

APR 23 4 02 PM '85

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS  
AND UNIT OWNERSHIP OF  
WINDSWEPT II VILLAS**

THIS DECLARATION, made this 19th day of April, 1985, by HUNT BUILDING COMPANY, a North Carolina corporation, hereinafter referred to as "Declarant";

**WITNESSETH:**

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

54 BEING all of WINDSWEPT II VILLAS as shown on the map thereof recorded in Condominium Plat Book 7 at Pages 31 & 32 of the New Hanover County Registry.

NOW, THEREFORE, Declarant hereby submits the above described property to villa ownership pursuant to North Carolina General Statutes 47A-13 and hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DESCRIPTION OF BUILDINGS.** The Declarant has constructed or will construct, upon the property described above, a two-story building with two (2) villas to be used for residential purposes. The two stories are located above the ground level which contain parking and storage areas. A plat of survey by Jack G. Stocks, Registered Land Surveyor, showing the location of said building is hereto attached as Exhibit "A" and incorporated by reference. The building is of wood construction, contains 3,252 square feet and is divided into two (2) units. The building is constructed on raised wood pilings. The two (2) units are designated on Exhibit "A" hereto attached as Units A and B. Each unit or villa (as used herein, the word "villa" shall be used interchangeably with and shall have the same meaning as the word "villa" or "townhouse") contains 8 rooms, 1,626 square feet and has access to all of the general common area designated on the above referenced Plat. The two (2) units share a common interior wall which separates the two units. Each unit is two stories in height, and is bounded as to horizontal and vertical boundaries as follows: By the interior surfaces of its perimeter walls, two story ceiling and the land lying beneath the unit as shown on the referenced plat.

The general common areas and facilities are shown on Exhibit "A" and Exhibit "B" hereto attached. Each villa owner will receive with the conveyance of his villa an undivided one-half interest in the general common area and facilities.

The limited common areas and facilities are also shown on Exhibit "A" and Exhibit "B" hereto attached. Each villa owner will receive a one-half undivided interest and the exclusive right to possession of the limited common areas designated for use by his villa.

**ARTICLE II**

**USE RESTRICTIONS.** The use of the property shall be in accordance with the following provisions:

A. Each of the villas shall be occupied only by a family for residential and for no other purposes. No villa may be divided or subdivided into a smaller villa nor any portion thereof sold or otherwise transferred, but each villa may be rented by the owner thereof.

B. The common areas and elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the villas.

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C. No use or practice shall be permitted on the villa property which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No villa owner shall permit any use of his villa or of the Common Elements which will increase the rate of insurance upon the villa property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No single rooms may be rented.

D. Reasonable regulations concerning the use of the villa property may be made and amended from time to time by **WINDSWEPT II VILLAS ASSOCIATION** (herein referred to as the "Association") in the manner provided by its By-Laws. Copies of the By-Laws and regulations are attached hereto and incorporated herein by reference.

### ARTICLE III

**EASEMENTS.** Each of the villa owners shall have an easement in common with the other villa owner to use common facilities, including but not limited to all sewer lines located in the other villa and serving his villa. Each villa shall be subject to an easement in favor of the owner of the other villa to use all common facilities serving such other villas and located in such villa. The Association shall have the right to be exercised by the Board of Managers or its Designee, to enter each villa from time to time, at reasonable hours as may be necessary for the operation of the property, to inspect the same, to remove violations therefrom, and to maintain, repair or replace the common facilities, if any, contained therein or else therein the building.

In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any villa, or any villa encroaches upon any other villa, or any villa encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such villa or common elements so encroaching shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any villa or in favor of the owners of the common elements if such encroachment occurred due to the wilfull conduct of said owner or owners.

The Declarant hereby reserves and subjects the lands which are the subject to this Declaration to an easement of use and enjoyment by the owners and occupants of the respective villas for ingress and egress to and from all of the common areas and facilities pertaining to **WINDSWEPT II VILLAS**. Easements are also hereby created for the installation, use, maintenance, repair and replacement of all necessary public utilities, including but not limited to sewer, water lines, gas, electricity, telephone and cable television for the use of the above described property.

Each villa and the property included in the Common Areas shall be subject to an easement for encroachments created by construction, reconstruction, settlement or shifting of the bulkheads and retaining walls and the tie lines for the bulkheads and retaining walls on the property of **WINDSWEPT VILLAS YACHT CLUB**, and to an easement in favor of the Yacht Club for the operation and maintenance of a commvillay sprinkler system serving all of the villas in **WINDSWEPT I, II and III VILLAS**, and to an easement in favor of the Yacht Club for the exterior maintenance of all of the villas as set forth in the Declaration of Covenants, Conditions and Restrictions of **WINDSWEPT VILLAS YACHT CLUB** recorded or to be recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

Easements for pedestrians only for ingress and egress over the common areas shown on Exhibit A hereto attached are hereby reserved by Declarant and granted to **WINDSWEPT VILLAS YACHT CLUB** and the members thereof for access to their boat dock facility from U.S. Highway 76 (Causeway Drive).

All easements herein created and described shall be easements appurtenant to, and shall run with the land by whomsoever owned, whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon the undersigned, all its grantees and their respective heirs, successors, personal representatives or assigns.

**ARTICLE IV.**

**ENFORCEMENT.** The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

**ARTICLE V.**

**NOTICE.** The name and address of the process agent to receive service of process in any matters affecting the property is as follows:

Mr. Robert L. Tillman  
614 Hillview Drive  
Wilmington, NC 28405

**ARTICLE VI.**

**TAXES.** Each individual villa and its one-half undivided interest in the common areas and facilities shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each villa holder shall be liable solely for the amount of taxes against his individual villa and undivided interest in the common areas and facilities and shall not be affected by the consequence resulting from the tax delinquency of any other villa holder. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for the purposes of taxation.

