

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

SEP 17 4 45 PM '82

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

THIS DECLARATION, made this the 17<sup>th</sup> day of SEPTEMBER,  
19 82, by DRIFTWOOD VILLAS DEVELOPMENT CORPORATION, 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 MEN 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

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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.

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ARTICLE II.Definitions

For the purposes of this Declaration and the By-Laws of the Association, hereinafter defined, the following definitions for the terms 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 the DRIFTWOOD VILLAS 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 M. F. UNDERWOOD, R.L.E., 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 is of wood frame construction, consisting of three (3) floors built above a storage and garage level situated on the finished grade. There are no basements. The building has a total of 11,430 square feet of heated area within the three (3) levels or stories above the garage and storage level, with 3,810 square feet on each level. The building has been subdivided into eighteen (18) units, hereinafter defined, as well as the common areas and facilities of the building hereinafter defined. The building has been constructed of concrete, wood with 5/8 inch cedar reverse board and batten siding, and fiberglass shingle roofing.

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 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.

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.

J. CONDOMINIUM shall mean and refer to the entire proposed development consisting of all of 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 DRIFTWOOD VILLAS DEVELOPMENT CORPORATION, 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 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 eighteen (18) 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 shall 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 deeds for certain units, as hereinafter defined, shall include a garage unit or storage unit on the ground level of the building.

The eighteen (18) units of the building are and will be identified by their unit designations, which are Units A-1 through A-6, B-1 through B-6, and C-1 through C-6, 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 eighteen (18) units, including, but not limited to, the layout, location, ceiling, and floor elevations, dimensions of the units, and the area and location of the common areas and facilities. Reference is hereby made to said plans for the purpose 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 units' perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings, and floors of the additional areas conveyed as part of each unit as defined hereinbelow for such encroachments as are contained in the building whether the same now exist for or may be caused or created by existing construction, settlement, or movement of the building, or by permissible repairs, construction, or alteration.

The first level of units shall be the "A" level, the second level shall be the "B" level, and the third level shall be the "C" level. There shall be six (6) units on each level.

Units A-1, B-1 and C-1 shall be designated "The Seagull" and shall each contain 722 square feet, two (2) bedrooms and two (2) bathrooms.

Units A-2 and A-4, B-2 and B-4, and C-2 and C-4 shall be designated "The Sandpiper" and shall each contain 588 square feet, one (1) bedroom and one and one-half (1 1/2) bathrooms.

Units A-3 and A-5, B-3 and B-5, and C-3 and C-5 shall be designated "The Egret" and shall each contain 609 square feet, one (1) bedroom and one and one-half (1 1/2) bathrooms.

Units A-6, B-6 and C-6 shall be designated "The Pelican" and shall each contain 694 square feet, one (1) bedroom, a den and two (2) bathrooms.

Each of the eighteen units shall have a living-dining area, kitchen, and one open-air deck as shown on the plans in Exhibit "C". The deck is located adjacent to the living-dining area of each unit, and access to

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each such deck is provided by a six (6) foot wide sliding glass door.

Adjacent to each deck shall be an outside storage area which shall be part of each unit and which shall contain, in addition to storage space, utility connections and space for installation of a "stacked" washer/dryer unit.

Each of the eighteen (18) units shall have other facilities, such as storage and/or linen closets, as shown on the attached plans for a particular unit designation.

The decks of each unit are bounded horizontally by the interior finished surface of the floor and ceiling overhangs of the decks and are bounded vertically by the interior finished surface or interior plan of either the deck railings or perimeter walls of the decks. The outside storage room is bounded both horizontally and vertically by the interior or finished surface of its ceiling, floor and perimeter walls.

Located within the garage and storage level situated upon the finished grade of the building are eighteen lockable storage rooms as shown upon the plans. Each unit is hereby defined to include one of these storage rooms as a part of the unit. These storage rooms are designated A-1S through A-6S, B-1S through B-6S, and C-1S through C-6S, inclusive, as shown upon the plans. The storage room which is a part of any certain unit is the storage room whose designation corresponds to the unit designation of the unit of which it is a part; that is, Storage Room A-1S is a part of Unit A-1, Storage Room B-1S is a part of Unit B-1, Storage Room C-1S is a part of Unit C-1, and so on. Each storage room is bounded both horizontally and vertically by the interior finished surface of its perimeter walls, ceilings, floor and its closed entrance door.

