

DECLARATION OF CONDOMINIUM

FOR

FAIRWAY VILLAS AT MOUNT MITCHELL

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FAIRWAY VILLAS AT MOUNT MITCHELL
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**DECLARATION OF CONDOMINIUM
FOR
FAIRWAY VILLAS AT MOUNT MITCHELL**

THIS DECLARATION is made this 18 day of April, 2008, by FAIRWAY VILLAS AT MOUNT MITCHELL, LLC hereinafter referred to as "Declarant", who makes the following declarations.

1. INTRODUCTION AND SUBMISSION

1.1 Submission Statement.

Declarant hereby submits to the condominium form of ownership and use the land described in Exhibit A hereof, the improvements now and hereafter situated thereon, and the easements and rights appurtenant thereto (the "Condominium Property"), pursuant to Chapter 47C, General Statutes of North Carolina, 1989, as amended to the date hereof (the "Condominium Act").

1.2 Name.

The name by which this condominium is to be identified is FAIRWAY VILLAS AT MOUNT MITCHELL, sometimes herein called the "Condominium."

1.3 The Land.

The land submitted to Condominium is situated in Yancey County, North Carolina, and is described in Exhibit "A" attached hereto and made a part hereof, and consists of a parcel of real property (the "Land") upon which are situated residential improvements ("Condominium Buildings") and Common and Limited Elements which are submitted hereby to condominium ownership excluding therefrom all portions of the Land and pipes, lines or conduits installed thereupon reserved by Declarant for itself, its successors or assigns for the installation of utilities and/or cable television. A survey and site plan of the Land with improvements depicted thereon is set forth in that certain plat recorded contemporaneously herewith in the public registry of Yancey County, North Carolina in Condominium Book 1, pages ~~288~~ - 286 ("Plat").

2. DEFINITIONS

2.1 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.

2.2 "Association" or "Condominium Association" means FAIRWAY VILLAS AT MOUNT MITCHELL, INC., a North Carolina not for profit corporation, organized under N.C. G. S. 47-C-2-107 the entity responsible for the operation of the Condominium.

2.3 "Board" or "Board of Directors" means the Board of Directors of the Association appointed or elected pursuant to the Articles and Bylaws thereof, designated to act on behalf of the Association.

2.4 "Building" means the structure or structures situate on the Condominium Property in which the Units are located, regardless of the number thereof.

2.5 "Bylaws" mean the Bylaws of the Association.

2.6 "Common Element" means all portions of the Condominium other than Units, as more fully described in Section 3.4.

2.7 "Common Expenses" mean all expenditures made by or financial liabilities of the Association, together with all allocations for reserves.

2.8 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Condominium, including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.

2.9 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements or a designated portion of the Common Elements which are appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.

2.10 "Condominium Property" means the Land and personal property that are subjected to condominium ownership under this Declaration, all Improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.11 "County" means the County of Yancey, State of North Carolina.

2.12 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time and any instruments which create a condominium.

2.13 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property.

2.14 "Limited Common Elements" means those Common Elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Reference herein to Common Elements shall include also all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.15 "Mortgagee" or "Institutional Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), the Administrator of the Veterans Administration or Federal Housing Administration and other similar insurers and guarantors of mortgages or deeds of trust, or any other lender generally recognized as an institutional-type lender, or the Declarant, holding deeds of trust on a Unit or Units, or on the Land in connection with the construction or development of the Land.

2.16 "Special Assessment" means any Assessment levied against Unit Owners other than an Assessment required by the budget adopted annually.

2.17 "Unit" means a physical portion of the Condominium Property which designated for separate ownership or occupancy, the boundaries of which are described herein and in the Plat.

2.18 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of a Condominium Parcel.

3. DESCRIPTION OF CONDOMINIUM PROPERTY

3.1 Number and Identification of Units.

The Plat and Plans of the Condominium, which are recorded contemporaneously herewith includes a graphic description of the Improvements comprising part of the Condominium Property. The Improvements consist of ten (10) Units each separately identified by unit numbers in two (2) two-story buildings. Each "Unit" is identified (as defined in the Condominium Act and herein) by number. The Declarant has not reserved the right to create additional condominium units or add additional land to the Condominium.

Contemporaneously with the recording of this Declaration, the Plat in the public registry of Yancey County, North Carolina, there shall be attached hereto a certificate of completion executed by a architect or engineer certifying that all structural components and mechanical systems of all Buildings containing or comprising any Units are substantially completed in accordance with plans.

3.2 Other Improvements.

In addition to the Condominium Buildings situated thereon, the Land also includes improvements, consisting of, but not limited to driveways, walks, entrance areas, landscaping, and all underground structures and improvements which are not part of or located within the Building, and which are not elsewhere herein reserved to and/or retained by Declarant, such as wires, cables, drains, pipes, ducts, conduits, valves and fittings and the Common Elements more fully described in Section 3.4.

3.3 Units.

The term "Units" as used herein, shall mean and comprise the ten (10) condominium Units which are located and individually described the Plat.

Each Unit shall include that part of the Building containing such Unit that lies within the following boundaries:

(a) Upper and lower boundaries.

The upper and lower boundaries of a Unit shall be the boundary of the horizontal plane of the unfinished ceiling surface extended to an intersection with the perimetrical boundaries as the upper boundary and the boundary of the horizontal plane of the unfinished surface of the floor extended to an intersection with the perimetrical boundary as the lower boundary.

