximum assessment for the previous year.

B. From and after December 31, 1988, the maximum regular assessment may be increased above the aforesaid five percent only by vote of three-fourths of each class of membership of the Association who are voting in person or by proxy, at a meeting duly called for such purpose, or at an annual meeting.

Section 4. SPECIAL ASSESSMENTS. In addition to the regular assessments authorized above, the Association may levy special assessments for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the condominium area, including, but not limited to fixtures and personal property related thereto, the cost of any exterior maintenance on or replacement of improvements, the cost of paying special governmental assessments, or any other cost or expense. Any such special assessment must be approved by not less than three-fourths of the votes of each class of membership of the Association who are voting in person or by proxy at a meeting duly called for this purpose. The time and method of payment of this special assessment shall be as determined by the Board of Directors of the Association.

Section 5. UNIFORM RATE OF ASSESSMENT. Both regular and special assessments of the Association must be fixed at a uniform rate for each Type Unit and shall bear the same ratio to the total assessment made against all units that the undivided interest in common area appurtenant to each unit bears to the total undivided common interest appurtenant to all units.

Section 6. DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS. The regular assessments provided for herein shall commence as to all units on the date of recording of this Declaration. The Board of Directors shall apply the amount of the regular assessment against each unit at least thirty days in advance of the end of the fiscal year of the Association, which shall be December 31. Written notice of the regular assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and, unless otherwise determined by the Board, regular assessments shall be collected monthly with one-twelfth of the annual assessment amount due and payable on the first day of each calendar month. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the president or the treasurer of the Association setting forth whether the assessments on a specified unit have been paid. Such certification shall be conclusive evidence of payment of any assessment therein stated to have been paid as to any purchaser or mortgagee of a unit who relies thereon.

Section 7. EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. In the event that any assessment, or monthly installment thereof, is not paid within thirty days of its due date, the Board of Directors of the Association may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent per annum. The Association may bring an action at law against the owner personally obligated to pay the assessment or may foreclose the lien against his unit to collect said assessment. Interest, reasonable attorney's fees not to exceed fifteen percent of the amounts due, and costs of such action or foreclosure shall be added to the amount of each assessment. Each owner, for himself, his heirs, successors and assigns, by his acceptance of a deed to a unit, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or a deed of trust would be brought as outlined in Chapter 45, North Carolina General Statutes, and each owner grants to the Association a power of sale in connection with any such

charge or lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other owners. The Association, acting on behalf of the owners, shall have the power to bid in any lot and to acquire and hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his unit.

Section 8. **PRIORITY OF LIEN.** The lien of the assessments provided for herein shall be prior to all other liens and encumbrances except those specifically designated by N.C.G.S. Section 47C-3-116(b), and that section is hereby incorporated by reference. Sale or transfer of any unit shall not affect the assessment lien. However, sale or transfer of any unit by foreclosure of any first mortgage or first deed of trust holder, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessment shall be deemed to be expenses of the Association assessable against and collectable from all owners, including such acquiring mortgagee, his heirs,, successors and assigns. No such sale or transfer shall release such unit from liability for assessments thereafter becoming due, or from the lien thereof, nor shall any such sale or transfer release the personal obligation of the owner of the unit at the time the unpaid assessment became due.

Section 9. **RESERVE FUNDS.** From and after the recording of this Declaration, the Association shall establish and maintain a reserve fund or funds for replacement and maintenance of the project by allocation and payment monthly to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board of Directors of the Association. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any and all facilities of the project and for such other purposes as may be determined by the Board of Directors. The aforesaid allocation and payment monthly to such reserve fund or funds shall be made out of regular assessments.

Section 10. **WORKING CAPITAL FUND.** The Association shall establish a working capital fund at the beginning of the operation of the Association. Such working capital shall be funded as follows:

At time of closing of the initial sale of each unit from Declarant, the purchaser of such unit shall pay to the Association an amount equal to two-twelfths of the initial annual assessment for that unit.

The purpose of the working capital fund is to insure that the Association board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. Amounts paid into the fund shall not be considered advance payment of regular assessments. However, it is not necessary that such working capital fund be maintained separately from other Association funds.