Access to storage rooms A-1S through A-6S shall be through the door within the garage units A-1G through A-6G as shown on the attached plans, and described hereinbelow. Access to Storage units B-1S through B-6S and C-1S through C-6S, inclusive shall be from the common area as shown on the plans.

Located within the garage and storage level situated upon the finished grade are six (6) garages intended for passenger automobile storage. These garages are bounded both horizontally and vertically by the finished interior surfaces of their perimeter walls, ceilings, floors and closed garage door. The garage doors shall be of the overhead swinging type. The garages are designated upon the attached plans in Exhibit C as A-1G, A-2G, A-3G, A-4G, A-5G and A-6G, with each individual garages containing the number of square feet shown on the plans. The garage which is hereby defined as a part of any certain unit is the garage whose designation corresponds to the unit designation of the unit of which it is a part; that is, Garage A-1G is defined to be a part of Unit A-1; Garage A-2G is defined to be a part of Unit A-2, and so on. Units B-1 through B-6, inclusive, and Units C-1 through C-6, inclusive, shall not have garages.

The kitchens of each unit shall be furnished by the Declarant with prefinished wood cabinets with laminated plastic counter tops, electric range, range hood, refrigerator with ice maker, electric dishwasher, and electric garbage disposal.

The bathrooms of each unit shall conform to the attached plans for a particular designated unit, but each full bath shall be furnished with a fiberglass tub/shower unit with shower head, a porcelain water closet and synthetic marble lavatory/vanity top combination. Half baths shall contain the porcelain water closet and synthetic marble lavatory/vanity top combination.

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All interior walls of each unit shall be finished fire-retardant water-repellant 5/8 inch gypsum board and all interior ceilings shall be the same material sprayed with a fire-retardant material.

All floor areas of each unit, except the deck floors, storage room floors, garage floors and kitchen and bathroom floors shall be carpeted. The kitchen and bathroom floors shall have vinyl floor coverings.

Each unit shall be equipped by the Declarant with and is defined to include its own electrical meter and a split system heat pump. The air handling equipment for said heat pump shall be housed within the unit within the closet designated for this purpose on the attached plans. The condensing units for the heat pumps will be located on a treated wooden rack located within the garage and storage level as shown on the attached plans. The thermostat for this heating and cooling equipment shall be located within each individual unit as shown on the plans.

Each unit shall be equipped with an electric hot water heater that is located within each unit as shown on the plans.

Each unit shall be separated from its immediately adjacent unit or units by a sound insulated wall 8 1/2 inches thick as shown on the plans.

Each unit is hereby defined also to 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 the window panes, frames, panes and exterior doors (including garage doors);
3. All air handling and condensing units, ducts and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage 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.

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 floor of the units. All such pipes, ducts, wires, conduits, and other such facilities are defined as part of the unit at and from their point of entry into the unit.

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The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as a part of the units is defined hereby 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 DRIFTWOOD VILLAS. The Declarant has caused to be constructed upon the real property described on Exhibit "A" the multi-unit building, containing eighteen (18) 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 DRIFTWOOD VILLAS, 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 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 Declaration without consultation with or consent of any unit owner. Every unit owner in DRIFTWOOD VILLAS, 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 first day of May, 1985; 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 42 units will be added to the eighteen (18) units in PHASE I; 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 60 units per acre;

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 three stories in height above a garage and storage level situated upon finished grade level and which shall be constructed with materials like or substantially similar to those used in PHASE I;

F. It is understood and declared that the undivided fractional or percentage interest owned by each unit owner of units in DRIFTWOOD VILLAS, PHASE ONE, in the common areas and facilities of DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS, all phases, in the expanded common areas and facilities of DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS, all phases, to be appurtenant to additional units of DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS, 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



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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. The precise time when assessments and votes appurtenant to any such annexed unit estates shall become effective shall be the first day of the first month following recordation of the deed for any annexed unit estate.

G. No amendment or supplemental declaration made by the Declarant in accord with this Article III shall divest Unit Owner of any portion of his unit without the consent of such Unit Owner and no such amendment or supplemental declaration shall materially alter the basic plan of development set forth herein without the consent of all Unit Owners affected thereby. Each Institutional Lender as well as each Unit Owner shall be deemed by the Owner's acceptance of a deed to a Unit to have appointed the Declarant their Attorney-In-Fact to give, execute and record the consent of said Institutional Lender as well as said Owner to any and all amendments and/or supplements to this Declaration which the Declarant may wish to execute pursuant to the powers herein reserved.

