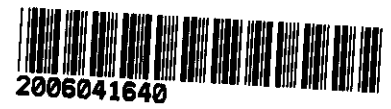


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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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INSTRUMENT # 2006041640

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM
COTTAGES AT BIRMINGHAM

THIS DECLARATION, made this 21st of July, 2006, by TFT & CO., INC. AND TURNCO, INC, North Carolina Corporation, hereinafter called "Declarant" (whether one or more persons, firms or corporations). The designation Declarant as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.)

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the Town of Wrightsville Beach, New Hanover County, North Carolina, which is more particularly described as follows:

BEING part of Lots 4, 6, and 8 in Block S of a Division of the Bear Property in the Town of Wrightsville Beach according to a map recorded in Book 124 at Page 397, as is more particularly described in those Exhibits A Pages 1 and 2 attached hereto, and in those Deeds in Book 4882 Page 852 and Book 4882 Page 856 in all recordings in the New Hanover County Registry ("the Condominium Property").

NOW, THEREFORE, Declarant hereby submits said property to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act" (herein the "Act"), and to that end does hereby publish and declare that all of the said property to be known as "COTTAGES AT BIRMINGHAM, a Condominium" which shall be held, sold, and conveyed subject to the terms and provisions of the Act, the terms and provisions of which shall apply hereto and control, except as herein modified by the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

A. Act. The North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

B. Allocated Interests. The undivided interests in the Common Elements, the Common Expense liability, and in the Association allocated to each Unit.

C. Assessment. A share of the funds required for the payment of Common Expenses that from time to time is assessed against the Unit Owner by the Association.

D. Association. The unincorporated association known as COTTAGES AT BIRMINGHAM Association, the entity responsible for the operation of the Condominium pursuant to the Act, which entity includes all of the Unit Owners acting as a group in accordance with this Declaration and the attached By-Laws.

E. Board of Managers or Board. Shall mean the Officers of the Association, as defined in the attached By-Laws.

F. By-Laws. The By-Laws for the Association as they exist from time to time. The initial By-laws are attached as Exhibit C.

G. Building. All structures and improvements now or hereafter erected upon the property.

H. Common Elements or Common Areas. These terms shall be used interchangeably to mean and refer to all portions of the Condominium other than the Units.

I. Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

J. Common Expense Liability. The liability for Common Expenses allocated to each Unit pursuant to the Act, this Declaration, and the By-Laws, if applicable.

K. Condominium. The real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, all of which is submitted to condominium ownership by this Declaration, and any additions thereto annexed by Supplemental Declaration.

L. **Condominium Documents.** This Declaration, the By-laws, the Rules and Regulations, if any, and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

M. **Declarant.** TFT & CO., INC. AND TURNCO, INC, their heirs, grantees, successors and assigns.

N. **Declaration.** This Instrument as it may be from time to time amended or supplemented.

O. **Development Rights.** Those rights hereby reserved by the Declarant to make additions to or to change the configuration of the Condominium Units and to change or revise the Common Elements or Limited Common Expenses within the Condominium.

P. **Limited Common Elements or Limited Common Areas.** These terms shall be used interchangeably to mean and refer to those portions of the Common Elements that are allocated for the exclusive use of a particular Unit, as more specifically defined herein. Any deck that serves only one Unit is defined as being a Limited Common Area the use of which is limited to the Owner, Guests, Invitees, Tenants, and other users of the Unit to which it is attached.

Q. **Property or Condominium Property.** The real estate described in Exhibit "A", attached hereto and incorporated herein by reference, together with the Building and improvements located thereon, and such additional improvements thereon as may be subsequently subjected to this Declaration by Supplemental Declaration in the manner herein provided.

R. **Supplemental Declaration.** A document filed by Declarant to change the configuration of the Condominium Units and to change or revise the Common Elements or Limited Common Elements within the Condominium in the manner provided herein.

S. **Unit or Condominium Unit.** A part of the Property that is to be subject to private ownership, as designated on the exhibits attached to this Declaration and as further defined in the Act.

