

87
1-w
1456 0962

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF
PLEASURE ISLAND CONDOMINIUMS

RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

MAY 16 4 20 PM '89

JOSEPH H. LEVINSON and wife, THEODOSIA M. LEVINSON, hereinafter referred to as "Developer", do hereby make, declare, and establish this Declaration of Condominium as and for the plan of dwelling of ownership of PLEASURE ISLAND CONDOMINIUMS, being the property and improvements hereinafter described.

1. ESTABLISHMENT OF CONDOMINIUM. Joseph H. Levinson and wife, Theodasia M. Levinson, are the owners of the fee simple title to that real estate identified as Lot 2, Block 21, Carolina Beach Avenue, North Extension as recorded in Map Book 3, Page 50 which property is more particularly described on Exhibit A attached hereto and incorporated herein by reference. This 50-foot lot is presently occupied. The total living units, for purposes of condominium living units, will be six (6), with their supporting facilities and other pertinent improvements. The building will be constructed on wood piles which have been pressure impregnated and which have a minimum-tip diameter of eight inches. Pile length from tip to cut-off elevation will be a minimum of 20 feet and will develop a primarily end-bearing capacity of 25 tons per pile. Typical exterior finish will be stucco with wood frame walls. Units will contain carpet in living rooms and bedrooms and vinyl in kitchens and baths. Heating will be by means of heat pump with forced warm air under fiberglass ducts with controls. Air conditioning will be by Bryant 2 1/2 ton unit. There are no basements.

The property is presently a building and lot. The floor plan consists of three bedroom unit condominiums. No additional units will be built.

130
The property contains sufficient parking space to accommodate at least one automobile for each condominium unit. Each unit owner has the right to the use for one automobile of such space. Developer does hereby submit the above-described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (N. C. Condominium Act), and hereby declares the same to be a condominium to be known and identified as PLEASURE ISLAND CONDOMINIUMS (herein "Condominium").

2. SURVEY AND DESCRIPTION OF IMPROVEMENTS. Filed simultaneously herewith and expressly made a part hereof as "Exhibit E" (herein "Unit Ownership File"), consisting of _____ pages is a survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Condominium Units and Common Areas and Facilities, as said terms are hereinafter defined, and their respective locations and

RETURNED TO

Theodasia M. Levinson 458-5611

155194

1456 0963

approximate dimensions. Each Condominium Unit is identified by specific numerical designation on said Unit Ownership File, and no Condominium Unit bears the same designation as any other Condominium.

3. **DEFINITIONS.** The Condominium consists of Condominium Units and Common Areas and Facilities, as said terms are hereinafter defined.

A. Condominium Units as defined herein shall comprise the separate numerically identified Dwelling Units which are designated in said Unit Ownership File, excluding all spaces and improvements lying:

(1) Beneath the surface of the hardwood flooring material of all floors or concrete slabs at ground level.

(2) Beneath the interior surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions.

(3) Above the interior surfacing material of the ceilings and further excluding all pipes, ducts, wires, conduits, and other facilities for the furnishing of utilities and other services to Condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires and conduits through the interior surfacing material for walls and ceilings and subflooring surfacing material for floors. All pipes, ducts, wires, conduits, and other such facilities within the interior surfacing materials shall be a part of the respective Condominium Unit.

B. Common Areas and Facilities (herein "Common Property") shall comprise all of the real property, improvements, and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all the Owners of the Condominium Units. All water lines located outside of public rights-of-way which serve the units and all sanitary sewer lines located outside public easements and public rights-of-way which serve the units are common areas.

C. Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit to the exclusion of other Units and are designated as "Limited Common Areas and Facilities". Limited Common Areas and Facilities and the Condominium Units to which they are reserved are as follows:

All units have use of an area above ceiling joists but limited by a plane parallel to the attic rafters, as set forth in the Unit Ownership File. Storage rooms, patio and/or balcony appurtenant to each unit as shown in the Unit Ownership File.