H. 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.

I. All taxes and assessments relating to the property in later phases, covering any period prior to the addition of such property pursuant to filing of an amended or supplemental declaration, shall be paid by the Declarant. Liens that may arise as a result of construction of later phases shall not extend to prior phases nor affect the rights of unit owners or the priority of first deeds of trust on unit estates in prior phases.

J. The Declarant shall construct a swimming pool if it adds additional property to this Declaration as Phase Two of DRIFTWOOD VILLAS, said pool to become part of the common area appurtenant to all units then existing or subsequently added to all phases of the Condominium.

K. The Declarant may amend this Declaration at any time, prior to or after the closing of sales of Units in Phase One or any additional phases of the condominium, if such amendment is required by the Federal National Mortgage Association (FNMA), or its successor or a similar agency created by the Federal Government to assist institutional lenders in providing permanent mortgage financing for unit owners. Any such amendment by the Declarant shall be limited in language and scope to the specific requirements of the government agency.

#### 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 DRIFTWOOD VILLAS, Phase One, and future phases, if any. The undivided interest in the common areas and facilities of DRIFTWOOD VILLAS, Phase One, appurtenant to each of the eighteen (18) units of DRIFTWOOD VILLAS, Phase One, is hereby established at 5 5/9% each. 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 describes 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 DRIFTWOOD VILLAS, 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 or 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 thereof, his immediate family, guests, invitees and lessees.

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.

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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 antennae 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 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 limit the 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, 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 other 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 DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS to be used for, by, or in connection with any other phases of DRIFTWOOD VILLAS, 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 DRIFTWOOD VILLAS, and future phases, if any, by the unit owners, a nonprofit North Carolina corporation known and designated as DRIFTWOOD VILLAS HOMEOWNERS ASSOCIATION, INC. (hereinafter called the "Association"), has been organized, a true copy of its Articles of Incorporation having been recorded in Book 1209, at Page 42 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, DRIFTWOOD VILLAS, 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 May 1, 1985, or the date upon which the Declarant owns no more than 25% of the units in Driftwood Villas, Phase One, whichever date 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 VII 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 DRIFTWOOD VILLAS.

C. Powers: The Association shall have all powers granted to it as stated in Article VI 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 assessed 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 and 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, 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 acreens 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 referenced to above if the same is available.

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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 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 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 settling claims arising under insurance policies purchased by the Board of Directors for the benefit of the Association and the unit owners; said Board of Directors or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board of Directors' duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purpose elsewhere stated herein or in the By-Laws for the benefit of the Association and the unit owners and their mortgagees, as their interests may appear.
6. Distribution of Insurance Proceeds: Proceeds of insurance policies shall be payable to the Board of Directors of DRIFTWOOD VILLAS HOMEOWNERS ASSOCIATION, INC. as insurance trustee and shall be distributed to or for the benefit of the beneficial owners in the following manner:
  - (a) Expense of the Trust: All expenses of the insurance trustee shall be first paid or provision made therefor, if any;
  - (b) Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as determined in Paragraph F(7) hereof. Any proceeds remaining after defraying such cost shall be distributed as surpluses to the beneficial owners of the damaged units pursuant to Paragraph H hereof;



- (c) Failure to Reconstruct or Repair: If it is determined, as provided in Paragraph F(7) hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed as surpluses to the beneficial owners of the damaged units thereof pursuant to Paragraph H hereof;
- (d) Mortgagees: In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired.

7. Damage and Destruction:

Determination to Reconstruct or Repair: If any part of the condominium property shall be damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

- (a) Common Areas and Facilities: If the damaged improvement is a common area or facility, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated;
- (b) Units:
- (i) Partial Destruction: If the damaged improvement is a unit, and if termination as provided in subparagraph (ii) below does not take place, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by the agreement in the manner elsewhere provided that the condominium shall be terminated;
- (ii) Total Destruction: If more than two-thirds (2/3) of the units are destroyed and the owners of three-fourths (3/4) of the units in the entire condominium should determine not to proceed with repair or restoration, then the procedure set forth in Section 47A-25 of the North Carolina General Statutes, and any amendments thereto, shall take place.

Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is a unit, by the owners of all damaged units therein which approvals shall not be unreasonably withheld.

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

Estimate of Costs: Immediately after a determination to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the costs to rebuild or repair.

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