## **ARTICLE IX**

### **ALTERATION, MAINTENANCE AND REPAIR OF CONDOMINIUM UNITS AND COMMON AREAS**

Section 1. No owner of a condominium unit shall permit any structural modification or alteration to be made to such unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine that such structural modifications or alterations would adversely affect or in any manner endanger the condominium in part or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium unit, including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects or machines which may protrude through the walls or the roof of the condominium unit, or in any manner alter the appearance of the exterior portion of any building, without the written consent of the Association being first obtained. No owner shall in any manner enclose or cover the balcony or deck portion of his unit with glass, plexiglass, mesh screen or any other material or substance without written consent of the Association. No unit owner shall cause any object to be fixed to the common areas, including location or construction of fences or the planting or growing of flowers, trees, shrubs or other vegetation, or in any manner change the appearance of the common areas without the written consent of the Association being first obtained. The Association shall have absolute discretion as to granting, or not granting, such consents. Notwithstanding the above provision regarding alteration of condominium units, in no event shall any garage appurtenant to a unit be converted to living space unless the Declarant and/or the Association shall have made provision for a new, paved and marked parking space to replace the parking space lost by conversion of the garage. The total number of parking spaces (including garages) in the condominium project must always equal, or exceed, two and one-half (2 1/2) parking spaces per condominium unit.

Section 2. Every owner shall perform promptly all maintenance and repair work within his condominium unit which, if omitted, would affect the condominium, either in its entirety or in part, every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each unit shall be liable and responsible for the maintenance, repair and replacement of all heating and air conditioning equipment regardless of where located, unless such equipment is damaged by a peril covered in the policies of insurance owned by the Association, and stoves, refrigerators, fans or other appliances or equipment, including any fixtures and the connections required to provide water, light, power and telephone service to his condominium unit. Such owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings and floors within his unit including painting, decorating, carpeting and furnishings, and all other accessories which such owner may desire to place or maintain in his unit. Whenever the maintenance, repair and replacement of any item for which the owner is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the owner of such unit shall be, in said instance, 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, exceed the amount of insurance proceeds applicable to such maintenance, repair or replacement. All windows, window frames, glass surfaces and screens are a part of the respective condominium units and shall be maintained by the respective unit owners.

Section 3. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the common areas, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring, sewer and other facilities located in the common areas for the furnishing of utility, heating and other services to the condominium units in the said common areas. Should any incidental damage be caused to any 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 areas, 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 the act of any unit owner, his family, guests 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; provided, however, that the unit owner who is responsible for the act or acts causing the damage, whether done by himself or his family, guests or invitees, shall be 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.

Section 4. In the event 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, or any other person authorized by the Board of Directors, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

## **ARTICLE X**

### **INSURANCE**

Section 1. Authority to Purchase Insurance. Insurance policies upon the property shall be purchased by the Association in the name of the Board of Directors of 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 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 personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above, if possible.

Section 2. Insurance Coverage and Use and Distribution of Proceeds. 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 the common areas:

- A. Casualty insurance covering the buildings and all improvements upon the land and all personal property subject to this Declaration, and any additions added by amendment, except such personal property as may be owned by the condominium unit owners, shall be procured in an amount equal to 100% of the replacement cost thereof (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the Board of Directors. The insurance policy shall contain an agreed amount endorsement. Such coverage shall afford protection against all risk, subject to normal exclusions, including (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement and (b) such other risks as may from time to time customarily be covered

with respect to buildings similar in construction,, location and use, including but not limited to vandalism and malicious mischief.

B. Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, including legal liability, hired automobile, non-owned automobile and off premises employee coverages.

C. All liability insurance shall contain cross liability endorsements to cover liabilities of the condominium unit owners, as a group, to a condominium unit owner.

D. Fidelity coverage protecting against dishonest acts by Association officers, directors, trustees and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. In the event professional management is obtained by the Association and it (the professional management company) has such coverage and it handles the funds, then this requirement will be satisfied.

Section 3. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as a common expense.

Section 4. All policies purchased by the Association 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 the Association, the condominium unit owners and their respective mortgages in the following shares:

A. Proceeds on account of damage to common areas shall be held in undivided shares for each condominium unit owner and his mortgagee, if any, which undivided share for each unit shall be the same percentage as stated for each unit's percentage of common ownership in Article III, above.