(b) Perimetrical Boundary.

The perimetrical boundary of each Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(i) Exterior Building Walls:

The intersecting vertical planes adjacent to and which include the unfinished surface of the interior of the outside walls of the Condominium Building bounding a Unit.

(ii) Interior Building Walls:

The vertical planes of the interior unfinished surface of the walls bounding a Unit (excluding interior partitions within Units) extended to intersections with other perimetrical boundaries.

(c) Specifications.

(i) All lath, furring, wallboard, plasterboard plaster, paneling, sills, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors or ceilings are a part of the Common Elements.

(ii) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated exclusively to that Unit and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(iii) Subject to the provisions of subsection (ii) all spaces, interior partitions and other fixtures and improvements within the boundaries of the Unit are a part of the Unit.

(d) Apertures.

Any shutters, awnings, window boxes, doorsteps, stoops, decks, patios, storage closets, and all exterior doors and windows or other fixtures designated to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

(e) Mechanical Equipment.

All air conditioning compressors, water heaters, heat pumps and other mechanical equipment serving only one Unit shall be deemed to be Limited Common Elements.

3.4 Common Elements.

The term "Common Elements", as used herein, shall mean and comprise all of the real property and improvements of the Condominium, except Units, including, without limitation: (a) easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to Units and Common Elements; and (b) easements of support in every portion of a Unit which contribute to the support of other Units and/or Common Elements; and (c) installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation; provided that the ownership is not elsewhere reserved by the Declarant or its designee and (d) the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements; and (e) fixtures owned or held for the common use, benefit and enjoyment of all owners of Units in the Condominium; (f) easements for ingress and egress over the Condominium Property for ingress and egress to the Units; (g) all open areas contained within the Land; (h) all driveways, walks, entrance areas and landscaping located on the Land; and (i) all other improvements owned or held for common use, benefit and enjoyment of all Unit Owners.

3.5 Limited Common Elements.

"Limited Common Elements," as the term is used herein, shall mean and comprise the Common Elements which are reserved herein, or assigned, or granted separately herefrom, for the use of a certain Unit or Units to the exclusion of other Units, consisting of those improvements described in Section 3.3, 3.3(d) and 3.3(e) and the porches which are accessible only from the Unit;

A Limited Common Element may be reallocated by an amendment to the Declaration executed by all Owners between or among those Units the reallocation is made. The Owners executing the amendment shall provide a copy thereof to the Association, which shall record it.

4. APPURTENANCES TO UNITS

There shall be appurtenant, and pass with title, to each Unit, the rights, shares, and interests provided by the Condominium Act which shall be deemed to include, without limitation, the following:

4.1 Use of Common Elements.

(a) An undivided share in the Common Elements and in the Common Surplus. The undivided share in the Common Elements and the Common Surplus of the Condominium appurtenant to each Unit is that proportion of the total set forth, as a fraction, in the schedule which is annexed hereto and made a part hereof as Exhibit "A".

(b) The right to use exclusively, or in common with certain other Units where so specified, those portions of the Common Elements designated and/or reserved herein and/or granted elsewhere to a certain Unit or Units as Limited Common Elements; and

(c) A Common Element, not previously allocated as a Limited Common Element, may not be so allocated except by unanimous consent. All such allocations shall be made by amendments to the Declaration.

(d) The Common Elements are not subject to partition. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an individual interest in the Common Elements, made without the Unit to which they are appurtenant is void.

4.2 Easements.

(a) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time (as shown on the Plat) and as it may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is permanently vacated from time to time; and

(b) Non-exclusive easements, to be used and enjoyed in common with the owners of all Units in the Condominium, their guests, invitees, and lessees, for use of those Common Elements not designated elsewhere herein as Limited Common Elements, including, without limitation, easements for:

(i) The furnishing and maintenance of private or public utility services to all parts of the Condominium over, across, in and through the Land, the Condominium Building and other improvements, as the fixtures and equipment therefor now exist and/or may be modified or relocated; and

(ii) Vehicular and pedestrian access over, across, upon, in and through the drives, sidewalks, entries, gates, walks, grounds, and other portions, if any, of the Common Elements as are intended and/or provided for pedestrian and vehicular traffic through the Condominium and for access to the public access.

(c) An exclusive easement for the encroachment by any Unit upon any other Unit or Common Element, or vice versa, for any reason, including, without limitation, encroachments caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachment, as an easement appurtenant to the encroaching Unit or other improvement, to the extent of such encroachment; and

(d) An exclusive easement for the use of the area of Land and air space occupied by the appurtenant mechanical equipment, e.g. air conditioning compressor, heat pump, air handler and the equipment and fixtures appurtenant thereto, situated in and/or on Common Elements of the Condominium but exclusively serving a particular Unit, as the same exist in and on the Land, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, heat pump, air handler and the equipment and fixtures appurtenant thereto, provided, that the removal of the same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies.

(e) The foregoing easements shall not prohibit or limit the Association's right to grant permits, licenses or easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium.

4.3 Membership.

The right to membership in the Association with full voting rights appertaining thereto upon the terms and conditions set forth elsewhere herein.