The boundaries of each Unit created by this Declaration are as shown on the Plats and Plans as numbered Units and are more particularly described as follows:

- (a) The boundaries of each Unit shall consist of the unfinished perimeter walls, floors, and ceilings as shown on the Plat and Plans. All interior surfacing materials, including all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the interior walls, floors or ceilings of each Unit shall be a part of that respective Unit. All other portions of such walls, floors, or ceilings are part of the

Common Elements. In addition, all spaces, interior partitions, fixtures, appliances, cabinets, and other such facilities or improvements lying completely within the boundaries of a Unit and serving only such Unit shall be a part of such Unit.

- (b) Each Unit will include the spaces and improvements lying within the boundaries described in subsection (a) above, and will also include the spaces and improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems, and all electrical switches, wiring, pipes, ducts, conduits, and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.
- (c) Except when specifically included by other provisions of this Article I, Section S, the following are excluded from each Unit: the spaces and improvements lying outside of the boundaries described in subsections (a) and (b) above; and all chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.
- (d) Except as specifically set out herein, the provisions of N.C.G.S. Section 47C-2-102 will apply. If the description of a Unit is inconsistent with the said statutory provisions, then the description contained in this Article I, Section S will control.

T. Unit Owner or Owner. A person or entity, or any combination thereof, that owns a Unit.

U. Plats or Plans: the plats and plans required to be filed with the New Hanover County Register of Deeds by NCGS Section 47C-2-109, including those plats or plans for the Condominium entitled "COTTAGES AT BIRMINGHAM CONDOMINIUM" being duly recorded in

Condominium Map Book 16 beginning at page 93 of the New Hanover County Registry, as the same may amended from time to time by the unanimous consent of the Unit Owners.

ARTICLE II DESCRIPTION OF BUILDING

The Declarant is the owner of a Building containing two (2) Units located upon the Property described in Exhibit A, Pages 1 and 2, attached hereto and made a part hereof, which Building is of wood frame construction on wood pilings, the layout of which are in accord with hereafter specified Plats and Plans. The Declarant hereby dedicates the aforesaid

land and Building to condominium ownership. A plat of survey of the Property by Arnold Carson, Registered Land Surveyor, showing the location of said Building is described in Exhibit B and is attached hereto and made a part hereof. The Building layout is also more particularly described on Exhibit B showing all particulars of the Building as required by law. The two Units are designated in Condominium Map Book

16, at Page 93 of the New Hanover County Registry as Unit A (the lower Unit) and Unit B (the upper Unit). The maximum number of units in the Condominium will be two (2).

Units A and B both contain approximately 4,000 to 4,150 square feet, including the foyer space.

Both Units have access to all of the Common Elements designated on the Plats and Plans recorded in Condominium Map Book

16, Page 93, of the New Hanover County Registry.

The Common Areas, Common Elements, and facilities are shown upon the Plats and Plans recorded in Condominium Map Book

16 Page 93 of the New Hanover County Registry.

The Limited Common Elements and facilities are also shown on the Plats and Plans of the Property recorded in Condominium Map Book

16, Page 93 of the New Hanover County Registry.

Each Unit shall be conveyed and treated as an individual Property capable of independent use and fee simple ownership, and the Unit Owners of each Unit shall also own, as an appurtenance to the ownership of each said Unit conveyed, a undivided interest in the Common Area, set out as follows, and a one-hundred percent interest in the Limited Common Area associated with the Unit, as shown on the said Plat, if any.

Units A and B shall both own a one-half interest in the Common Areas.

Each unit shall have one vote in the operation of the Condominium.

Limited Common Expenses and facilities may be shown on the aforesaid-recorded plat of the Property as recorded in the New Hanover County Registry. Each Unit Owner will have the exclusive right to possession and use of the Limited Common Elements designated for use by each Unit, if any.

ARTICLE III USE RESTRICTIONS

The use of the Property shall be in accordance with the following provisions:

A. Each of the Units shall be occupied only by a family, its servants, and guests, and may be used as a residence and for no other purpose (use for investment and rental is allowed). No Unit may be divided or subdivided into a smaller Unit nor any portion thereof sold or otherwise transferred without the consent of all Unit Owners and compliance with the Act.

B. The Common Elements, Common Areas and facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit.

C. No use or practice shall be permitted on the Condominium Property that reasonably could be considered the source of annoyance to residents of the Property or interfering with the peaceful possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No Owner shall permit any use of his/her Unit or of the Common Elements that will increase the rate of insurance upon the Condominium Property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Rental of less than the whole unit is prohibited.

D. Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by the unanimous consent of the Unit Owners of COTTAGES AT BIRMINGHAM CONDOMINIUM ASSOCIATION (herein referred to as the "ASSOCIATION").

E. Each Unit Owner shall maintain, repair and replace, at is or her own expense, all portions of his or her Unit. Except as may be provided in this Declaration, each Unit Owner shall have the exclusive right and duty to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming and boundaries of such Owner's Unit and all walls, floor, ceilings, and doors within such boundaries, including without limitation painting of interior surfaces. Without limiting the generality of the foregoing, each Unit Owner, at such Unit Owner's expense, shall maintain and keep in repair the interior of the Condominium Unit (including, without limitation, the fixtures and utilities located in the Unit) to the extent current repair shall be necessary in order to avoid damaging other persons, property, Units or the Common Elements. A Unit Owner shall not be responsible for repair occasioned by casualty occurring outside a Unit, unless such casualty is due to the act of negligence of the Unit Owner, or guests, licensees, agents, invitees, users, occupants, or tenants of such Unit Owner. A Unit Owner is responsible for a repair resulting from a casualty occurring within or affecting the inside of the Unit.

F. No Unit Owner shall alter any Common Elements without the prior written consent of all members of the ASSOCIATION. No Unit Owner shall fix any object to the Common elements (including fences, flowers, trees, shrubs or other vegetation) or in any

manner change the appearance of the Common Elements without first obtaining the written consent of all members of the ASSOCIATION.

G. No Unit Owner shall permit any structural modification or alteration to be made to any Unit, or the Common Area or Limited Common Area, nor alter or cause any changes to be made to or alter the appearance of the exterior of any building (including painting, installing television, satellite dish, radio antennae, or signs, without first obtaining the written consent of all members of the ASSOCIATION, except as may be otherwise allowed by law.

H. No timeshare units as defined by Chapter 93A of the North Carolina General Statutes or any successor statute shall be permitted within the Condominium and no Unit may be conveyed pursuant to any such timesharing plan or scheme.

I. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained in or on any Unit or in any dwelling. Certain domestic household pets, such as may be otherwise provided by rules and regulations approved all members of the ASSOCIATION, may be allowed. The rules and regulations may regulate, permit or prohibit the kind and number of domestic household pets. Domestic household pets may not be raised, bred, kept or maintained for any commercial purposes. All household pets shall be kept on a leash at all times when outside the Units and animal waste must be immediately removed. Such pets may not be permitted to run at large at any time. Owners of pets on the Property shall control excessive barking or other disturbances caused by the pets. The Association, or either Unit Owner, shall have the right to require a Unit Owner or occupant to remove any pet from their Unit, the Common Area or Limited Common Area, if the pet is a nuisance to the complaining Unit Owner.

J. Unit Owners shall not park or store any camper, trailer, boat trailer, trailer vehicle, motor home, or similar vehicle anywhere on the Property. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized trucks. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No striped, wrecked or partially wrecked, or junk motor vehicle or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on the Property

K. No burning of wood, leaves, trash, garbage or household refuse or burning as a means of clearing brush shall be permitted on the Property.

L. Garbage and trash shall be disposed by Unit Owners in accordance with rules and regulations approved by all members of the ASSOCIATION.

M. No laundry or wash shall be dried or hung outside any Unit.

N. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Unit Owner without the prior written approval of the ASSOCIATION.

O. No trash containers may be stored on the balconies or screened porches of Units. Barbecue grills may NOT be stored or used on balconies or screened porches of Units due to the associated fire hazard.

P. The ASSOCIATION is authorized to regulate parking by adopting the rules and regulations relating thereto, which rules and regulations will include the right to assign or reassign parking spaces if it deems it appropriate or necessary.

Q. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner, or by any member of a Unit Owner's family, guests, invitees, licensees, agents, occupants, users, or tenants, then the expenses incurred by the ASSOCIATION for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner. If the Unit Owner fails to repay the expenses incurred by the ASSOCIATION within 30 days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment enforceable in accordance with Article IX herein.

ARTICLE IV EASEMENTS

A. Each Unit shall be subject to an easement in favor of the other Unit to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Unit and located in such Unit. The Association shall have the right, to be exercised by the Board of Managers or its agents, to enter each Unit from time to time at reasonable hours as may be necessary for the operation of the Condominium to inspect the same and to maintain, repair or replace the Common Elements, if any, contained therein or elsewhere in the Building.