B. Proceeds on account of damages to condominium units shall be held in the following undivided shares:

1. Partial destruction when the condominium is to be restored: for the owners of damaged condominium units in proportion to the costs of repairing the damage suffered by each damaged condominium unit.

2. Total destruction of the condominium or where the condominium is not to be restored; for all condominium unit owners and their mortgagees, the share of each being set forth in Article III.

Section 5. 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, but nothing herein contained shall be construed so as to give any mortgagee the right to determine, or to participate in the determination of, reconstruction or repair.

Section 6. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial condominium unit owners in the following manner:

A. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial condominium

unit owners, all remittances to condominium unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a condominium unit and may be enforced by him.

B. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial condominium unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a condominium unit and may be enforced by him.

## **ARTICLE XI**

### **RECONSTRUCTION OR REPAIR AFTER CASUALTY DAMAGE**

Section 1. Determination to Reconstruct or Repair. If any part of the condominium shall be damaged by casualty, whether or not it be reconstructed or repaired shall be determined in the following manner:

A. Common Area. If the damaged improvement is a common area or facility, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

B. Condominium Units.

1. Partial Destruction. If the damaged improvement is a condominium unit and if termination as provided in subparagraph (2) below does not take place, the damaged property shall be reconstructed or repaired unless, within sixty days after the casualty, it is determined by agreement in the manner elsewhere provided that the condominium shall be terminated.

2. Total Destruction. If more than two-thirds of the condominium units are destroyed and the owners of eighty percent (80%) of the units in the condominium (including one hundred percent (100%) of the units not to be rebuilt) should determine not to proceed with repair or restoration, then the procedure set forth in N.C.G.S. Section 47C-3-113(h) shall be followed, and said section is hereby incorporated by reference.

Section 2. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings attached to this Declaration.

Section 3. Responsibility. If the damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit, owner, then the unit owner shall be responsible for the reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

Section 4. Estimate of Costs. Immediately after a determination to rebuild or repair damage to property for which the Association has a responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to repair or rebuild. Such costs may include professional fees and premiums for such bonds as the Board of Directors shall deem appropriate.

Section 5. Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the

payment of the cost thereof are insufficient, the excess costs of such repairs shall be a common expense.

## **ARTICLE XII**

### **CONDEMNATION OF COMMON AREA OR UNIT**

In the event of taking of any of the common area or unit by governmental authority pursuant to condemnation proceedings, the provisions of N.C.G.S. Section 47C-1-107 shall govern, and same is hereby incorporated by reference.

## **ARTICLE XIII**

### **SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves Special Declarant Rights as that term is defined in N.C.G.S. Section 47C-103(23) as follows:

A. **Development Rights.** Declarant reserves the right, by appropriate amendment to this Declaration, to add additional units and real property to the condominium, subject to the following:

1. Any additional improvements shall be located generally as designated on Exhibit I, attached hereto. Declarant reserves the right to make minor adjustments to such locations.
2. The maximum number of units in the condominium shall not be more than 62.
3. No property shall become part of the condominium except that property (or portions thereof) described in Exhibit A, attached hereto.
4. In the event of exercise of such Development; rights, the percentage of common element ownership shall be adjusted in accordance with Exhibit F, attached hereto.
5. Declarant's rights under this subparagraph A shall, terminate, to the extent not exercised, on June 1, 1991.

B. Declarant reserves the right to maintain on the condominium property sales offices, management offices, models and advertising signs advertising the condominiums and models. Any such sales office or management office shall be located in a model which shall be a unit of the condominium. No more than two units may be used as a model, sales office or management office by Declarant at any one time. Declarant shall have the right to change units used for such purposes, from time to time, at its discretion.

C. Declarant reserves unto itself, for so long as there shall be unexercised development rights retained by Declarant, an easement over and across the condominium property for purpose of access to portions of property described in Exhibit A, for construction thereon, and further, reserves such other easements as are described in N.C.G.S. Section 47C-2-116, which section is hereby incorporated by reference.

D. For purpose of exercising Development rights described above, Declarant reserves the right to record Amendments to this Declaration in compliance with N.C.G.S. Section 47C-2-109 and 47C-2-110.