**ARTICLE VII.**

**ASSESSMENTS.** Assessments against villa owners by the Board of Managers made pursuant to the By-Laws shall, if not paid when due, create a lien in favor of the Association against the villa of the defaulting owner as provided in Chapter 47A of the North Carolina General Statutes, and shall be collected as provided therein and in the By-Laws hereto attached.

**ARTICLE VIII.**

**LIENS.** All liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage or deed of trust given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any villa or villas, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to recordation to the said first lien mortgage or deed of trust in the Office of the Register of Deeds of New Hanover County, North Carolina.

**ARTICLE IX.**

**FIRST REFUSAL.** Each of the villa owners agree and covenant with and between each other that in the event that the owners of either villa offer to sell their respective villa that said owner will give to the other owner the right of first refusal to purchase said villa and that in such event the sale price for said villa shall be the amount of any bona fide offer made by a prospective purchaser and acceptable to the owners offering the villa for sale. Such right of first refusal shall expire thirty (30) days from date of offer to said other owner.

**ARTICLE X.**

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

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ARTICLE XL

AMENDMENT. This Declaration may be amended at any time by an instrument in writing executed by the owners of both units 1 and 2 of WINDSWEPT II VILLAS and shall be effective upon the recording of such amendment in the Office of the Register of Deeds of New Hanover County.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its corporate name and its corporate seal affixed by its duly authorized officers all the day and year first above written.

HUNT BUILDING COMPANY

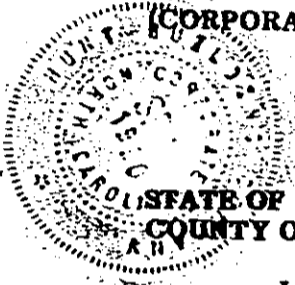
BY:

*W. H. Andrews*  
President

ATTEST:

*Sally K. Hunt*  
Assistant Secretary

(CORPORATE SEAL)



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Laura R. Andrews, a Notary Public in and for the aforesaid County and State do hereby certify that Sally K. Hunt personally appeared before me this day and acknowledged that she is the (Assistant) Secretary of HUNT BUILDING COMPANY, a corporation, and that by authority duly given and as the act of the said corporation the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its (Assistant) Secretary.

WITNESS my hand and notarial seal, this the 19<sup>th</sup> day of April, 1985.

My Commission Expires:

June 30, 1989



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

*Laura R. Andrews*  
Notary Public

The foregoing certificate of Laura R. Andrews, Notary Public is certified to be correct. This the 23 day of April, 1985.

REBECCA P. TUCKER  
Register Of Deeds - New Hanover County

By *Mary Sue Dato*  
Deputy Assistant

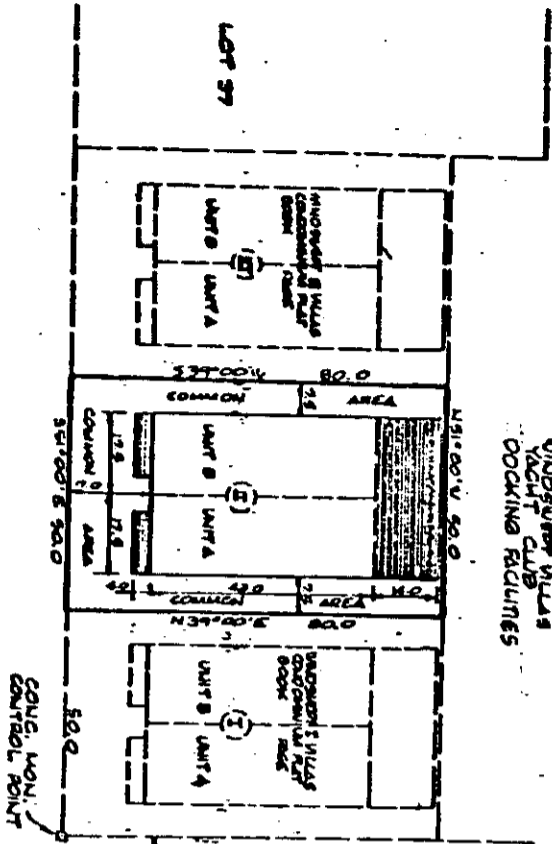
SURVEY REF:  
PART OF LOT 28  
AND BOOK 7 PAGE 74

JACK G. STOCKS  
REGISTERED LAND SURVEYOR  
VICTIMINGTON, N.C.

# WINDSWEPT II VILLAGES

VIRGINIA BEACH  
NEW HANOVER COUNTY  
NORTH CAROLINA  
SCALE 1" = 20'  
APRIL 1985

U. S. HIGHWAY # 76



CERTIFICATION BY SURVEYOR: THE UNDERSIGNED AN ENGINEER  
DULY REGISTERED TO PRACTICE UNDER THE LAWS OF THE STATE OF  
NORTH CAROLINA HEREBY CERTIFIES THAT THESE PLANS AND TITLE  
WINDSWEPT II VILLAGES PERTAINING TO UNIT B, UNIT C AND  
SITE PLAN AND A SET OF RECORDS AND PLATS, RECORD MAP AND  
PORTIONS OF THE PLATS OF THE BUILDING AS FILED WITH AND APPROVED  
BY VICTIMINGTON BEACH, THE BUILDING DEPARTMENT OF THE  
LAYER, LOCALITY BEACH, THE BUILDING DEPARTMENT OF THE  
DIVISIONS OF THE UNITS AS BUILT.