B. Each Unit and all Common Elements and Limited Common Elements are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other Common Elements, whether or not the cause of any or all to those activities originates in the Unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the Common Area.

D. In case of emergency originating in or threatening any Unit or the Common Elements, regardless whether the Unit Owner is present at the time of such emergency, the

Board of Managers, or any other person authorized by it, shall have the right to enter any Unit, if reasonably required for the purpose of remedying or abating the causes of such emergency and such right of entry shall be immediate.

E. All easements and rights described herein are easements appurtenant, and shall run with the land by whomsoever owned, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

F. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved and intended for such purposes, for all unit owners or units in COTTAGES AT BIRMINGHAM CONDOMINIUMS, their guests, families, invitees, lessees, the Association, and the Declarant, its successors and assigns.

ARTICLE V ENFORCEMENT

A. The ASSOCIATION, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any of the other provisions that shall remain in full force and effect.

ARTICLE VI NOTICE

The name and address of the initial process agent to receive service of process in any matters affecting the Property is as follows:

Terry F. Turner
1904 Eastwood Road, Suite 212
Wilmington, New Hanover County, NC 28403

The process agent may be changed by recording in the New Hanover County Registry a memorandum of change signed by the record Owners of both Units.

ARTICLE VII
TAXES

Each individual Unit and its undivided interest in the Common Elements and facilities shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and Undivided Interest in the Common Elements and facilities and shall not be affected by the consequence resulting from the tax delinquency of any other Unit Owner. Neither shall the Building, the Condominium Property, nor any of the Common Elements and facilities be deemed to be a separate parcel for the purpose of taxation.

ARTICLE VIII
INSURANCE

The Association shall purchase, maintain in force and administer insurance coverage as provided by N.C.G.S. §47C-3-113, the terms and provisions of which are incorporated herein. In addition, the Association shall meet the following requirements regarding insurance:

(a) Property Insurance. All Common Elements of the Condominium (including all Limited Common Elements), except land, excavations, foundations and other items normally excluded by property insurance policies, shall be insured by the Association in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association, with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire, wind and hail, flood, and other hazards or risks covered by a standard extended coverage endorsement for similarly located properties.

(b) Liability Insurance. The Association shall acquire and maintain in full force and effect a policy of insurance which insures the Association against any liability arising out of the use, ownership, maintenance and control of the Common Elements, any commercial space leased or owned by the Association and any public rights-of-way within the Property, with limits of liability therefore of not less than One Million Dollars (\$1,000,000.00) per occurrence, which policy shall include an endorsement to cover liability of the Association to a single Unit Owner.

(c) Other Insurance. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association.

All contracts of property insurance purchased by the Association shall be for the benefit of all of the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized

representative as insurance trustee under this Declaration. Each Unit Owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the Unit Owner's undivided interest in the Condominium. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Subject to the provisions of N.C.G.S. §47C-3-113, proceeds of insurance received by the insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

- (i) Proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;
- (ii) Proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and
- (iii) Any remaining proceeds shall then be distributed to the beneficiary or beneficiaries of the trust, as their interests may appear.

(d) Insurance Obtained by Unit Owners. It shall be the responsibility of each Unit Owner, at such Unit Owner's expense, to maintain fire and extended property damage insurance on such Unit Owner's Unit and any personal property and furnishings, and to maintain public liability insurance covering such Unit Owner's Unit. In addition, a Unit Owner may obtain such other and additional insurance coverage on and in relation to the Unit Owner's Unit as the Unit Owner, in the Unit Owner's sole discretion, shall conclude to be desirable or reasonably obtainable. However, no such insurance coverage obtained by the Unit Owner shall operate to decrease the amount that the ASSOCIATION may realize under any policy maintained by the ASSOCIATION or otherwise affect any insurance coverage obtained by the ASSOCIATION or cause the diminution or termination of that insurance coverage. A Unit Owner shall be liable to the ASSOCIATION for the amount of such diminution of insurance proceeds to the ASSOCIATION resulting from insurance coverage maintained by the Unit Owner, and the ASSOCIATION shall be entitled to collect the amount of the diminution from the Unit Owner as if the amount were a Default Assessment, with the understanding that the ASSOCIATION may impose and foreclose a lien for the payment due. Any insurance obtained by a Unit Owner shall include a provision waiving the particular insurance company's right to subrogation against the ASSOCIATION and other Unit Owners, including Declarant should Declarant to the Unit Owner.