5. THE ASSOCIATION

5.1 Name of Association.

The entity responsible for the operation of the Condominium shall be FAIRWAY VILLAS AT MOUNT MITCHELL, INC., a North Carolina not for profit corporation (the "Association"), a copy of the Articles of Incorporation is attached hereto and made a part hereof as Exhibit "B." Subject to the rights reserved to Declarant herein, and in the Condominium Act to administer and manage the Condominium Property, the Association shall administer and manage the Condominium Property; provided, that the Association may, to the extent permitted by the Condominium Act, by contract, delegate its maintenance, management and operational duties and obligations to a management agent.

5.2 By-laws of Association.

A copy of the Bylaws of the Association is attached hereto and made a part hereof as Exhibit "C".

5.3 Voting Rights of Unit Owners.

The Unit Owner(s) shall become a member or members of the Association automatically upon and simultaneously with delivery of a deed of conveyance of fee title thereto from Declarant or, in a conveyance by a grantee or a remote grantee of Declarant. There shall be appurtenant and pass with title to each Unit, one vote as a member of the Association, which may be exercised by the Unit Owner(s), or the duly constituted proxy of the Unit Owner(s), from time to time, at all meetings of members and in connection with all matters upon which all members of the Association are entitled to vote. The qualification of members of and manner of admission to membership in the Association, the termination of such membership and voting by members shall be as provided for in the Articles of Incorporation and Bylaws of the Association.

5.4 Owner and Mortgagee Inspection of Documents.

The Association shall have current copies of this Declaration, Articles, Bylaws and rules and regulations as well as its books, records and financial statements available for inspection by Owners or Mortgagees, which documents shall be available during normal business hours or other reasonable circumstances and may be copied by Owners or Mortgagees at their expense.

5.5 Merger or Consolidation of Condominium Associations.

(a) This Condominium together with any other condominium or condominiums may by agreement of the Owners be merged or consolidated into a single condominium. In the event of merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be, for all purposes, the legal successor of the preexisting condominiums, and the operation and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

(b) An agreement by two or more condominiums to merge or consolidate pursuant to subsection (a) shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by Owners of Units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be executed in the same manner as a deed and recorded in the County and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the Units in the resultant Condominium either (i) by stating such reallocations or formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the Units comprising each of the pre-existing condominiums and providing that the portion of such percentages allocated to each Unit formerly comprising a part of such pre-existing condominium shall be equal to the percentages of allocated interests allocated to such unit by the declaration of the pre-existing condominiums.

6. AMENDMENT OF DECLARATION

Except for amendments which Declarant, Association or Unit Owners is authorized and/or obligated elsewhere herein to make and except as may be elsewhere herein or in the Condominium Act otherwise specifically provided, this Declaration and the Plat recorded in connection therewith may be amended only in the following manner.

6.1 Notice.

Notice of the subject matter of any proposed amendment to this Declaration shall be included in the notice of any meeting at which such proposed amendment is to be considered.

6.2 Proposal.

Amendments to this Declaration may be proposed by the Board of the Association by resolution adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the Owners of Units to which at least twenty percent (20%) of the votes of the Association are allocated, whether by vote of such Owners as members of the Association at a special or regular meeting of the members or by written instrument signed by them.

6.3 Adoption.

Any amendment to this Declaration so proposed by the Board or members of the Association shall be transmitted to the President of the Association, or, in the absence of the President, to a Vice President or other acting chief executive officer, who shall thereupon call a special meeting of the Unit Owners in this Condominium to consider and vote upon such proposed amendment; provided, that a proposed amendment may be considered and voted upon at an annual meeting of the Association if the next such meeting is to be held within the time hereafter limited and if notice of the proposed amendment shall be included in the notice of such meeting. The special or annual meeting, as the case may be, shall be held not sooner than ten (10) days nor later than fifty (50) days from the date of receipt by the Association of the proposed amendment. Notice of the meeting shall be in the form and shall be delivered and the meeting shall be called and held as provided for in the Bylaws of the Association; provided, that any Owner may, in writing signed by such Owner, waive notice of any such meeting in the manner provided for in the Bylaws of the Association and such waiver, when delivered to the Secretary of the Association for filing in its records, whether before, during or after such meeting shall be construed to be the equivalent of giving notice to such Owner.

No provision of this Declaration shall be revised or amended by reference to its title and number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be

amended; new words shall be inserted and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration, see provision .Ê.Ê. for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment. The proposed amendment may be adopted, and shall become effective, by and upon the affirmative vote at such meeting of not less than seventy percent (70%) of the votes in the Association.

6.4 Proviso.

Except as elsewhere permitted herein, no amendment shall:

(a) Change any "Condominium Parcel" unless the Owner thereof and Mortgagees thereon shall join in the execution and acknowledgment of the amendment, or

(b) Discriminate against any Unit Owner or against any Unit or any class or group of Units comprising part of the Condominium Property, unless the Owners of all affected Units and Mortgagees thereon shall join in the execution and acknowledgment of the amendment, or

(c) Change the share of Common Elements appurtenant to any Unit or Units or the share of any Unit Owner in the Common Surplus, or increase the share of any Unit Owner(s) in the Common Expenses, unless the Owners of Units so affected and the Mortgagees thereon shall join in the execution and acknowledgment of such amendment, or

(d) Make any change in Article 10 hereof, entitled "Insurance," nor in Article 11 hereof, entitled "Reconstruction or Repair After Casualty," unless the Mortgagees who hold deeds of trust or mortgages on fifty-one percent (51%) of the Units shall join in the execution and acknowledgment of the amendment, or

(e) Adversely affect the lien or priority of any previously recorded deed of trust or mortgage held on a Mortgagee; or

(f) Shall be made to this Declaration or any exhibits thereto so long as the Declarant has title to any Condominium Unit unless the Declarant shall consent in writing to the amendment, which consent may be withheld by the Declarant for any reason.