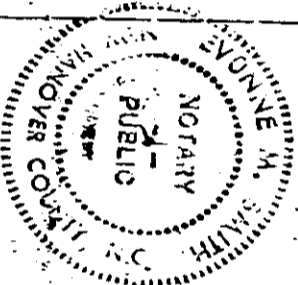
DAVID B. SIMS, JR., P.E., U.C. REGISTRATION NO. 7138  
VICTIMINGTON, BEACH, N.C.

CERTIFICATE OF OWNERSHIP AND DESIGNATION

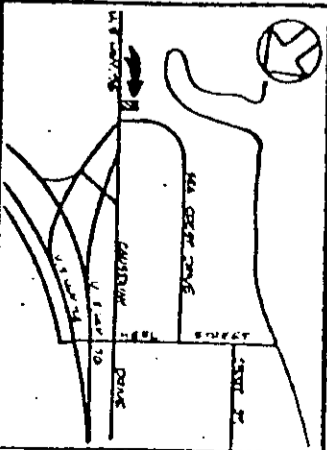
I, HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED  
HEREON AND THAT I ACCORD HERETO THE FULL AND COMPLETE TITLE AND SOLE  
RIGHTS AND OTHER RIGHTS AND RESOURCES TO THE UNITS AS BUILT.

4-18-85  
DATE

W. A. Williams  
OWNER(S)



LOCATION MAP  
NOT TO SCALE



CERTIFICATE OF SURVEY AND ACCURACY

I, JACK G. STOCKS, CERTIFY THAT THE SURVEY (UNDER MY SUPERVISION)  
SHOWN ON THESE PLANS WAS ACCURATELY MADE AND THAT THE  
MEASUREMENTS WERE MADE BY ME OR UNDER MY CLOSE PERSONAL  
SUPERVISION AND THAT THE INSTRUMENTS USED WERE CALIBRATED BY  
THE BUREAU OF STANDARDS OF THE NATIONAL BUREAU OF STANDARDS  
AND THAT THE SURVEY WAS MADE IN ACCORDANCE WITH THE  
STANDARD PRACTICES OF THE SURVEYING PROFESSION IN NORTH  
CAROLINA AND THAT THE SURVEY WAS MADE IN ACCORDANCE WITH  
THE STANDARD PRACTICES OF THE SURVEYING PROFESSION IN NORTH  
CAROLINA.

JACK G. STOCKS  
REGISTERED LAND SURVEYOR

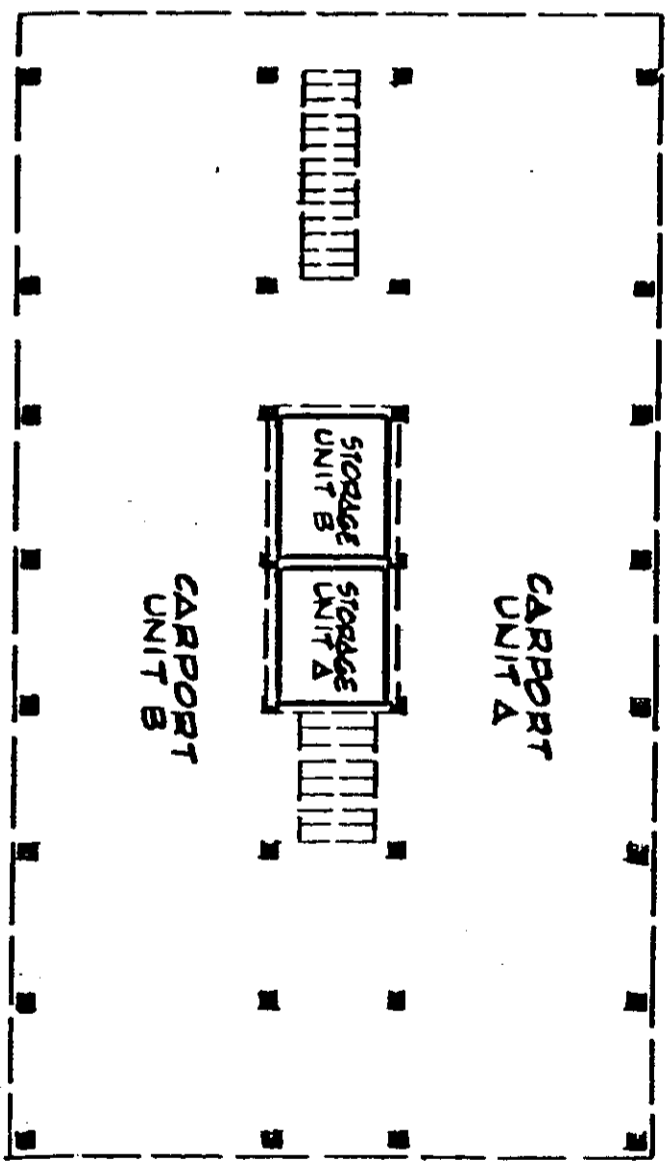
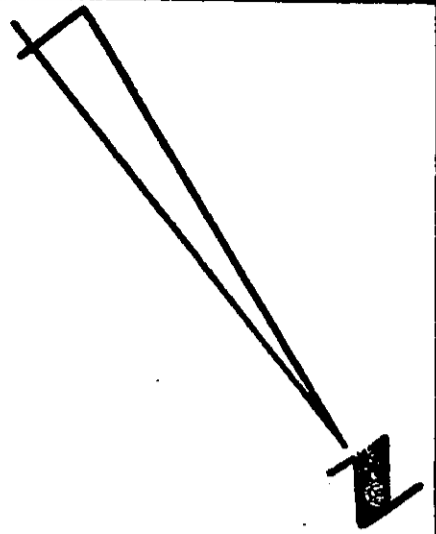
I, YVONNE M. SMITH, CERTIFY THAT THE SURVEY (UNDER MY SUPERVISION)  
SHOWN ON THESE PLANS WAS ACCURATELY MADE AND THAT THE  
MEASUREMENTS WERE MADE BY ME OR UNDER MY CLOSE PERSONAL  
SUPERVISION AND THAT THE INSTRUMENTS USED WERE CALIBRATED BY  
THE BUREAU OF STANDARDS OF THE NATIONAL BUREAU OF STANDARDS  
AND THAT THE SURVEY WAS MADE IN ACCORDANCE WITH THE  
STANDARD PRACTICES OF THE SURVEYING PROFESSION IN NORTH  
CAROLINA AND THAT THE SURVEY WAS MADE IN ACCORDANCE WITH  
THE STANDARD PRACTICES OF THE SURVEYING PROFESSION IN NORTH  
CAROLINA.

