

DECLARATION OF CONDOMINIUM  
HARBOR OAKS, PHASE ONE

Jul 25 11 12 AM '83

G E N E R A L I N D E X

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*Returned to*  
ROUNTREE, RYALS, JACKSON, SEAGLE & CARTER  
WILMINGTON NORTH CAROLINA 28402-1000

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION CREATING UNIT OWNERSHIP OF  
PROPERTY UNDER THE PROVISIONS OF  
CHAPTER 47A OF THE GENERAL STATUTES OF  
THE STATE OF NORTH CAROLINA  
HARBOR OAKS, PHASE ONE

THIS DECLARATION, made this the 18th day of July,  
1983, by COASTAL CAROLINA DEVELOPERS, INC., a North Carolina corporation,  
with its principal place of business located in the County of New Hanover,  
State of North Carolina, hereinafter referred to as "DECLARANT";

KNOW ALL BY THESE PRESENTS:

THAT, WHEREAS, the Declarant is the owner of record of the fee  
simple title of certain real property in the County of New Hanover, State  
of North Carolina, which is more particularly described in Exhibit "A"  
attached hereto and made a part hereof by reference; and

WHEREAS, the Declarant is the owner of the one multi-unit  
building and certain other improvements heretofore constructed upon the  
aforesaid property; and

WHEREAS, it is the desire and the intention of the Declarant to  
market, sell and convey interests in the property and the improvements  
thereon as a condominium project pursuant to the provisions of Chapter 47A  
of the North Carolina General Statutes, entitled "Unit Ownership Act"; and

WHEREAS, it is the desire and intention of the Declarant in the  
recordation of this DECLARATION in the Office of the Register of Deeds of  
New Hanover County, North Carolina, to submit said condominium project to  
the provisions of the said Chapter 47A;

NOW, THEREFORE, THE DECLARANT DOES HEREBY DECLARE THAT ALL OF  
THE REAL PROPERTY DESCRIBED IN EXHIBIT "A", ATTACHED HERETO AND MADE A  
PART HEREOF BY REFERENCE, AS WELL AS ALL OF THE IMPROVEMENTS CONSTRUCTED  
THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED,  
USED, OCCUPIED, AND IMPROVED SUBJECT TO THE FOLLOWING ARTICLES OF  
COVENANTS, CONDITIONS, RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS,  
ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE  
IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM  
UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A  
BENEFIT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, AND ANY PERSON OR  
ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND  
IMPROVEMENTS, OR ANY SUBDIVISION THEREOF, THEIR GRANTEEES, SUCCESSORS,  
HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

ARTICLE I.

Submission of Property

Pursuant to the provisions of Chapter 47A of the North Carolina  
General Statutes, Section 47A-2, the Declarant does hereby submit all of  
the real property described in Exhibit "A", attached hereto and made a  
part hereof by reference, together with all improvements thereon and  
described herein, to the provisions of the "Unit Ownership Act" of the  
State of North Carolina, which is codified as Chapter 47A of the General  
Statutes of the State of North Carolina.

ARTICLE II.

Definitions

For the purposes of this Declaration and the By-Laws of the  
Association, hereinafter defined, the following definitions for the term  
used herein and therein shall apply unless otherwise defined by the  
context thereof:

A. ACT shall mean and refer to the Unit Ownership Act, Chapter 47A of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

B. ASSOCIATION shall mean and refer to HARBOR OAKS HOMEOWNERS ASSOCIATION, INC., the mandatory association of all unit owners, as is more particularly described in Article VII hereinbelow.

C. ASSESSMENT shall mean and refer to a share of the funds required for the payment of the common expenses, hereinafter defined, of the Association which from time to time shall be levied or assessed against a unit owner by the Association, all as provided for hereinbelow.

D. BUILDING shall mean and refer to the single multi-unit building which the Declarant has constructed upon the real property described in Exhibit "A", to be used for residential purposes, as hereinafter provided. Attached hereto and made a part hereof by reference is Exhibit "C" which consists of a full and exact copy of the plans of the building as well as a survey of the real property, drawn by Jack G. Stocks, R.L.S., showing the location of the building thereon. Said building is more particularly described in the plans of said building, showing all particulars as required by law. In general, the building has eleven (11) stories built above a ground floor level situated on the finished grade. There are no basements. The building has a total of 65,804 gross square feet of heated area within the eleven levels or stories above ground level, with 6,110 gross square feet on the bottom floor, 6,074 gross square feet on each of floors two (2) through ten (10), both inclusive, and 5,028 gross square feet on the eleventh (11) or penthouse floor. The building has been subdivided into sixty-four (64) units, hereinafter defined, as well as the common areas and facilities, also hereinafter defined, of the building. The building is constructed principally of reinforced concrete and steel.