(g) Change the use of any Unit or Common Element to commercial use without Declarant's written consent.

(h) The right of the Declarant to amend this Declaration of Condominium as elsewhere provided herein shall not be abridged in any manner by this Article or any other article of this Declaration or exhibits thereto.

6.5 Effective Date and Recording Evidence of Amendment.

An amendment, other than amendments made by the Declarant alone pursuant to the Condominium Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed in the form required for the execution of a deed.

Amendments effected by the Declarant must be evidenced in writing and recorded, but a certificate of the Association is not required. An amendment of the Declaration is effective when it is recorded in the public records of the County

6.6 Amendment by Declarant.

Notwithstanding any provision to the contrary set forth in this Article or elsewhere in this Declaration or in the Articles of Incorporation or Bylaws of the Association, the Declarant may amend this Declaration as required by an Institutional Mortgagee or a governmental entity, or in accordance with the provisions of this Declaration without the consent or joinder of any Unit Owner or Mortgagee.

6.7 Statute of Limitation.

No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded.

7. MAINTENANCE, REPAIRS AND REPLACEMENTS

Responsibility for maintenance, repairs and replacements of Condominium Property and property of Unit Owners located or situated within the Condominium shall be as follows:

7.1 Units.

Each Unit, and the personal property therein, fixtures, equipment and appliances comprising a part thereof, located therein, or exclusively serving the same shall be maintained, including, without limitation, the air conditioning and electrical equipment located outside the Unit which serves the Unit exclusively, kept in good repair and replaced by and at the expense of the Owner(s) thereof. All maintenance, repairs and/or replacements for which Unit Owners are responsible and obligated to perform, whether structural or nonstructural, ordinary or extraordinary, shall be performed promptly as the need arises.

Notwithstanding the obligation of Unit Owners for maintenance, repair and replacement of and in Units, the proceeds of all insurance awards or payments under insurance carried by the Association for loss or damage to or within such Units shall be applied against repairs and replacements to the extent that such award or payments exceed the deductible provisions of such insurance.

7.2 Common Elements.

The Association shall be responsible for, and shall assess against and collect from all Unit Owners, the costs of maintaining, repairing, replacing and keeping in clean and orderly condition, all of the Common Elements except certain of the Limited Common Elements specified below. The Association shall, at the expense of all Unit Owners, repair any and all incidental damage to Units resulting from maintenance, repairs and/or replacements of or to Common Elements. If damage, for which a Unit Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any Common Element, the Association may direct such Unit Owner to repair such damage or the Association may itself cause the repairs to be made and recover the cost thereof from the responsible Unit Owner.

7.3 Limited Common Elements.

The responsibility for, and the cost of keeping clean and in orderly condition the porches and storage areas forming a part of the Limited Common Elements which exclusively serve a certain Unit to the exclusion of other Units, shall be borne by the Owner(s) of the Unit(s) to which the same are appurtenant. Provided however, all repairs and maintenance to porches and storage areas other than the cost of keeping them clean and orderly shall be performed by the Association.

Notwithstanding the Unit Owners' obligations with respect to certain Limited Common Elements, any proceeds of insurance awards or payments under insurance carried by the Association for loss or damage to such Limited Common Elements shall be applied against such repair or replacement to the extent that such award or payments exceed the deductible limits of such insurance.

7.4 Management.

The Board may enter into a contract with any firm, person, or corporation or may join with any other condominium associations and entities in contracting for the maintenance and repair or management of the Condominium Property. The Board may contract for and may delegate to the contractor or manager all the powers and duties of the Association, except such as are specifically required by this Declaration or by the Bylaws, to have the approval of the Board of Directors or the membership of the Association. The contractor or manager may be authorized to prepare the budget, collect assessments for Common Expenses as provided by this Declaration, Bylaws and exhibits to this Declaration.

7.5 Entry for Maintenance.

The Board, or its agents or employees, shall be allowed entry into any Unit or Limited Common Elements for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, Limited Common Elements, or the Common Elements or in case of emergency circumstances threatening Units, Limited Common Elements or the Common Elements. The liability for any damage done by the Board, agents or employees of any management firm or Association shall be assessed against Association.

7.6 Failure to Maintain.

In the event a Unit Owner fails to maintain his Unit and Limited Common Elements, as required herein, or makes any alterations or additions without the required consent, or otherwise violates or threatens to violate the provisions of this Declaration relevant to maintenance, alteration and repair, the Association shall have the right to make special assessments and place a lien against the Unit and the Unit Owner for the collection of such sums all as more fully described in Articles 15 and 16.