YVONNE M. SMITH  
NOTARY PUBLIC

CERTIFICATE OF REGISTRATION BY REGISTER OF DEEDS  
NORTH CAROLINA  
NEW HANOVER COUNTY  
FILED FOR REGISTRATION OF THE  
RECORD MAP AND RECORDS PERTAINING TO  
WINDSWEPT II VILLAGES

CERTIFICATE OF REGISTRATION BY REGISTER OF DEEDS  
NORTH CAROLINA  
NEW HANOVER COUNTY  
FILED FOR REGISTRATION OF THE  
RECORD MAP AND RECORDS PERTAINING TO  
WINDSWEPT II VILLAGES

EV-4, b. 1 "P"  
SHEET 1 OF 4



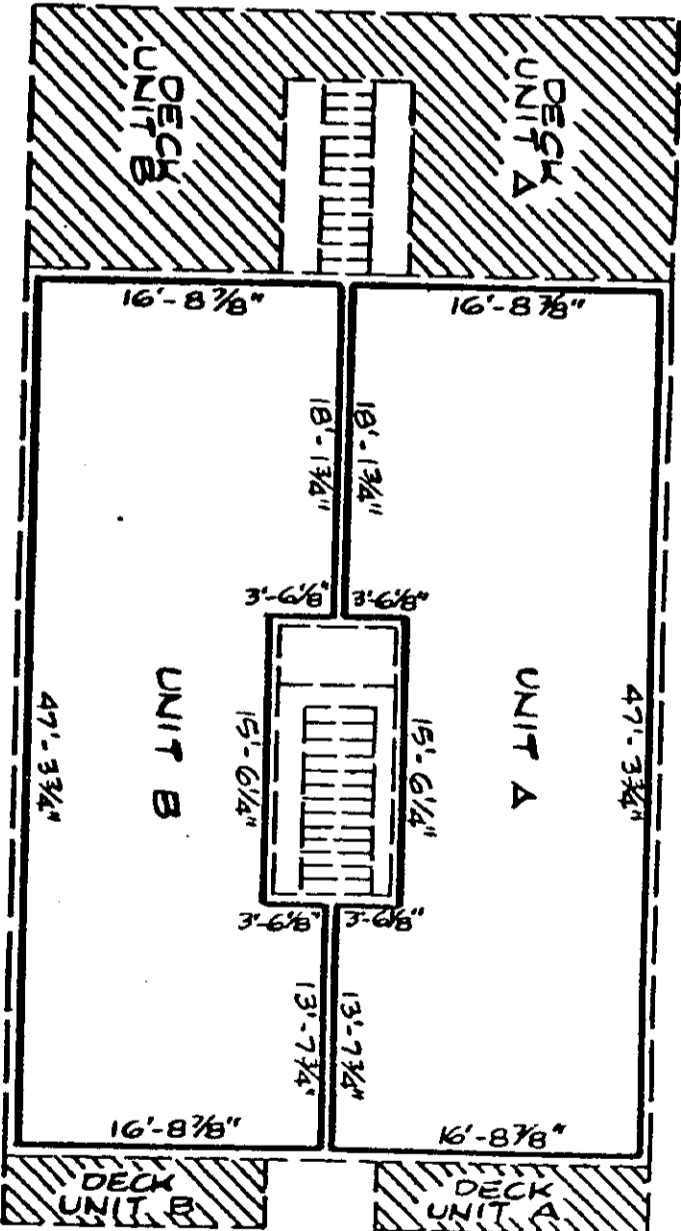
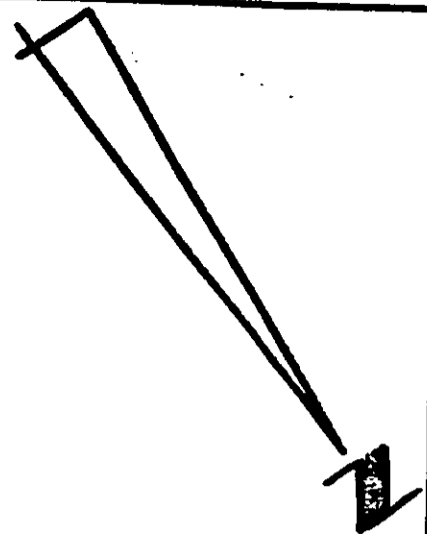
# GROUND LEVEL PLAN

----- INDICATES COMMON AREAS & STRUCTURAL BOUNDARIES  
////////// INDICATES LIMITED COMMON AREAS  
||||| INDICATES STAIRS  
CONCRETE FINISH FLOOR ELEVATION = 9.8  
CEILING ELEVATION = 16.6  
CARPORTS & STORAGE ARE LIMITED COMMON AREAS

## WINDSWEPT II VILLAS

WRIGHTSVILLE BEACH, N.C.