The terms "Association of Unit Owners", "Building", "Common Areas and Facilities", "Common Expenses", "Common Profit", "Condominium", "Declaration", "Majority", or "Majority or Unit

1456 0964

Owners", "Person", "Property", "Recordation", "Unit", or "Condominium Unit", "Unit Designation", and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Section 1-1-3 of Chapter 47C of the General Statutes of North Carolina. "Common Expenses" shall be defined as follows:

A. All sums lawfully assessed against the unit owners by the association of unit owners;

B. Expenses of administration, maintenance, repair or replacement of the common areas and facilities;

C. Expenses agreed upon as common expenses by the association of unit owners;

D. Expenses declared common expenses by the provisions of this Chapter, or by the Declaration or the By-Laws;

E. Hazard insurance premiums, if required;

F. All ad valorem taxes and public assessments levied against the common areas.

4. OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTERESTS

COMMON PROPERTY. Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit shall be set out in Exhibit "B" attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each condominium Unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each Unit at the date of the Declaration bears to the then aggregate fair market value of all of the Units having an interest in the Common Property. The fair market value of each Unit and the aggregate fair market value of all the Units have been determined by the Developer, and are building upon all Unit Owners. The percentage of undivided interest in the Common Property assigned to each Condominium Unit shall not be changed except with the unanimous consent of all the Owners of the Condominium Units and with the consent of all of the Lenders holding their mortgages or deeds of trust on the Condominium Units.

5. RESTRICTIONS AGAINST FURTHER SUBDIVISION OF CONDOMINIUM UNITS: SEPARATE CONVEYANCE OF APPURTENANT COMMON PROPERTY

PROHIBITED. No Condominium Unit may be divided or subdivided into a smaller Unit or Units than as shown in the Unit Ownership File nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Property

1456 0965

appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered, or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Condominium Unit. Any conveyance, mortgage, or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null and void insofar as it purports to affect any interest in a Condominium Unit and its entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which described said Condominium Unit by the numerical designation assigned thereto in the Unit Ownership File shall be construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. No limitation is placed on the ownership of any Condominium Unit by any person as tenants in common, joint tenants, or as tenants by the entirety.

6. THE CONDOMINIUM SUBJECT TO RESTRICTIONS. The Condominium Units, common Property and Limited Common Areas are hereby declared to be subject to the restrictions, easements, conditions, and covenants prescribed and established herein governing the use of said Condominium Units, Common Property, and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each condominium Unit and its appurtenant undivided interest in the Common Property, and said Condominium Units, conditions, and limitations now of record affecting the land improvements of the Condominium.

7. PERPETUAL NONEXCLUSIVE EASEMENT IN COMMON PROPERTY. The Common Property is hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the Owners of Condominium Units for their use and the use of their tenants, immediate families, guests and invitees, for all property purposes, and for the furnishing of services and facilities for which they are intended, and for the enjoyment of the Owners. Notwithstanding the foregoing, the association, hereinafter defined, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests, invitees, and tenants, may be entitled to use the Common Property, including the right to assign parking spaces, and to establish regulations concerning their use, provided that such regulations and such assignments are not inconsistent with the New Hanover County Code.

8. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. In the event that any Condominium Unit shall encroach upon any common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such condominium Unit shall exist for the continuance of such encroachment upon the Common Property or upon

a Condominium Unit for as long as such encroachment shall naturally exist; and, in the event that any portion of the Common Property shall encroach upon any condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium Unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction there exist encroachments or portions of the Common Property upon any Condominium Unit, or if any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

9. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON PROPERTY. Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property appurtenant to each Condominium Unit shall remain undivided, and no Unit Owner shall bring or have any right to bring any action for partition or division.

10. ADMINISTRATION OF THE CONDOMINIUM BY THE PLEASURE ISLAND HOMEOWNERS' ASSOCIATION, LTD. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, a nonprofit North Carolina corporation known and designated as PLEASURE ISLAND HOMEOWNERS' ASSOCIATION, LTD. (hereinafter "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of said By-Laws and Articles of Incorporation are annexed hereto and expressly made a part hereof as Exhibits "C" and "D", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property; such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such condominium Units, regardless of how such ownership may be divested. No person, firm, or corporation holding any lien, mortgage, or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage, or other encumbrance, to

1456 0967

membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, amend, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest.

11. RESIDENTIAL USE RESTRICTIONS APPLICABLE TO CONDOMINIUM Units. Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invitees, and leasees. No Unit Owner may lease less than the entire Unit. Any lease agreement must provide that it shall be subject to the provisions of this Declaration, and that any failure by the leasee to comply with the terms hereof shall be a default under the lease, and shall be in writing. No leases shall be entered into by a unit owner for a term of less than thirty (30) days. All such occupancy must conform with the New Hanover County Code.

12. USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION. The use of all Common Property by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established by the Association.

13. THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES: RESTRICTION AGAINST NUISANCES. No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other condominium Unit or the Common Property.

14. RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES AND FOR MAINTENANCE OF COMMON PROPERTY. In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, shall have the right to enter such condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Whenever it may be necessary to enter any Condominium Unit for the purpose of remedying or alteration or repair to any portion of the Common Property, the Owner of each condominium Unit shall permit other Owners or their representatives, or an agent of the Association, to enter such Condominium Unit for such purpose, provided that entry shall be made only at reasonable

1456 0968

times and with reasonable advance notice.

15. LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS: NO RIGHT TO ALTER COMMON PROPERTY. No Owner of a condominium Unit shall permit any structural modification or alteration to be made to such Condominium 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 improvement 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 or machines 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 obtained. Storm windows and doors, balcony and pation awnings and enclosures shall be allowed on a unit by unit basis, provided, however, that the style and materials of such improvements shall be subject to te prior written approval of the Board of Directors. No Unit Owner shall cause any object to be fixed to the common Property or to any Limited Common Area (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Property or Limited Common Area without the written consent of the Association being first obtained; such consent shall be measured considering the harmony of the Condominium.

16. RIGHT OF ASSOCIATION TO ALTER AND IMPROVE THE COMMON PROPERTY AND ASSESSMENT THEREFOR. The Association shall have the right to make such alterations or improvements to the Common Property which do not prejudice the rights of the Owner or any Condominium Unit in the use and enjoyment of his condominium Units, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and their costs shall be common expenses to be assessed and collected from all of the Owners of the Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting them, then the cost of such alterations or improvements shall be charged against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the charge to be levied in such proportion as may be determined by the Board of Directors of the Association.

17. MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS. Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to

other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may endanger. The Owner of each condominium Unit shall be liable and responsible for the maintenance, repair, and replacement of all heating and air conditioning equipment, stove, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings, and floors within his Unit, including painting, decorating, and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium 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 Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. The Owner of a Condominium Unit who has exclusive use of any Limited Common Area shall maintain such at his own expense. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners, except as set forth in provision 3A hereinabove.

18. MAINTENANCE AND REPAIR OF COMMON PROPERTY BY THE ASSOCIATION. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring, and other facilities located in the common Property for the furnishing of utility and other services to the Condominium Units and said Common Property, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a condominium Unit Owner, his immediate family, tenants, 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, tenants, 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.

19. INSURANCE AND AUTHORITY TO PURCHASE INSURANCE. Insurance policies upon the Property (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 Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner shall obtain insurance at his own expense, affording coverage upon his Condominium 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 for subrogation referred to above if available.

20. INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE PROCEEDS.

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

1. Casualty insurance covering the buildings and all improvements upon the land as described in Exhibit "A" and all personal property of the Association, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to the maximum insurance replacement value thereof (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company on a coinsurance basis of not less than eighty percent (80%). Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to the buildings similar in construction, location and use, including vandalism and malicious mischief.

2. 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,

nonowned automobile, and off-premises employee coverage.

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

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

C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgages, 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 mortgagees in the following shares:

(1) Proceeds on account of damage to Common Property: in undivided shares for each Condominium Unit Owner and his mortgagee, if any, which shares are shown on Exhibit "B".

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

(a) 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;

(b) 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 Exhibit "B".

D. 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 no mortgagee shall have the right to participate in the determination of reconstruction or repair.

E. 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:

(1) If the damage for which the proceeds were paid is to be repaired, reconstructed, the proceeds shall be paid to defray the costs. 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.

(2) 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, 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.

F. Each Unit Owner, at his expense, shall keep in force comprehensive personal liability insurance covering liability for damages to person or property of others located within such Owner's Unit, or another Unit, or upon the Common Area and Facilities in such amounts as in the Board of Directors shall from time to time determine, but in no case less than \$100,000.00 for each occurrence.

G. Fidelity bonds shall be required by the Board of Directors for all directors, officers, managers, trustees, and employees of the Association, volunteers, and any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, taking into consideration the regulations and guidelines of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, as they may be amended from time to time. The premiums on such bonds shall be paid by the Association as a common expense.

21. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE: DAMAGE TO COMMON PROPERTY: DAMAGE TO CONDOMINIUM UNITS.

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

(1) Partial destruction shall be destruction of two-thirds (2/3) or less of the Building. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all of the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair.

(2) Total destruction shall be destruction if more than two-thirds (2/3) of the Building. In the event of total destruction, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Condominium Unit Owners who own three-fourths (3/4) or more of the Building vote against reconstruction or repair.

(3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

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

(1) Immediately after casualty causing damage to property for which the Association has the responsibility for

1456 0973

maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty.