ARTICLE IX ASSESSMENTS

Assessments against Unit Owners by the Board of Managers made pursuant to this Declaration shall, if not paid when due, create a lien in favor of the ASSOCIATION against the Unit of the defaulting owner as provided in Chapter 47C, Section 47C-3-116 and Chapter 47A, both of the North Carolina General Statutes, and shall be collectable as provided therein.

The Unit Owners are bound to contribute pro rata, in accordance with those percentages set out on Exhibit D, attached hereto, which percentage is based on their percentage undivided interest in the Common Areas and facilities.

The Association shall establish an Annual Budget for each fiscal year in advance of the annual meeting. The budget shall project all common expenses for the forthcoming year. The proposed budget shall be provided to Members at least five days prior to the meeting. As approved, the budget shall be the basis for regular assessments for the Unit Owners. There shall be, at a minimum, an Annual Insurance Assessments due upon receipt of invoices for premiums for the master policies covering the Common Areas and facilities, and regular assessments for water for the irrigation system. If the Unit Owners so decide, Assessments may be made on a quarterly or monthly basis. Payments of assessments may be made either directly on invoices to the Association, or into an Association bank account used only for Association purposes, as decided by the Association.

The Association may collect assessments to be deposited into a "reserve fund" to be used only for repair, replacement and improvements to the Common Area and facilities, and for meeting insurance deductibles. Interest earned on the reserve fund may be used to fund current operations of the Association.

In the event Declarant pays for the first year's insurance premium(s), a prorata share of the first year's insurance premium (refunded to Declarant for the upfront payment of the first year's premium), all due at the closing of the initial purchase of each Unit.

Each Unit shall have separate water and sewer, electricity, trash collection, telephone, cable, and other utility billings. There will be a separate water meter for irrigation of the Common Area.

All assessments collected by the Association shall be the separate property of the Association. No assessments collected may be commingled with funds of either Unit Owner. No Member of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer their membership interest in the funds collected by the Association, other than as appurtenant to their sale of their Unit. When the owner of a Unit ceases to be a Member of the Association, the Association shall not be required to account to the Owner for any share of the assets of the Association.

The lien created by this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the lien of any assessment, except that the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of any assessment against the Unit that first became due prior to such sale or transfer.

Fees, charges late charges, fines and interest charged pursuant to the Act and this Declaration are enforceable as assessments under the Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the

assessment shall constitute a lien from the time of such filing. The ASSOCIATION'S lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina. The Trustee for such foreclosure shall be a person or entity appointed by the non-defaulting Unit Owner.

All monetary fines, penalties, interest or other charges or fees levied against a Unit Owner pursuant to this Declaration, or any expense of the ASSOCIATION that is the obligation of a Unit Owner or that is incurred by the ASSOCIATION on behalf of the Unit Owner pursuant to this Declaration, and any expense (including without limitation attorneys' fees) incurred by the ASSOCIATION as a result of the failure of a Unit Owner to abide by this Declaration, constitutes a **"Default Assessment,"** enforceable as provide in this Declaration below and in accordance with the Act. Any installment of an assessment, which is not paid when due, shall be delinquent. If such an assessment installment becomes delinquent, or if any Default Assessment is levied, the member of the ASSOCIATION other than the defaulting member may unilaterally cause the ASSOCIATION to take any or all of the following actions (in the non-defaulting member's sole discretion):

- (a) Assess a late fee for each delinquency equal to four percent (4%) of the amount due;
- (b) Charge interest from the date of delinquency at an interest rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the maximum legal rate allowed in the state of North Carolina per annum (the "Default Rate");
- (c) Suspend the voting rights of the Unit Owner or the right of the Unit Owner to use any recreational amenity of the Condominium during any period of delinquency;
- (d) Accelerate all remaining assessment installations for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- (e) Bring an action at law against any Unit Owner personally obligated to pay the delinquent assessment charges;
- (f) File a statement of lien with respect to the Unit and foreclose as set forth in more detail below.