DAVID B. SILLIS, JR., P.E.  
N.C. REGISTRATION NO. 7136  
WRIGHTSVILLE BEACH, N.C.



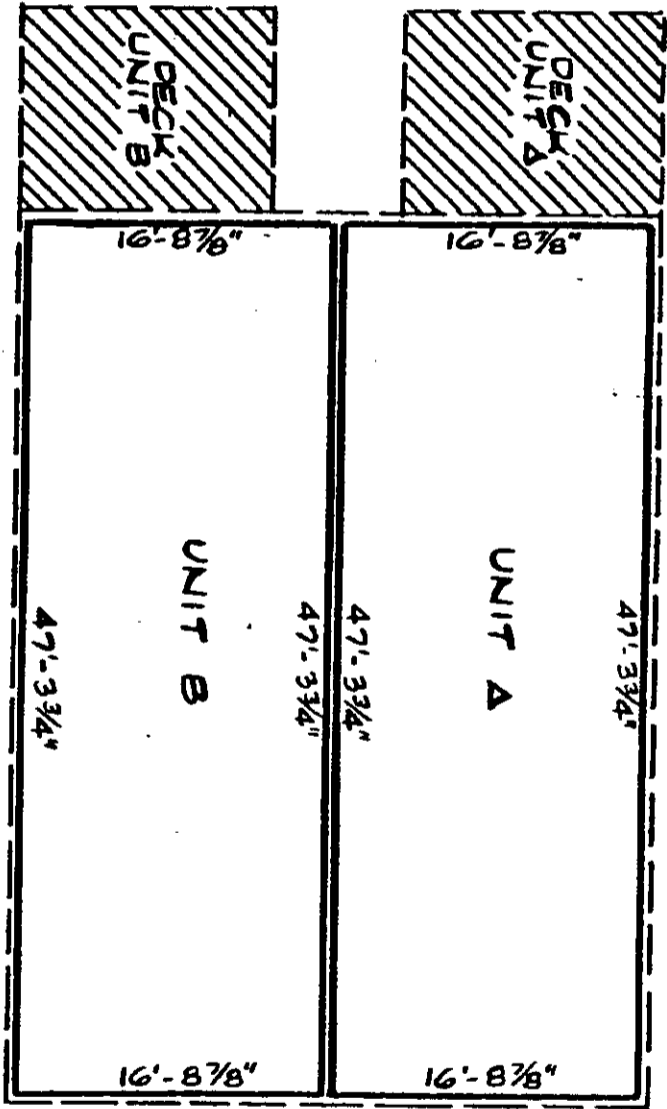
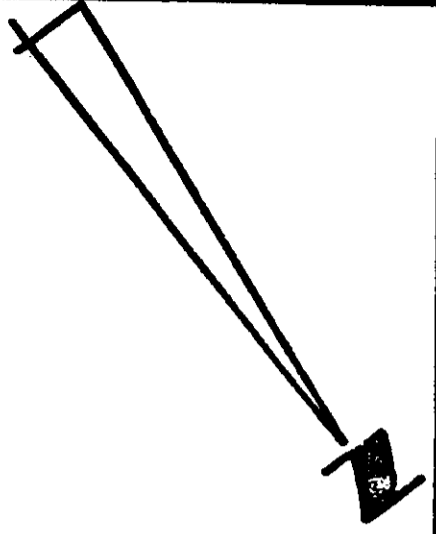
**FIRST FLOOR PLAN**

- INDICATES BOUNDARY LINE OF UNITS
- - - - - INDICATES COMMON AREAS & STRUCTURAL BOUNDARIES
- //// //// INDICATES LIMITED COMMON AREAS
- ||||| INDICATES STAIRS
- FINISH FLOOR ELEVATION = 17.6
- CEILING ELEVATION = 25.6

**WINDSVEPT II  
VILLAS**

WRIGHTSVILLE BEACH, N.C.

DAVID B. SIMS, JR., P.E.  
N.C. REGISTRATION NO. 7138  
WRIGHTSVILLE BEACH, N.C.



# SECOND FLOOR PLAN

- INDICATES BOUNDARY LINE OF UNITS
  - - - - INDICATES COMMON AREAS & STRUCTURAL BOUNDARIES
  - ////// INDICATES LIMITED COMMON AREAS
- FINISH FLOOR ELEVATION = 26.6.  
 CEILING ELEVATION = 34.6

## WINDSWEPT II VILLAS

WRIGHTSVILLE BEACH, N.C.

DAVID B. SIMS, JR., P.E.  
 N.C. REGISTRATION NO. 7138  
 WRIGHTSVILLE BEACH, N.C.

**BY-LAWS  
OF  
WINDSWEPT II  
VILLAS ASSOCIATION**

**ARTICLE I**

Section 1. **TITLE TO VILLA UNITS.** Title to villas may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants, or as tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 2. **APPLICABILITY OF BY-LAWS.** The provisions of these By-Laws are applicable to **WINDSWEPT II VILLAS**, and its common elements and to the use and occupancy thereof. The term **WINDSWEPT II VILLAS** and its common elements as used herein shall include the land, the building and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith.

Section 3. **APPLICATION.** All present and future owners, mortgagees, lessees, and occupants of villas and their employees and any other persons who may use the facilities in any manner are subject to these By-Laws, the Declaration and Rules and Regulations pertaining to the use and operation of the villa Property. The act of occupancy of a villa shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

Section 4. **OFFICE.** The office of the Owners Association and of the Board of Managers shall be located at 306 Causeway Drive, Wrightsville Beach, North Carolina, 28480.