7.7 Disputed Liability.

In the event that any Special Assessment is made under this Article is Five Hundred Dollars (\$500.00) or less and it is disputed by an Owner, the Board may appoint an adjudicatory panel to determine if a Unit Owner is responsible for the damages. Such panel shall accord to the party charged with causing damages notice of the charges, an opportunity to be heard and to present evidence, and notice of the decision. The panel may assess liability for each damage incident not in excess of Five Hundred Dollars (\$500.00) against the responsible party. Liabilities of Unit Owners so assessed shall be Special Assessments subject to the provision of Article 15 and 16 as hereinafter provided.

8. ALTERATIONS OF AND IMPROVEMENTS TO UNITS AND COMMON ELEMENTS

Except as the right is herein reserved to Declarant, neither a Unit Owner nor the Association shall make any alterations, improvements or additions to Units, Common Elements, or Limited Common Elements except in compliance with the following conditions.

8.1 Declarant's Right to Alter.

The Declarant hereby reserves Special Declarant Rights as follows: (i) make alterations, additions or improvements in, to and upon Units owned by the Declarant, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-owned Units; (iii) change the size and/or number of Declarant-owned Units by subdividing one or more Declarant-owned Units into two or more separate Units, combining separate Declarant-owned Units (including those resulting from such subdivision or otherwise) into one or more Units, or otherwise; and (iv) reapportion among the Declarant-owned Units affected by such change in size or number pursuant to the preceding clause their appurtenant interest in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than Declarant-owner Units) shall not be changed by reasons thereof unless the Owners of such Units shall consent thereto and, provided further, that Declarant shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing including the rules and regulations of the Condominium Act. In making the above alterations, additions and improvements, the Declarant may relocate and alter Common Elements adjacent to such Units, incorporate portions of such Common Elements into altered Units and/or create additional Common Elements from portions of altered Units, provided that such relocation and alteration does not materially or adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Declarant. Any amendments to this Declaration required by actions taken pursuant to this Article may be effected by the Declarant alone. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Declarant.

8.2 Unit Owner's Right to Alter.

Owner may make any improvement or alterations to his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium.

No Unit Owner shall make any addition, alteration or improvements in or to the Common Elements nor to his Unit or any Limited Common Element nor change the appearance of the Common Elements or the exterior appearance of any Unit or any other portion of the Condominium without the prior written consent of the Board.

The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Element within 60 days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent.

Provided, however, the Board may establish certain pre-approved types of improvements and any Unit Owner who constructs such improvements to his Unit or Limited Common Elements in compliance with the pre-approved plans and specifications shall not need any further approval and shall be deemed to be in compliance. Provided, however, if the improvements made by such Unit Owner are not built strictly in compliance with the pre-approved plans and specifications, the Association shall be entitled to all rights and remedies hereunder.

All proposed additions, alterations, and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. A Unit Owner making or causing to be made any such additions, alterations or

improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association, subject to the Board's right to perform appropriate maintenance upon the failure of the Unit Owner to do so as provided in Section 7.7.

9. MANAGEMENT AGREEMENT

9.1 Management Firm.

The Association, through its Board of Directors, may enter into a management agreement with a professional management firm ("Management Firm").

The Association may delegate to the Management Firm certain powers of the Association, not reserved to the Board of Directors under the provisions of the Condominium Act.

9.2 Duties of Management Firm.

Each Unit Owner, his heirs, successors, and assigns, shall be bound by the Management Agreement for the purposes therein expressed, including but not limited to:

- (a) Adopting, ratifying, confirming, and consenting to the execution of the Management Agreement by the Association.
- (b) Covenanting and promising to perform each and every of the covenants, promises, and undertakings to be performed by Unit Owners as provided in the Management Agreement.
- (c) Ratifying, confirming, and approving each and every provision of the Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.
- (d) Agreeing that the persons acting as directors and officers of the Association entering into such an Agreement have not breached any of their duties or obligations to the Association.

9.3 Interested Directors.

It is specifically recognized that some or all of the persons comprising the original Board are or may be stockholders, officers and Directors of a Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

10. INSURANCE.

Insurance shall be carried and kept in force at all times in accordance with the following provisions:

10.1 Duty and Authority to Obtain.

The Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force all of such other or additional insurance coverage as it is authorized hereby to carry. All insurance obtained by the Association shall be purchased for the benefit of the Association and the Unit Owners and their Mortgagees, and all policies of such insurance shall be deposited with and held by the "Insurance Trustee" (as hereinafter identified); provided that a certificate evidencing a mortgagee endorsement shall be issued to the Mortgagee of each Unit. The Unit Owners may, at their own expense, obtain

insurance coverage against damage to and loss of the contents of the Unit, including, without limitation, carpeting, wall and ceiling coverings, personal liability for injury to and death of persons and damage to and loss of personal property of others, and against additional living expenses. Provided, however, that each policy of such insurance purchased by a Unit Owner shall, where such provision is available, state that the insurer waives its right of subrogation as to any claim or claims against other Unit Owners, the Association, and their respective employees, agents, guests and invitees.