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

C. Each Condominium Unit Owner delegates to the Board of Directors of the Association his right to adjust with insurance companies all leases under policies purchased by the Association, except in any case where the damage is restricted to one Condominium Unit.

22. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEE

The Association shall maintain a Register setting forth the names of the names of the Owners of all the Condominium Units. In the event of the transfer of any Condominium Unit to a third party the transferee shall notify the Association in writing of his interest in such Condominium Unit, together with the recording information necessary to identify the instrument by which the transferee has acquired his interest. The Owner of each Condominium Unit shall also notify the Association of the parties holding any mortgage on any Condominium Unit, the amount of such mortgage and the recording information necessary to identify the mortgage. The holder of any mortgage upon any Condominium Unit may notify the Association of the existence of any mortgage, and the Association shall register in its records all pertinent information relating thereto.

23. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT. The Association is give the authority to administer the operation and management of the Condominium as being in the best interest of the Owners of all Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses (herein "common expense"). To provide the funds necessary for such proper taxes, operation, management, and capital improvement, the Association has been granted the right to make, levy, and collect assessments against the Unit Owners and their Condominium Units. In furtherance thereof, the following provisions shall be operative and binding upon the Owners of all Condominium Units:

A. All assessments levied against the Unit Owners and their Condominium Units shall be uniform, and unless specifically otherwise provided for herein, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall the same ratio to the total assessment made against all Unit Owners and their Condominium Units as the undivided interest in Common Property appurtenant to each Condominium Unit bears to the total undivided interest in Common Property appurtenant to all Condominium Units ((Exhibit B). Should the Association be the

1456 0974

owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned, and the assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interest in the Common Property, exclusive of the interest therein appurtenant to any Unit or Units owned by the Association.

B. Assessments provided for herein shall be payable in monthly installments, or in such other manner as the Board of Directors of the Association shall determine. Such assessments shall commence for each Unit on December 31, 1989, unless the Board of Directors of the Association decides to assess monthly dues before this date.

C. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management, and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph D hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies shall be delivered to each Owner of a Condominium Unit, and the assessment for said year shall be established based upon such budget, although the non-delivery of a copy of it to each Owner shall not affect the liability of any Owner for such assessment. A majority of the Owners must approve an increase in the assessment by an amount greater than the percentage increase in the Consumer Price Index compiled by the Bureau of Labor Statistics of the United States Department of Labor from January 1 of the prior year to January 1 of the current year. Any notice provisions for calling a meeting to increase assessment above the Consumer Price Index (or its successors) shall be in accordance with Paragraph 26(A) of this Declaration.

D. The Board of Directors of the Association, in establishing the Annual Budget for operation, management, and maintenance of the Condominium, shall designate a sum to be collected and maintained as a reserve fund for replacement of capital improvements to the Common Property (herein "Capital Improvement Fund") which shall be for the purpose of enabling the

Association to replace structural elements and mechanical equipment constituting a part of the Common Property, and the replacement of personal property constituting a portion of the Common Property held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvements Fund may be established by the Board of Directors to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and shall be used only to make capital improvements to Common Property. Any interest earned on the Capital Improvement Fund may not be expended for current operation and maintenance.

E. All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating and managing the condominium, or to the proper undertaking of all acts and duties imposed upon it by this Declaration, the Articles of Incorporation, and the By-Laws of the Association. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer his membership interest herein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the Condominium.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of its due date. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the highest rate allowed by law until paid in full to the Association.

G. The Owner or Owners of each condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of

1456 0976

collecting such assessment or installment and interest thereon, including reasonable attorney's fees, whether suit be brought or not.

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

I. Recognizing that proper operation and management of the Condominium requires the continuing payment of cost and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such common expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure the funds due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure all costs and expenses, including reasonable attorney's fees, which may be incurred by the Association in enforcing this lien upon said Condominium Unit. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to reasonable rental from the Owner of any Condominium Unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said condominium Unit. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its liens or encumbrances, including interest at twelve percent (12%) on any such advances so made. All persons, who shall acquire any interest in the ownership of any Condominium Unit, or who may be given or acquire a lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights. The Association, by or through its duly elected officers or Board of Directors, shall have the right to bid in any unit at any foreclosure sale.

J. The lien herein granted to the Association is recorded in the office of the Clerk of Superior Court of New Hanover County in the same manner as provided in Article 8 of Chapter 44 of the General Statutes and shall be enforceable from the time of recording a claim of lien in the Public Records of New Hanover County, North Carolina (hereafter the "Public Registry"), which claim shall state the description of the