**ARTICLE II**

**BOARD OF MANAGERS**

Section 1. **NUMBER AND QUALIFICATION.** The affairs of the villa Property and the Owners Association shall be managed by a Board of Managers. The Board of Managers shall be composed of two (2) persons, each of whom shall be an owner or spouse of an owner of a separate villa, or in the case of partnership owners or mortgagees, shall be members or employees of such partnership, or in the case of corporate owners or mortgagees, shall be officers, shareholders, or employees of such corporations or in the case of fiduciary owners or mortgagees shall be the fiduciaries, or officers or employees of such fiduciaries.

Section 2. **POWERS AND DUTIES.** The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the villa and Common Elements except such powers and duties as by law or by these By-Laws may not be delegated to the Board of Managers by the villa owners. The powers and duties to be exercised by the Board of Managers shall include, but not be limited to, the following:

- A. Operation, care, upkeep and maintenance of the common elements;
- B. Determination of the amounts required for operation, maintenance and other affairs of the villas and Common Elements.
- C. Collection of the common charges from the villa owners;
- D. Employment and dismissal of personnel as necessary for efficient maintenance and operation.
- E. Adoption and amendment of rules and regulations covering the details of the operation and use of the villas and Common Elements;
- F. Opening of bank accounts on behalf of the Owners Association and designating the signatures required therefor;
- G. Obtaining insurance for the villas, and Common Elements pursuant to the provisions of Article V, Section 2 hereof; and

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H. Making repairs, additions, and improvements to, or alterations of, the property and repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

Section 3. **ELECTION AND TERM OF OFFICE.** The Board of Managers shall be elected at the first annual meeting of the villa owners, the term of office of the members of the Board of Managers shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Managers, his successor shall be elected to serve for a term of three (3) years. The members of the Board of Managers shall hold office until their respective successors shall have been elected by the villa owners.

Section 4. **VACANCIES.** Vacancies in the Board of Managers caused by any reason shall be filled by vote of a majority of the owners of the villa to be represented at a special meeting of that villa's owners held for that purpose promptly after the occurrence of any such vacancy. Each person so elected shall be a member of the Board of Managers for the remainder of the term of the member so removed.

Section 5. **ORGANIZATION MEETING.** The first meeting of the members of the Board of Managers following the annual meeting of the villa owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the villa owners at the meeting at which such Board of Managers shall have been elected and no notice shall be necessary to the newly elected members of the Board of Managers in order legally to constitute such meeting, providing a majority of the whole Board of Managers shall be present.

Section 6. **REGULAR MEETINGS.** Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Managers, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Managers shall be given to each member of the Board of Managers, by mail or telegraph, at least three business days prior to the day named for such meeting.

Section 7. **SPECIAL MEETINGS.** Special meetings of the Board of Managers may be called by any board member on three business days' notice to each member of the Board of Managers given by mail or telegraph, which notice shall state the time, place and purpose of the meetings.

Section 8. **WAIVER OF NOTICE.** Any member of the Board of Managers may, at any time, waive notice of any meeting of the Board of Managers in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Managers at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 9. **QUORUM OF BOARD OF MANAGERS.** At all meetings of the Board of Managers, all members thereof must attend to constitute a quorum for the transaction of business, and the votes of all of the members of the Board of Managers shall constitute the decision of the Board of Managers. If at any meeting of the Board of Managers there shall be less than a quorum present, the Board members present may at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 10. **COMPENSATION.** No member of the Board of Managers shall receive any compensation from the Association for acting as such.

Section 11. **DEADLOCK.** Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

**ARTICLE III.****MEETINGS OF VILLA OWNERS**

**Section 1. PLACE.** All meetings of the villa owners shall be held at the office of the Association or such other place as may be stated in the notice.

**Section 2. ANNUAL MEETINGS.**

A. The annual meetings of the villa owners shall be held at Wrightsville Beach, North Carolina, in each year commencing in 1985, provided, however, that the first annual meeting will not be held until 30 days after the earlier of (1) the sale of all Condominium Property by the Declarant; (2) notice by Declarant, or if not sooner held, the meeting shall be held on the first Friday in December, 1985. At such meeting each villa owner shall elect a member of the Board of Managers. Regular annual meetings subsequent to 1985 shall be held on the 3rd Saturday in June of each succeeding year. At such meeting the Board of Managers shall be elected by ballot of the villa owners in accordance with the requirements of Section 4 of Article II of these By-Laws.

B. Regular annual meetings subsequent to 1985 shall be held on the 3rd Saturday in June of each succeeding year unless otherwise determined by the Board of Managers.

C. All annual meetings shall be held at such hour as is determined by the Board of Managers.

D. At the annual meeting, the members shall elect the new members of the Board of Managers and transact such other business as may properly come before the meeting.

**Section 3. SPECIAL MEETINGS.** It shall be the duty of the President to call a special meeting of the villa owners if so directed by resolution of the Board of Managers or upon a petition signed and presented to the Secretary by villa owners owning a total of at least fifty percent of the common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. The business transacted at all special meetings shall be confined to the objects stated in the notice unless the Board of Managers unanimously consents to the transaction of business not stated in the notice.

**Section 4. NOTICE OF MEETINGS.** The Secretary shall mail to each villa owner of record a notice of each annual or special meeting of the villa owners, at least ten days but not more than twenty days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the building or at such other address as such villa owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this section shall be considered service of notice.

**Section 5. ADJOURNMENT OF MEETINGS.** If any meeting of villa owners cannot be held because a quorum has not attended, a majority in common interest of the villa Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not more than forty-eight hours from the time the original meeting was called.