Any assessment or portion thereof that is not paid when due shall be delinquent. If any delinquent assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the Default Rate and in addition, a late fee may be assessed as provided above. The non-defaulting member may bring an action in the name of the ASSOCIATION (and at the expense of the ASSOCIATION) against the Unit Owner personally obligated to pay the same, and may foreclose the lien against the Unit in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The non-defaulting member may cause the ASSOCIATION to bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments.

ARTICLE X
ARCHITECTURAL CONTROL

A. No Building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon the Condominium Common Area or Limited Common Area, nor shall any exterior addition or change therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved by unanimous approval of the Owners at a duly called meeting at which the Owners of both Units are present.

B. The exterior color of a Unit cannot be changed unless the color scheme of the entire Condominium is similarly changed. Any such change requires the unanimous approval of the owners at a duly called meeting at which the Owners of both Units are present.

ARTICLE XI
BINDING EFFECT

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the ASSOCIATION or the owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

ARTICLE XII
AMENDMENT

This Declaration may be amended at any time and from time to time by an instrument in writing executed by all the Owners of both Units of COTTAGES AT BIRMINGHAM, a Condominium, and shall be effective upon the recording of such Amendment(s) in the Office of the Register of Deeds for New Hanover County.

The parties hereto may file Supplemental Declarations from time to time authorizing, approving, and detailing the reconfiguration, renovation and remodeling of the Condominium Units, Common Elements, and Common Areas. In the event of any disagreement between the owners of the Units as to what is fair, proper and appropriate and in order to prevent a stalemate which would result in a detriment to all concerned parties it is agreed that any dispute or disagreement that can't be settled to the satisfaction of both Unit Owners within thirty days will be submitted to binding arbitration in accordance with the rules of Arbitration as set forth in North Carolina General Statute Chapter 1 Article 45C, the Revised Uniform Arbitration Act, and settled in that manner.

ARTICLE XIII
THE ASSOCIATION

A. Association Management Duties. Subject to the rights and obligations of the Owners as set forth in this Declaration and the Act, the ASSOCIATION shall be responsible

for the administration and operation of the Condominium and for the exclusive management, control, maintenance, repair, replacement and improvement of the Common Elements (including facilities, furnishings, and equipment related thereto) and the Limited Commons Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The expenses, costs and fees of such management operation, maintenance and repair by the ASSOCIATION shall be part of the assessments charged under Article IX herein, and prior approval of the Owners shall not be required in order for the ASSOCIATION to pay any such expenses, costs and fees. The officers of the ASSOCIATION will exercise for the ASSOCIATION all powers, duties and authority vested in or obligated to be taken by the ASSOCIATION and not reserved to the members by this Declaration, the Act, or other applicable law.

B. Common Elements. The ASSOCIATION will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained repaired or replaced by the Unit Owners to which the Limited Common Areas are allocated. The costs of such maintenance, repair and replacement shall be a Common Expense. All damage caused to a Unit or to a Limited Common Element by any work on or to the Common Elements done by or for the ASSOCIATION shall be repaired by the ASSOCIATION and the cost thereof shall be a part of the Common Expenses.

C. Membership. Every Unit Owner shall be a member of the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of any Condominium Unit. No Unit Owner, whether one or more persons, will have ore than one membership per Unit owned, but all of the persons owning each Unit will be entitled to rights of membership and use and enjoyment appurtenant to such ownership.

D. Transfer of Membership. A Unit Owner shall not transfer, pledge or alienate his Membership in the ASSOCIATION in any way, except upon the sale or encumbrance of the Unit, and then only to the purchaser of his Condominium Unit.

E. Class of Membership. The ASSOCIATION shall have one class of voting membership, composed of all Unit Owners including Declarant.

F. Voting Rights. Except as otherwise provided in the By-Laws, each member shall be entitled to vote in ASSOCIATION matters. Each Unit shall have one vote. 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 by one person or alternative persons as the Unit Owners among themselves determine. If more than one of the multiple owners is present at a meeting in person or by proxy, the vote allocated to their Unit may be cast only in accordance with the agreement of a majority in interest of the owners as evidenced by a written designation filed with the secretary of the ASSOCIATION. There is a majority agreement if any of the multiple owners casts the vote allocated to his Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.