10.2 Required Coverage.

The Association shall purchase and carry casualty insurance covering all of the Buildings and other improvements, including personal property of the Condominium. All hazard policies issued to protect Buildings whenever used in the policy shall include, but shall not necessarily be limited to fixtures, installations, or additions comprising that part of the Building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual Units initially installed or replacements thereof of like, kind or quality in accordance with the original plans and specifications, or as existed at the time the Unit was initially conveyed if the original plans and specifications are not available, excluding therefrom the insuring of floor, wall and ceiling coverings (which may be jointly referred to as "Insured Property") in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the Board of Directors of the Association in accordance with reasonably acceptable appraisal practice. Such insurance shall include or afford protection against:

(a) Loss or damage by fire or other hazards covered by the standard extended coverage and broad form and/or special form; and

(b) Such other risks or perils of a similar or dissimilar nature as are or shall be customarily covered with respect to Buildings and other improvements similar, in construction, location and use, to the building and other improvements of the Condominium, including without limitation, vandalism, malicious mischief, windstorm, and flood and perils covered by the standard "all risk" endorsement, if available.

(c) Comprehensive general liability insurance in the amount of \$1,000,000 for bodily injury including deaths of persons and property damage arising out a single occurrence and an umbrella policy of \$1,000,000 for both, insuring the Association, the Board of Directors, the Management Firm, at the discretion of the Board of Directors, and each Unit Owner for claims arising out of or in connection with the ownership, operation or maintenance of any of the Condominium Property including Common Elements and public ways of the Condominium. This coverage shall exclude Unit Owner liability coverage for claims arising in connection with that portion of the property used and occupied exclusively by a particular Unit Owner. Such comprehensive general liability insurance shall also cover cross liability claims of one insured against the other. Coverage under this policy shall include without limitation legal liability of the insureds for property damage bodily injuries and deaths of persons in connection with the operation and maintenance of the Common Elements and legal liability arising out of law suits related to contracts entered into by the Association. The Board of Directors shall review such limits once a year.

(d) Workmen's compensation insurance to meet the requirements of law.

(e) Loss or damage by flood, to the extent and limitations, if any, required or necessitated by law, including, without limitation, the Flood Disaster Protection Act of 1973, or any similar law or regulation.

(f) Director and officer liability coverage, and to the extent the duties and obligations of the Board are delegated for such delegees. Such bonds shall comply with the requirements of Mortgagees.

(g) If the insurance described above is not reasonably available, the Association shall promptly cause notice of that fact to be delivered to all Unit Owners and Mortgagees.

10.3 Optional Coverage.

The Association may purchase and carry other insurance coverage or obtain other endorsements including without limitation, products liability, agreed amount and inflation guard endorsements, construction code endorsements and steam boiler coverage as the Board, in its sole discretion, may determine from time to time to be in the best interests of the Association and Unit Owners, or as an Institutional Mortgagee may reasonably require while it holds a mortgage encumbering any Unit. Any waiver of subrogation contained in policies shall include waivers as to the Management Firm.

10.4 Premiums.

Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums, and other incidental expenses incurred by the Association in administering and carrying out the provisions of this Article, shall be assessed against and collected from Unit Owners as a Common Expense.

10.5 Additional Provisions.

Any policy obtained by the Association must provide for the following, if available:

- (a) Recognition of any Insurance Trust Agreements.
- (b) Waiver of the right of subrogation against Unit Owners individually.
- (c) The insurance will not be prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.
- (d) The policy shall be primary in the event that the Unit Owner has other insurance covering the same loss.
- (e) The policy may not be canceled or substantially modified without at least 60 days prior written notice to the Association and each Mortgagee which is listed as a scheduled holder of a first mortgage in the insurance policy.

10.6 Assured.

All policies of insurance obtained and purchased by the Association shall be for the benefit of the Association, the Unit Owners and their Mortgagees, as their interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the "Insurance Trustee," as herein identified, or to its successor, and the proceeds from insurance against any casualty loss shall be held for the use of the Association, Unit Owners and their respective Mortgagees, as their interests may appear, to be applied or distributed in the manner herein provided. Policies shall contain the standard Mortgage Clause or equivalent endorsement without contribution. The Association is hereby constituted and appointed agent for all Unit Owners, with authority to negotiate and settle the value and extent of any and all losses covered under any policy of casualty insurance, and the Association is granted full right and authority to execute, in favor of any insurer, a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

10.7 Insurer.

All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Association, including without limitation Unit Owner(s) and Institutional Mortgagees shall be bound by the

Association's selection of its insurer(s) and the amount of insurance coverage carried and kept in force by the Association.