**Section 6. ORDER OF BUSINESS.** The order of business at all meetings of the villa Owners shall be as follows:

- A. Roll Call;
- B. Proof of Notice of Meeting;
- C. Reading of minutes of preceding meeting;
- D. Reports of Officers;
- E. Report of Board of Managers;
- F. Reports of Committees;
- G. Election of members of the Board of Managers (when so required);

H. Unfinished business; and

L. New business.

**Section 7. VOTING.** The owner or owners of each villa, or some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner, shall be entitled to cast the votes appurtenant to such villa at all meetings of villa owners. The designation of any such proxy shall be made in writing to the Secretary, and shall be revocable at any time by written notice to the Secretary by the Owner or Owners so designating. The total number of votes of all villa Owners shall be 2 and each villa owner shall be entitled to cast one vote at all meetings of the villa owners. A fiduciary shall be the voting member with respect to any villa owned in a fiduciary capacity.

**Section 8. MAJORITY OF VILLA OWNERS.** As used in these By-Laws the term "majority of villa owners" shall mean those villa owners having one hundred per cent of the total authorized votes of all villa owners in person or by proxy and voting at any meeting of the villa owners, determined in accordance with the provisions of Section 7 of this Article.

**Section 9. QUORUM.** Except as otherwise provided in these By-Laws, the presence in person or by proxy of villa owners having one hundred per cent of the total authorized votes of all villa owners shall constitute a quorum at all meetings of the villa owners.

**Section 10. MAJORITY VOTE.** The vote of a majority of villa owners at a meeting at which a quorum shall be present shall be binding upon all villa owners for all purposes except where a higher percentage vote is required by law, or by these By-Laws.

**Section 11. DEADLOCK.** Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

#### ARTICLE IV.

##### OFFICERS

**Section 1. DESIGNATION.** The principal officers of the Owners Association shall be the President and Secretary and Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary. The President and Secretary and Treasurer must be members of the Board of Managers.

**Section 2. ELECTION OF OFFICERS.** Officers shall be elected annually by the Board of Managers.

**Section 3. REMOVAL OF OFFICERS.** Upon the affirmative vote of a majority of the members of the Board of Managers, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Managers or at any special meeting of the Board of Managers called for such purpose.

**Section 4. PRESIDENT.** The President shall be the chief executive officer of the Owners Association. He shall preside at all meetings of the villa owners and of the Board of Managers. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the Business Corporation Law of the State of North Carolina including but not limited to the power to appoint from among the villa owners any committee which he decides is appropriate to assist in the conduct of the affairs of the Owners Association.

**Section 5. SECRETARY.** The Secretary shall keep the minutes of all meetings of the villa owners and of the Board of Managers; he shall have charge of such books and papers as the Board of Managers may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the Business Corporation Law of the State of North Carolina.

Section 6. **TREASURER.** The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Managers, and he shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the Business Corporation Law of the State of North Carolina.

Section 7. **AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC..** All agreements, contracts, deeds, leases and other instruments of the Association shall be executed by the President and Secretary of the Association and checks are to be executed by such person or persons as may be designated by the Board of Managers.

Section 8. **COMPENSATION OF OFFICERS.** No officer shall receive any compensation from the Association for acting as such.

## ARTICLE V.

### OPERATION OF THE PROPERTY

Section 1. **DETERMINATION OF COMMON EXPENSES AND COMMON CHARGES.** The Board of Managers shall from time to time and at least annually, prepare a budget for the Association, determine the amount of the common charges required to meet the common expenses of the Association and allocate and assess such common charges against the villa owners according to their respective common interests. The common expenses shall include, among other things, all insurance premiums and expenses related thereto required to be maintained by the Board of Managers pursuant to the provisions of Section 9 of this Article V. The common expenses may also include such amounts as the Board of Managers may deem proper for the operation, maintenance, repair or replacement of the Common Elements including, without limitation, an amount for working capital of the Association, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year, and any other expenses designated by the Board of Managers as common expenses.

Section 2. **LIABILITY FOR COMMON CHARGES.** All villa owners shall be obligated to pay the common charges assessed by the Board of Managers pursuant to the provisions of Section 1 above at such times and in such manner as may be directed by the Board.

A. **SELLER'S LIABILITY.** No villa owner shall be liable for the payment of any part of the common charges assessed against his villa from and after the date of closing of the sale, transfer, or other conveyance by him of such villa.

B. **PURCHASER'S LIABILITY.** A purchaser of a villa shall be liable for the payment of any common charges assessed against such villa prior to its acquisition by him, except that a mortgagee or a purchaser of a villa at a foreclosure sale shall not be liable for and such villa shall not be subject to a lien for the payment of common charges assessed prior to the foreclosure sale.

Section 3. **COLLECTION OF ASSESSMENTS.** The Board of Managers shall at least annually take prompt action to collect from a villa owner any assessment for common charges which remains unpaid by him for more than thirty days from the due date for its payment.

Section 4. **DEFAULT IN PAYMENT OF COMMON CHARGES.** In the event of default by any villa owner in paying to the Board of Managers the assessed common charges, such villa owner shall be obligated to pay interest at the legal rate on such common charges from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board of Managers in any proceeding brought to collect such unpaid common charges. The Board of Managers shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action brought against such villa owner, or by foreclosure of the lien on such villa which is hereby granted by all villa owners in favor of the Association for the enforcement of payment of delinquent common charges.

**Section 5. FORECLOSURE OF LIENS FOR UNPAID COMMON CHARGES.**

In any action brought by the Board of Managers to foreclose a lien on a villa because of unpaid common charges, the villa owner shall be required to pay a reasonable rental for the use of his villa and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect such rental. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 6. STATEMENT OF COMMON CHARGES.**

The Board of Managers shall promptly provide any villa owner, who makes a request in writing with a written statement of his unpaid common charges.