E. BOARD shall mean and refer to the Board of Directors of the Association and DIRECTOR shall mean and refer to a member of said Board.

F. BY-LAWS shall mean and refer to those By-Laws of the Association providing for the government of the Association as they are duly adopted and amended from time to time by the Association. A copy of the initial By-Laws are attached hereto as Exhibit "D" and made a part hereof by reference.

G. COMMON AREAS AND FACILITIES generally shall mean and refer to all of the real property, described on Exhibit "A", and all of the improvements and facilities thereon which are not units, as defined hereinafter, and which are not items of personal property owned, held, and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

1. All of the real property more particularly described in Exhibit "A" attached hereto, reference to which is hereby made for a more particular description thereof;
2. All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except nonload bearing partition walls wholly within a unit) of the building.
3. All stairways, stairwells and stairs, elevators, and their components which give access to the units; and all halls or passageways, and their entrances, giving access to the storage rooms located on the garage and storage level of the building situated on the finished grade;

4. All yard and garden areas, parking and drive areas, sidewalks, and swimming pool;
5. All installations of and facilities, apparatus, conduits, and equipment for the provision of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone irrigation, trash disposal, if any, and cable TV, if any, supplied for the common use and convenience of the unit owners, and which are not defined as part of the units, hereinbelow;
6. All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinafter defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.
7. The water softener and pool equipment room, the electrical room, the pump room, the fire control room and the office, all as shown on the plans attached hereto as Exhibit "C".

H. COMMON EXPENSES shall mean and refer to the total cost and expense incurred by the Association (as hereinafter provided) for the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the common areas and facilities as well as any other expense incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein and labeled as common expenses. Common expenses is additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association of unit owners as common expenses of the Association.

I. COMMON SURPLUS shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses. Any such common surplus shall be used to reduce the assessments for members for the following fiscal year of the Association, based upon the proposed budget for the Association for the following fiscal year, subject, however, to the terms of Article VIII, Paragraph C hereinafter set forth.

J. CONDOMINIUM shall mean and refer to the entire proposed development consisting of all the real property and the building, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith, which are intended to be submitted to the provisions of the act by this Declaration, and the supplements and amendments hereto, as are provided for hereinbelow.

K. DECLARANT shall mean and refer to COASTAL CAROLINA DEVELOPERS, INC., its successors and assigns.

L. DECLARATION shall mean and refer to this instrument as it may from time to time be lawfully amended or supplemented.

M. MAJORITY or MAJORITY OF UNIT OWNERS shall mean and refer to the owners of fifty-one percent (51%) of the aggregate interest in the common areas and facilities, as established by this Declaration hereinbelow, assembled at a duly called meeting of the unit owners.

N. PERSON shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

O. REAL PROPERTY shall mean and refer to all of the real property described in Exhibit "A" attached hereto and made a part hereof.

P. SINGULAR, PLURAL GENDER whenever the context so permits the use of the plural shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

Q. UNIT or CONDOMINIUM UNIT shall mean and refer to any one of those 64 subdivisions of enclosed space within the building, together with any additional areas or spaces accompanying the same as defined hereinbelow, and which are intended to or will be sold as dwelling units pursuant to the Act and this Declaration. The deed for any particular unit should convey such unit by its unit designation and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the covenants, conditions, restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

The 64 units of the buildings are and will be identified by their unit designations, which are as follows:

- (a) Units 1-A through 1-F, both inclusive,
- (b) Units 2-A through 2-F, both inclusive
- (c) Units 3-A through 3-F, both inclusive
- (d) Units 4-A through 4-F, both inclusive
- (e) Units 5-A through 5-F, both inclusive
- (f) Units 6-A through 6-F, both inclusive
- (g) Units 7-A through 7-F, both inclusive
- (h) Units 8-A through 8-F, both inclusive
- (i) Units 9-A through 9-F, both inclusive
- (j) Units 10-A through 10-F, both inclusive, and
- (k) Units P-1 through P-4, both inclusive

These units and their designations are shown upon the plans of the building attached hereto in Exhibit "C", which also shows graphically all particulars of the building and its 64 units, including, but not limited to, the layout, location, ceiling and floor elevations, dimensions of the units, and the layout and location of the common areas and facilities. Reference is hereby made to said plans for the purposes of identifying and locating each unit within the building, as well as identifying its dimensions, approximate areas, and number of rooms. No unit bears the same designation as any other. Any conflict between said plans and this definition shall be resolved by reference to the said plans, which shall control.