10.8 Insurance Trustee.

The Association shall have the right, but no obligation, to designate the Insurance Trustee and all persons beneficially interested in such insurance coverage shall be bound by the Association's selection of the Insurance Trustee. If the Association fails or elects not to appoint such Insurance Trustee, the Association will perform all obligations imposed upon such Insurance Trustee by this Declaration. The Insurance Trustee shall be either a bank with trust powers, doing business in the State of North Carolina, the Board or an attorney who is admitted to practice in the State of North Carolina. The Insurance Trustee, if a bank or attorney, shall not be liable for the payment of premiums, the renewal of any policy or policies of casualty insurance, the sufficiency of coverage, the form or content of policies, nor for the failure to collect any insurance proceeds. The duties of the Insurance Trustee, if a bank or attorney, shall be to hold such insurance policies as may be placed with it pursuant to Section 10.1 and to receive such proceeds of casualty insurance as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Association, Unit Owners and their respective Mortgagees, to be disbursed as herein provided. The Association shall pay a reasonable fee to the Insurance Trustee, if a bank or attorney, for services rendered hereunder and shall pay such costs and expenses as the Insurance Trustee may incur in the performance of its duties hereunder. Such fees and costs to be assessed against and collected from Unit Owners as a Common Expense. The Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then only for such money as may come into the possession of the Insurance Trustee. If and when the Insurance Trustee is required to distribute insurance proceeds to Unit Owners and their Mortgagees, as their respective interests may appear, the Insurance Trustee, if a bank or attorney, may rely upon a certificate of the President and Secretary of the Association, executed under oath and provided to the Insurance Trustee upon request to the Association, such certificate to certify the name or names of the owners of each Unit, the Mortgagee(s) thereof, and the respective percentages of any distribution which is to be made to the Unit Owner(s) and Mortgagee(s), as their respective interests may appear. If and when insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder(s) of any Mortgage or Mortgages encumbering a Unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage, and shall not have the right to elect to apply insurance proceeds to the reduction of indebtedness secured by such Mortgage(s), unless the insurance proceeds represent a distribution to the Unit Owners and the Mortgagee(s) thereof, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the Owner(s) of the Unit, and the Mortgagee(s) thereof by reason of loss of or damage to personal property constituting a part of the Common Elements and as to which a determination is made not to repair, replace or restore such personal property.

10.9 Application of Insurance Proceeds.

The proceeds of casualty insurance paid to the Insurance Trustee by an insurer for loss or damage to real and/or personal property upon which the Association carries insurance, shall be applied and paid as follows:

(a) Common Elements Only.

The proceeds paid to the Insurance Trustee for loss of or damage to property constituting Common Elements only shall be applied to the repair, replacement or reconstruction of such loss or damage. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements, the excess shall be paid by the Insurance Trustee to the Association and such funds shall become part of the Common Surplus of the Association. If the insurance proceeds shall be insufficient to pay the cost of the repair, replacement or reconstruction of such Common Elements, the Association shall deposit with the Insurance Trustee, from any Association Reserve Fund which may have been established, the difference between the total cost of repairing, replacing or reconstructing such loss or damage and the amount of the insurance proceeds. If no such Association Reserve Fund has been established, or if any such Association Reserve Fund has been established and is

insufficient to pay to the Insurance Trustee such difference, the Association shall assess the amount of the difference against, and collect it from, all Unit Owners, as a Common Expense.

(b) Units.

The proceeds paid to the Insurance Trustee for loss of or damage to any portion of the Condominium Building, constituting damage to Common Elements and one or more Units thereof, shall be first applied to the repair, replacement or reconstruction of Common Elements, then to the repair, replacement or reconstruction of any Unit or Units in the Building which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements and Units, the excess shall be paid by the Insurance Trustee to the Association and such funds shall become part of the Common Surplus of the Association. If the insurance proceeds shall be sufficient to pay for the repair, replacement or reconstruction of the Common Elements but shall be insufficient to pay the cost of the repair, replacement or reconstruction of the damaged or destroyed Unit or Units in such Building, the Association shall assess the amount of the difference against, and collect the same from, the Owner(s) of the Unit(s) damaged or destroyed, in proportion that the amount of damage sustained to each such Unit bears to the total deficit, and deposit such sum with the Insurance Trustee to be applied by the Insurance Trustee toward the total cost of repairing, replacing or reconstructing all of such damaged or destroyed Common Elements and Units. If the insurance proceeds shall be insufficient to pay the cost of the repairs, replacements, or reconstruction of the Common Elements and the damaged or destroyed Unit or Units in such building, the Association shall assess the amount of the difference against, and collect the same from all Unit Owners, the total cost of repairing or replacing the Common Elements as a Common Expense. The cost of repairing, replacing or reconstructing the Unit or Units destroyed or damaged shall be assessed by the Association against, and collected from, the Owner(s) of such damaged or destroyed Units.

(c) Proceeds of Optional Property Coverage.

If any, proceeds from any damage occasioned solely to Units and/or certain portions or all of the contents thereof not included in Insured Property, as determined by the Association in its sole discretion, (collectively "Optional Property"), are collected by reason of optional insurance which the Association elects to carry thereon, such proceeds shall be held for the benefit of the Owners of the Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

10.10 Deposits to Insurance Trustee After Damage.

Within sixty (60) days after a loss of or damage to Condominium Property covered by casualty insurance, the Association shall obtain estimates of the cost of repairing, replacing or restoring the same, including the cost of professional fees and any construction bond which the Board of Directors may require. If, from such estimates, it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to pay the total costs thereof, the additional money required to pay the total cost thereof, whether it is to be paid by one or more Unit Owners, shall be deposited with the Insurance Trustee not later than thirty (30) days from (i) the day on which the Insurance Trustee receives the insurance proceeds or (ii) the date of receipt of cost estimates for repair or replacement, whichever last occurs.

11. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

Whether, and the manner in which, any or all of the Condominium Property which shall be damaged or destroyed by casualty shall be repaired, reconstructed or replaced shall be determined as follows:

11.1 Insured Property.

If the Insured Property shall be damaged or destroyed, repair or reconstruction thereof, or termination of the Condominium, shall be in accordance with the following:

(a) Total Destruction of the Insured Property.