**Section 7. ABATEMENT AND ENJOINING OF VIOLATIONS.**

The violation of any rule or regulation adopted by the Board of Managers or the breach of any By-Law contained herein, shall give the Board of Managers the right, in addition to any other rights set forth in these By-Laws: (a) to enter the villa in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting villa owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Managers shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**Section 8. MAINTENANCE AND REPAIR.**

**A. INDIVIDUAL VILLAS.**

All maintenance of and repairs to each individual villa, structural or non-structural, ordinary or extraordinary, (other than maintenance of and repairs to any common elements contained therein not necessitated by the negligence, misuse, or neglect of the owner of such villa) shall be made by the owner of such villa. Each villa owner shall be responsible for all damages to any other villa and to the common elements resulting from his failure to effect such maintenance and repairs.

**B. COMMON ELEMENTS.**

All maintenance, repairs, and replacements to the common elements, whether located inside or outside of the villas (unless necessitated by the negligence, misuse, or neglect of a villa owner, in which case, such expense shall be charged to such villa owner), shall be made by the Board of Managers and be charged to all the villa owners as a common expense.

**Section 9. INSURANCE.**

The Board of Managers on behalf of the Association, at its common expense, shall at all times keep **WINDSWEPT II VILLAS** insured against loss or damage by fire, flood or other hazards normally insured against at 100% of replacement cost, and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the property and as shall be required to protect not only the villa Owners but any lending institution holding first liens on individual units which insurance shall be payable in case of loss to the Board (or its designee) as Trustee for all Villa Owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interest as their interest may appear. The Trustee so named shall have the authority on behalf of the Association and Villa Owners to deal with the insurer in the settlement of claims.

Such insurance shall be obtained without prejudice to the right of each individual Unit Owner to insure his personal property for his own benefit and any Unit Owner or Occupant may obtain additional insurance at his own expense; provided, however, that no owner or occupant shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Managers or its Designee) as Trustee for all the owners, may realize under any insurance policy in force on the project at any particular time. In no event shall the insurance coverage obtained by the Board of Managers (or its Designee) be brought into contribution with insurance purchased by individual owners or their mortgagees.

**Section 10. DAMAGE OR DESTRUCTION.**

Except as hereinafter provided, damage to or destruction of the property or building shall be promptly repaired and restored by the Board using the proceeds of insurance for that purpose, and the Unit Owners of each unit shall be liable for assessment of one-half (1/2) of any deficiency in accordance with their ownership of one-half (1/2) undivided interest in the common areas and facilities; provided, however, if the building shall be more than three-fourths (3/4) destroyed by fire or other casualty, as determined by the Board of Managers, and all of the owners of the units resolve not to proceed with construction or restoration, then and in that event:

A. The property shall be deemed to be owned as tenants in common by the unit owners with the owner of each unit owning an undivided one-half (1/2) interest in all of the property.

B. Any liens affecting any of the units shall be deemed to be transferred, in accordance with the existing priorities, to the percentage of undivided interest of the unit owner in the property as herein provided.

C. The property shall be subject to an action for partition at the suit of any unit owner, in which event, the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided equally between the unit owners in accordance with their previously owned undivided interest in the common areas and facilities, after paying off, out of the respective shares of the unit owners, all liens on the respective units.

Section 11. USE OF VILLAS. In order to provide for congenial occupancy of the villas and for the protection of their values the use of the villas shall be subject to the following limitations:

A. The villas shall be used for residences only.

B. No portion of a villa other than the entire villa unit may be rented.

Section 12. ADDITIONS, ALTERATIONS, OR IMPROVEMENTS BY BOARD OF MANAGERS. Whenever in the judgment of the Board of Managers the common elements shall require additions, alterations, or improvements costing in excess of \$500.00, and the making of such additions, alterations, or improvements shall have been approved by the unit owners, the Board of Managers shall proceed with such additions, alterations, or improvements and shall assess all unit owners for the cost thereof as a common charge. Any additions, alterations or improvements costing \$500.00 or less may be made by the Board of Managers without approval of the unit owners.

Section 13. ADDITIONS, ALTERATIONS OR IMPROVEMENT BY UNIT OWNERS. No unit owner shall make any structural addition, alteration or improvement in or to his Unit without the prior written consent thereto of the Board of Managers. The Board of Managers shall have the obligation to answer any written request by a unit owner for approval of a proposed structural addition, alteration, or improvement in such owner's villa within 30 days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Managers to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any villa shall be executed by the Board of Managers. The Board of Managers shall not be liable to any contractor, subcontractor, or materialman or to any person sustaining personal injury or property damage, for any claim arising in connection with such addition, alteration or improvement.

Section 14. LIMITED COMMON AREAS. The area shown and designated as Limited Common Areas on the plat of the villas duly recorded in the office of the Register of Deeds of New Hanover County will be treated in all respects as the general common area or common elements except that the sole use and control of said limited common areas shall be in the owner of the unit to which said Limited Common Area is appurtenant as designated on said map.

Section 15. DESCRIPTION OF COMMON ELEMENTS. The Common Elements consist of the entire property not located within any unit. They include, without limitation, the following:

A. All roofs, foundations, pipes, ducts, flues, chutes, conduits, wires, and other utility installations to outlets, bearing walls, perimeter walls, columns, and girders to the interior surfaces thereof, regardless of location;

B. All land, lawns, gardens, docks, piers, roads, parking and other improved or unimproved areas not within the units, except for those areas designated as limited common areas.

C. All installations of power, lights, and water existing for common