## **ARTICLE XIV**

### **AMENDMENT OF DECLARATION OF CONDOMINIUM**

An amendment to this declaration (except for amendment pursuant to Article XIII above, by Declarant and except for amendments made pursuant to Sections 1-107, 2-206(d), 2-112(a) or 2-11(b) of Chapter 47C) shall be made only upon the affirmative vote of voting members representing seventy-five percent of the common ownership of the condominium and shall be recorded in accordance with Section 2-117, Chapter 47C. Provided, however, that, except pursuant to Article III, hereof, no alteration in the percentage of ownership in the common area appurtenant to each condominium unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof or alteration of basis of ownership of common surplus, or alteration of voting rights in the Association, shall be made without prior written consent of all the owners of all condominium units and of all institutional lenders and other holders of mortgages and deeds of trust on the condominium units. Further, no alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Lenders shall be made without prior written consent of all lenders holding mortgages or deeds of trust on condominium units in the condominium being first had and obtained.

## **ARTICLE XV**

### **TERMINATION**

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

Section 1. Termination of the condominium may be affected only by the unanimous agreement of all condominium unit owners expressed in an instrument duly recorded, and provided that the holders of all mortgages or deeds of trust affecting any of the condominium units consent thereto, or agree, by instrument duly recorded, that their liens may be transferred to the percentage of undivided interest in the condominium of the unit owner in the property as provided in Section 2 of this Article. The instrument required above must comply with Section 2-118, Chapter 47 C.

Section 2. Upon termination, the rights of parties shall be governed by the provisions of Section 2-118, Chapter 47C.

## **ARTICLE XVI**

### **USE RESTRICTIONS**

Section 1. Residential Use. The owner of a unit shall occupy and use this unit as a single, family private dwelling for himself and the members of his family, his guests, licensees, lessees and invitees; provided, however, that Declarant, so long as it continues to own and promote the sale of a unit, shall be entitled to utilize units as sales models and to carry on such other activities in furtherance of its development plan as it deems appropriate.

Section 2. Prohibited Acts. The condominium unit owner shall not permit or suffer anything to be done or kept in any unit which will increase the rate of insurance on the condominium or which will obstruct or interfere with the rights of other unit owners, or annoy other unit owners by unreasonable noises or otherwise. Further, the unit owner shall not commit or permit any nuisance, or any immoral or illegal act in or about the property.

Section 3. Use of Decks. No owner shall permit any cooking of any nature whatsoever or the use of any type of charcoal or gas grill or other cooking unit on the balcony or deck comprising a part of his unit. ,

Section 4. Signs. No advertising signs, (including "For Sale" or "For Rent" signs), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property; but provided, however, this foregoing restriction shall not apply to the activities of the Declarant or its agents during the period of the initial sale of the units.

Section 5. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property, except that dogs, cats or other usual household pets may be kept by the respective owners only, in their respective units, provided that they are not kept, bred or maintained for any commercial purposes and do not endanger the health of or, in the sole discretion of the Board of Directors of the Association unreasonably disturb the owner of any unit or any resident thereof, and provided, further, that such pets shall not be allowed in the general common area of the condominium project unless on a leash or carried by the owner thereof.

Section 6. Recreational Vehicles. Travel trailers, tent campers, motor homes or other like vehicles shall not be allowed to remain on the property at any time, except the right to do so reserved by Declarant for maintenance of a temporary construction office for such time as construction is in progress. Boat trailers are permitted only in the enclosed garage areas or wholly within carport areas which are under shelter, unless the Association shall later designate areas for the parking of boat trailers.

Section 7. Draperies. All draperies or other window dressings in units shall be white or off-white in color, or in lieu thereof, shall have white linings.

## **ARTICLE XVII**

### **RENTALS OF UNITS BY OWNERS**

Units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as any rental in which the occupants of the unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Other than the foregoing, the owners, including Declarant, shall have the absolute right to lease or rent the same subject to the terms of this Declaration and further subject to the rules and regulations of the Association.

Provided, however, that each owner, by acceptance of a deed, grants unto the Association the right to evict tenants of owner from owner's Unit, without notice to owner, for violation of rules or regulations of the Association, or violation of the terms hereof. Any lease for a unit, whether or not same shall be in writing, shall be deemed to include, and shall be subject to, the terms of this Declaration and rules and regulations of the Association.