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

All units shall be substantially the same in construction and material. Each of the 64 units is wholly contained within one of the eleven levels or stories of the building.

There are seven (7) types of units, being defined as A, B, C, D, E, F and P Units. Each floor, with the exception of the top floor

shall have one A, one B, one C, one D, one E and one F unit. The top floor shall have four (4) P units.

(a) A Units - A units contain approximately 950 square feet and contain two bedrooms, two full baths, a kitchen and a living and dining room area.

(b) B Units - B units contain approximately 812 square feet and contain one bedroom, one full bathroom, a kitchen and a living and dining room area.

(c) C Units - C units with the exception of Unit 1-C contain approximately 1,185 square feet and contain two bedrooms, two full bathrooms, a kitchen, a living and dining room area, and a utility room. Unit 1-C contains approximately 850 square feet and contains one (1) bedroom, one (1) bathroom, and a living and dining room area and a kitchen.

(d) D Units contain approximately 589 square feet and contain one (1) bedroom, one (1) full bathroom, and a kitchenette, living and dining room area.

(e) E Units - E units contain approximately 1,113 square feet and contain two bedrooms, two full bathrooms, a kitchen and a living and dining room area.

(f) F Units - F units contain approximately 1,386 square feet and contain three bedrooms, two full bathrooms, a kitchen, a utility room and a living and dining room area.

(g) P Units - There are two types of P units, to wit, those containing approximately 1,625 square feet and those containing approximately 1,200 square feet. The eleventh (11) or penthouse floor shall contain two (2) 1,200 square foot units and two 1,625 square foot units. The 1,200 square foot units contain three (3) bedrooms, a kitchen, a living and dining area, two full bathrooms, a utility area and an entry hall. The 1,625 square foot units contain four (4) bedrooms or three (3) bedrooms and a den, two (2) full bathrooms, a kitchen, a living and dining area, a dressing room off the master bedroom, a utility room, a hallway and an entry hallway.

Each unit is hereby defined to also include:

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

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

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as a part

of the unit is defined as a part of the common areas and facilities of the condominium.

The specifics, such as style, construction, materials, and finishes of the building and its units are best described in the plans of the building which are shown in Exhibit "C", attached hereto and made a part hereof by reference, and which shall control in case of conflict with the provisions hereof.

R. UNIT DESIGNATION shall mean and refer to the letter and number combination which designates a unit within the condominium as the same is shown upon the plans of the building in Exhibit "C" attached hereto.

S. UNIT OWNER shall mean and refer to a person, corporation, partnership, association, trust, other legal entity, or any combination thereof, in whose name or names the title to or an interest in the title to any unit is vested, excluding those who own or hold such title or interest under the terms of any mortgage or deed of trust or other similar instrument for the purposes of securing the payment of an indebtedness or the performance of an obligation.

ARTICLE III.

Plan of Development and Scope of Declaration

The name by which this condominium project shall henceforth be known is HARBOR OAKS. The Declarant has caused to be constructed upon the real property described in Exhibit "A" the multi-unit building, containing the 64 units of the building as well as the common areas and facilities of both the building and the real property, all as defined hereinabove and as shown upon the plans contained in Exhibit "C" attached hereto and made a part hereof by reference. The units of the building, together with their privileges and appurtenances, shall be offered for sale to the public by the Declarant as condominium units pursuant to the provisions of Chapter 47A of the General Statutes of the State of North Carolina, subject to the covenants, conditions, restrictions, and obligations stated in the Articles of this Declaration, the Articles of Incorporation of the Association, its duly adopted By-Laws and its Rules and Regulations.