## **ARTICLE XVII**

### **AVAILABILITY OF ASSOCIATION RECORDS**

The Association shall make available to unit owners and lenders, holders, insurers or guarantors or any mortgage on a unit, current copies of the Declaration (and amendments thereto) By-Laws, and other rules and regulations concerning the project and the books, records and financial statements of the Association. For purposes of this article the term "available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

## **ARTICLE XIX**

### **RIGHTS RESERVED UNTO LENDERS**

So long as any lender shall hold any mortgage or lien upon any unit or units, or shall be the owner of any unit or units, such lender shall have, in addition to the rights otherwise provided herein, the following rights:

1. To be given written notice by the Association of the call of any meeting of the membership, which notice shall state the purpose of such meeting, and to designate a representative to attend.
2. To be given written notice of default by any unit owner owning a unit encumbered by a mortgage or lien held by the lender, such notice to be sent to the place which said lender may designate in writing.
3. To be given written notice of any loss to or taking of the common areas of the condominium if such loss or taking exceeds \$10,000.00 or damage to a condominium unit in excess of \$1,000.00.
4. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.
5. To receive written notice of delinquency in the payment of assessments by a unit owner which remains for a period of sixty days.
6. To receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
7. To receive written notice of any proposed action which would require consent of a specified percentage of mortgage holders.

Whenever a lender desires the provisions of this article to be applicable to it, it shall serve written notice of such fact upon the Association identifying the unit or units upon which such lender holds any mortgage, or identifying any units owned by it, together with sufficient facts to identify such mortgage, and such notice shall designate the place to which notices are to be given by the Association to such lender. In the absence of such written notice by a lender, the Association shall have no obligation to give notice to lenders under this Article XIX.



## **ARTICLE XX**

### **MASTER ASSOCIATION BRANDYWINE BAY OWNERS ASSOCIATION, INC.**

There exists in Brandywine Bay Development, of which these condominiums are a part, a "Master Association", Brandywine Bay Owners Association, Inc. (hereinafter, "Master Association"). Each owner of a Unit in the condominium shall be a member of the Master Association, and shall pay dues to such Master Association on a per unit basis, in the same manner as single family lot owner members of that Master Association pay dues on a per lot basis. Provided, however, that, initially, the Association shall pay, as part of the common expense, the annual dues on behalf of each Unit Owner. The per unit or per lot assessment shall be equal for each unit or lot. Likewise, the per unit or per lot voting power shall be equal for each unit or lot. The lien for assessments made by such Master Association, and the enforcement provisions with respect to such assessments, shall be the same for units hereunder as they are for single family lot owner/members of such Master Association, and those provisions with respect to liens and enforcement are hereby incorporated by reference.

It is understood that the Master Association shall have no rights to enforce any use restrictions in the condominium, nor shall the Architectural Control Committee created thereunder have any authority with respect to the condominium. Whenever there is a conflict between this Declaration and the documentation of the Master Association, the terms of this Declaration shall prevail.

## **ARTICLE XXI**

### **MISCELLANEOUS PROVISIONS**

Section 1. COVENANTS RUNNING WITH THE LAND. Each owner, by the acceptance of a deed of conveyance for a unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, or reserved or declared, and all impositions, and obligations hereby imposed shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such persons in like manner as if the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 2. CONSTRUCTION AND ENFORCEMENT. The provisions hereof shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and the operation of a residential condominium community of the highest quality. Any owner, the Association, Declarant or any institutional lender may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby. There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including, without limitation, attorney's fees and court costs.

Section 3. **WAIVER.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 4. **SEVERABILITY.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or effect in any manner the validity or enforceability of the rest of the Declaration.

Section 5. **HEADINGS.** The heading to each article and section hereof is inserted only as, a matter of convenience for reference and in no way limits or describes the scope or the intent of this Declaration nor in any way effects this Declaration.

Section 6. **PERSON TO RECEIVE SERVICE OF PROCESS.** H. Buckmaster Coyne, Jr. is hereby designated to receive service of process in any action which may be brought against or in relation to this Condominium. Said person's address is 1210 Arendell Street, Morehead City, North Carolina 28557.

IN WITNESS WHEREOF, CWV DEVELOPMENT CORPORATION, a North Carolina corporation, has caused this instrument to be executed, by authority of its Board of Directors duly given, the day and year first above written.

**CWV DEVELOPMENT CORPORATION**