The Declarant, by this Declaration, submits only the real property described in Exhibit "A", attached hereto, together with the improvements thereon, to the Act and hereinafter this submission shall be referred to as HARBOR OAKS, PHASE ONE. Nevertheless, the Declarant hereby reserves to itself the exclusive right and option, but not the obligation, to add to or expand the property subject to this Declaration by the addition of all or any portion or portions of the real property described on Exhibit "B", attached hereto and made a part hereof by reference, in one or more additional phases of HARBOR OAKS upon the following terms and in the following manner:

A. Any addition of real property subject to this Declaration, if any, shall occur only by the registration in the Office of the Register of Deeds of New Hanover County, North Carolina, of one or more supplements to this Declaration, which shall be executed only by the Declarant. The addition to or expansion of the real property subject to this Declaration shall be at the sole discretion of the Declarant without consultation with or consent of any unit owner. Every unit owner in HARBOR OAKS, all phases, by accepting a deed for a unit therein, shall be deemed to have agreed for himself, his heirs, devisees, successors and assigns to such addition to or expansion of the property subject to this Declaration in accordance with the provisions of this Article; and

B. The right and option as described hereinabove shall terminate on the 31st day of December, 1988; and

C. In the event the Declarant adds to the real property subject to this Declaration all of the real property described in Exhibit "B" attached hereto, the Declarant covenants and agrees that no more than

a total of two hundred (200) units will be added to the sixty-four (64) units in HARBOR OAKS, PHASE ONE; and

D. In the event the Declarant adds to the real property subject to this Declaration any portion or portions of the real property described in Exhibit "B", attached hereto, the Declarant covenants and agrees that with respect to any such portion the density of units shall not exceed an average of 64 units per acre; and

E. The Declarant covenants and agrees that all buildings containing units built upon the real property which may be subjected to this Declaration under this Article shall be not more than eighteen (18) stories in height ground level situated upon finished grade level and which shall be constructed with materials like or substantially similar to those used in HARBOR OAKS, PHASE ONE; and

F. It is understood and declared that the undivided fractional or percentage interest owned by each unit owner of units in HARBOR OAKS, PHASE ONE, in the common areas and facilities of HARBOR OAKS, PHASE ONE, is as stated in Article IV hereunder. However, it is further declared that in the event the Declarant, pursuant to the provisions of this Article, adds to or expands the property, and therefore the number of units, unit owners, and common areas and facilities subject to this Declaration and the jurisdiction of the Association, then consequently the fractional or percentage interest owned by each unit owner of units in HARBOR OAKS, all phases, in the expanded common areas and facilities of HARBOR OAKS, all phases, shall necessarily have to change from that as established in Article IV hereunder. It is further understood that the Act provides that the fractional or percentage undivided interest of each unit owner in the common areas and facilities as expressed in any Declaration shall have a permanent character and shall not be altered except with the unanimous consent of all unit owners expressed in an amended Declaration duly recorded. Therefore, in the event the Declarant adds to or expands the property subject to this Declaration, pursuant to this Article, then every unit owner of units in HARBOR OAKS, any phase, by the acceptance of the deed for his unit shall be deemed to have specifically agreed for himself, his heirs, devisees, successors and/or assigns that the Declarant shall have the exclusive right and power, as attorney-in-fact for every unit owner, to establish the undivided fractional or percentage interest of each such unit owner in the expanded common areas and facilities of HARBOR OAKS, all phases, as well as the right and power to establish the undivided fractional or percentage interest in the expanded common areas and facilities of HARBOR OAKS, all phases, to be appurtenant to additional units of HARBOR OAKS, and, therefore, (a) the liability of each unit owner for common expenses, not specifically assessed, (b) the interest of each unit owner in any common surplus, and (c) the voting rights in the Association of each unit owner; which such undivided fractional or percentage interests shall be stated in any supplement to this Declaration required to be executed and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in order to expand or add to the property subject to this Declaration as is provided for hereinabove. It is hereby declared and agreed that the Declarant shall establish said undivided interests without prior consultation with or consent of any unit owner of any unit in HARBOR OAKS, any phase; and, that, the Declarant covenants and agrees to establish such undivided fractional or percentage interests for all units at such times as may be necessary pursuant to this Article in the proportions that the then fair market value of each unit, new and existing, as shall be determined solely by the Declarant, bears to the then aggregate fair market value of all units on the date of the supplemental declaration, or declarations. In determining such fair market value for any additional unit added to or made subject to this Declaration, Declarant may use the offering or purchase price of such unit or the fair market value as established by any independent appraiser. In determining the fair market value of units previously subjected to the Declaration, the Declarant may use the value as then established for tax purposes by the appropriate authorities or the value established by any independent appraiser.

G. Nothing herein shall be deemed to limit or alter the Declarant's right, hereby reserved, to vary the internal layout, size, configurations of any units hereafter constructed so long as the Declarant substantially conforms with the provisions of this Article.

ARTICLE IV.

The Nature and Incidents of Unit Ownership

A. Each unit shall be conveyed and treated as an individual real property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common areas and facilities of HARBOR OAKS, PHASE ONE, and future phases, if any. The undivided interest in the common areas and facilities of HARBOR OAKS, PHASE ONE, appurtenant to each of the sixty-four (64) units of HARBOR OAKS, PHASE ONE, and the fair market value of each Unit on the date of this Declaration is shown on Exhibit "E" hereto attached and made a part hereof.

The proportional interest in the common areas and facilities that is appurtenant to each unit has been determined in a manner consistent with the Act.

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

C. The common areas and facilities shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners of units in HARBOR OAKS, PHASE ONE, for their use and the use of their immediate families, guests or invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of units. Notwithstanding anything above provided in this Article, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any unit, his family, guests and invitees, may be entitled to use the common areas and facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof and to establish rules and regulations concerning the use of the swimming pool and any other recreation area.

D. Recognizing that the proper use of a unit by an owner of owners is dependent upon the use and enjoyment of the common areas and facilities in common with the owners of all other units, and that it is in the interest of all owners that the ownership of the common areas and

facilities be retained in common by the owners, it is hereby declared that the proportional undivided interest in the common areas and facilities appurtenant to each unit shall remain undivided and no unit owner shall bring or have any right to bring any action for partition or division.

ARTICLE V.

Use Restrictions

A. Each unit is hereby restricted to single-family residential use by the owner hereof, his immediate family, guests, invitees and lessees; it being intended that no unit shall be sold or conveyed as a "time-share" or "interval ownership" unit.

B. No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas and facilities, which will increase the rate of insurance on the unit, or which will obstruct or interfere with the rights of other occupants of the other units or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit, or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

C. The use of common areas and facilities, by the owner or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

D. No owner of a 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, in their sole discretion, 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 (including painting or other decoration, or the installation of electrical wiring, television or radio antenna or any other objects, machines or air conditioning units which may protrude through the walls or roof of the condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No unit owner shall cause any object to be fixed to the common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the written consent of the Association being first had and obtained.

E. So long as the Declarant shall retain ownership of any units in any phase, it may utilize any such unit or units for sales offices, models or other usage for the purpose of selling units within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease.

F. The use of the condominium may be further restricted under the By-Laws of the Association, or its Rules and Regulations.

ARTICLE VI.

Easements

In addition to easements and rights established and/or reserved elsewhere in this Declaration, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

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

B. Each unit owner shall have an easement in common with the other owners of all units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors of the Association or their designee shall have the right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

C. The initial and subsequent Boards may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, 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 units and/or common areas and facilities and limited common areas and facilities; and, each unit owner hereby grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. 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 of units in all phases of HARBOR OAKS, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

E. The Declarant hereby reserves unto itself the right to grant easements over any of the common areas and facilities of this phase of HARBOR OAKS to be used for, by, or in connection with any other phases of HARBOR OAKS, which may hereafter be erected on the property described in Exhibit "B", pursuant to this Declaration, as may become necessary for the purpose of the Declarant, its grantee, lessee, successor, or assigns, servicing such adjacent phases with utility services, drainage and easements for ingress and egress and regress.

F. In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment upon the common areas and facilities or upon a unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally

destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such unit and/or common areas and facilities in accordance with this Declaration, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

ARTICLE VII.

The Association

To efficiently and effectively provide for the administration and maintenance of HARBOR OAKS, PHASE ONE, and future phases, if any, by the unit owners, a nonprofit North Carolina corporation known and designated as HARBOR OAKS HOMEOWNERS ASSOCIATION, INC. (hereinafter the "Association"), has been organized, a true copy of its Articles of Incorporation having been recorded in Book 1229 at Page 813 in the Office of the Register of Deeds of New Hanover County, North Carolina, and the provisions thereof are incorporated herein by reference. The Association shall administer the operation and management of the condominium, HARBOR OAKS, PHASE ONE, as well as future phases, if any, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and its duly adopted By-Laws. A true copy of the original By-Laws are attached hereto in Exhibit "D" and expressly made a part hereof by reference.

A. Declarant Control: Until December 31, 1986, or until such time as the first unit is deeded to a homeowner, whichever occurs first, the Board of Directors of the Association shall consist of those three (3) individuals appointed by the Declarant to the initial Board of Directors of the Association as stated in its Articles of Incorporation, or their successors or replacements, as provided for in the duly adopted By-Laws of the Association. Until said date, said Board shall exclusively be responsible for the total operation and management of the Association, exercising all powers, duties, and obligations thereof, free from interference or control by any and all unit owners; provided, however, that said Board shall manage and operate the Association in a manner consonant with the terms and conditions of this Declaration, any and all supplements or amendments hereto, the Association's Articles of Incorporation and its duly adopted By-Laws; provided, further, however, that the Declarant may by written notice to each unit owner at any time prior to the above-referenced date manifest its intention to cause the resignation of said Board of Directors at which time the initial meeting of the membership of the Association shall be called for the purpose of the election of a new Board of Directors of the Association from the membership thereof, who shall then become responsible for the operation and management of the Association.

B. Membership and Voting Rights: Membership and voting rights in the Association shall be as provided in Article VI of its Articles of Incorporation referred to and incorporated herein as stated hereinabove; membership being mandatory for all unit owners of all units in all phases of HARBOR OAKS.

C. Powers: The Association shall have all powers granted to it as stated in Article V of said Articles of Incorporation.

D. Common Expenses: The common expenses of the Association shall be shared by the unit owners in the same proportions that the undivided interest in the common areas and facilities appurtenant to each owner's unit bears to the total of all undivided interests in the common areas and facilities appurtenant to all units, and as assessment against the unit owners and their units as provided for hereinbelow.

E. Management and Maintenance:

1. The Association, as a common expense, shall be responsible for the maintenance, repair and replacement of all of the common areas and facilities, including those portions thereof which contribute to the support of the building or buildings, and all conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas and facilities, and 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 and facilities, 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 any act of a unit owner, his immediate 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, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, or invitees) shall be required to pay such portion of the cost of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement.
2. The Association shall have the right to make or cause to be made such alterations or improvements to the common areas and facilities which do not prejudice the rights of the owner of any unit in the use and enjoyment of his unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be common expenses to be assessed and collected from all of the owners of units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of a certain unit or units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the owner or owners of the unit or units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.
3. The Association may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. All the powers and duties of the Association necessary or convenient for such maintenance and management may be delegated to and vested in the manager by the Board of Directors, except such as are specifically required by this Declaration, the By-Laws, or the Unit Ownership Act, to have the approval of the Board of Directors or the Association. The manager is hereby further authorized to recommend the annual budget, and, upon approval thereof by the Board of Directors, make assessments for common expenses, and collect such assessments as provided in this Declaration and the By-Laws, subject

always to the supervision and right of approval of the Board of Directors.

4. Unit Owners Maintenance:

Every owner shall perform promptly all maintenance and repair work within his unit which, if omitted, would affect the condominium, either in its entirety or in a part belonging to other owners; every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each unit shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit. Such owner shall further be responsible and liable for the maintenance, repair, and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of his unit, including painting, decorating, 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 of a unit 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 costs of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. All glass doors, windowframes, panes and screens are a part of the respective units and shall be maintained by the respective unit owners.

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

5. Limitation of Liability: Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for injury or damage caused by

any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

F. Insurance:

1. Acquisition: Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association, as Trustee for the unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the 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 unit owners, the Association and their respective servants, agents, and guests. Each unit owner may obtain insurance, at his own expense, affording coverage upon his unit, 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 as that referred to above if the same is available.
2. Coverage: All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, or by ninety percent co-insurance coverage or by such other form of policy as the Board of Directors annually determines will most reasonably provide the funds necessary to repair or reconstruct the insured improvements. Such coverage shall afford protection against (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the real property, including, but not limited to, vandalism and malicious mischief.
3. Public Liability Insurance: Public liability insurance shall be secured by the Association in such amount and with such coverage as shall be deemed necessary by the Board of Directors, including, but not limited to, an endorsement to cover liability of the unit owners as a group or to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Directors or manager shall determine from time to time to be desirable or necessary.
4. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association and chargeable to the Association as a common expense.
5. Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The Board of Directors of the Association is hereby irrevocably appointed agent for each unit owner and his mortgagee as their interests may appear for the purpose of compromising and