If seventy-five (75%) or more of the Insured Property is destroyed or so damaged that no Units therein are habitable, the Building and none of the improvements comprising Common Elements thereof shall be reconstructed, and the Condominium shall be terminated unless the Owners of Units to which seventy-five(75%) percent of the Common Elements are appurtenant agree in writing, within 60 days after the date of such destruction, to reconstruct the same and/or unless any policy or policies of casualty insurance covering the same shall require reconstruction thereunder, and in either case as long as the then applicable zoning and other regulatory laws and ordinances shall allow the same to be reconstructed.

(b) Partial Damage to the Insured Property.

If less than seventy-five percent (75%) of the Insured Property is damaged and some Units therein are habitable, the damaged or destroyed Common Elements and/or Units shall be repaired or reconstructed so that the Units and Common Elements shall be restored to substantially the same condition as existed prior to such damage or destruction, unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere herein provided that the Condominium shall be terminated.

(c) Damage to Common Elements.

Damaged or destroyed improvements constituting part of the Common Elements and Limited Common Elements shall be repaired, reconstructed and/ or replaced unless, in the event of total destruction of the Units, or, by agreement after partial destruction, the Condominium shall be terminated.

(d) Responsibility for Damage to Units Only.

If the damage or destruction shall be limited only to one or more Units for which the responsibility of maintenance and repair is that of the affected Unit Owners, then such Unit Owners shall be responsible for carrying out the repair or reconstruction thereof. In all other instances of damage or destruction, the Association shall be responsible for carrying out the repair and reconstruction thereof.

11.2 Certificate.

The Insurance Trustee may rely upon a certificate executed by the President and Secretary of the Association to determine whether or not damaged or destroyed Condominium Property shall be repaired or reconstructed.

11.3 Plans and Specifications.

Repair or reconstruction of Condominium Property shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed, provided that the Board may authorize reasonable variations from the original plans and specifications as may appear to them to be necessary or desirable.

11.4 Construction Funds.

All funds for the payment of repair and reconstruction costs, consisting of insurance proceeds and/or funds collected by the Association from Unit Owners, shall be disbursed toward payment of such costs in the following manner:

- (a) Association.

If the total funds assessed against and collected from Unit Owners by the Association for payment of repair and reconstruction costs is more than \$100,000.00, then all such sums shall be deposited by the Association with and disbursed by the Insurance Trustee. In all other cases the Association shall hold such sums so assessed and collected and shall disburse the same in payment of the costs of reconstruction and repair upon receipt of proper invoices. Provided, however, upon request of a Mortgagee, the construction funds, even if less than \$100,000 shall be disbursed by the Insurance Trustee.

- (b) Insurance Trustee.

The proceeds of insurance collected on account of a casualty, and the sums assessed against and collected from Unit Owners by the Association and deposited with the Insurance Trustee shall constitute a construction fund which shall be disbursed in payment of the costs of repair and reconstruction by the Insurance Trustee in payment of such costs in the manner required by the Board and upon receipt of a proper invoice and approval of an architect registered to practice in Florida and employed by the Association to supervise the work.

- (c) Surplus.

It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the Association.

- (d) Certificate.

Notwithstanding the provisions herein, the Insurance Trustee, if a bank or attorney, shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine whether surplus funds to be distributed are less than the assessments paid by owners. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a Mortgagee is herein required to be named as payee the Insurance Trustee shall also name the Mortgagee as payee; and further provided that when the Association, or a Mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association.

12. USE RESTRICTIONS.

In order to provide for congenial occupancy of the Condominium Property and for the protection of the value of the Units, the use of the Condominium Property shall be in accordance with the following provisions so long as the Condominium exists:

12.1 Units.

Each residential Unit shall be used for a single household and for residential non-commercial purposes only. A single household is hereby deemed to include a single person, a group of persons living together related by bonds of consanguinity, marriage, or adoption; a group of nonrelated persons provided, however, the number of nonrelated persons living together shall not exceed a total greater than two (2) persons for the number of bedrooms per Unit, unless the unit is furnished with a convertible sleeper, in which event the number of persons may be increased by two for the sleeper. Nothing herein shall be construed to prohibit leasing of the Units, provided that such leases are in compliance with paragraph 12.9 hereof.

12.2 Insurance.

No use shall be made of any Unit or of the Common Elements or Limited Common Elements which will increase the rate of insurance upon the Condominium Property without the prior consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in cancellation of insurance on any Unit or any part of the Common Elements, or which will be in violation of any law. No waste shall be committed in the Common Elements.

12.3 Signs and Antennas.

Except as provided in section 13.4, no signs, advertisements or notices of any kind shall be displayed in public view on or from any Unit or the Common Elements without the prior written consent of the Board, nor may any antennas, aerials or cable satellite dishes or similar structures be erected without the consent of the Association.

12.4 Pets.

No animals of any kind shall be kept in a Unit or allowed upon the Condominium Property except by prior written consent of the Board. Such consent, if given, shall be revocable by the Board at any time, and shall automatically expire upon the death or other disposition of the pet. If permitted, pets shall be leashed and restrained at all times when on or about the Condominium Property. Owners shall remove and dispose of all animal waste from the Common Elements. No guest, lessee, or invitee shall bring any animal upon the Condominium Property. Unit Owners maintaining pets on the Condominium Property, or whose guests, lessees, or invitees bring any animal upon the Condominium Property, shall be responsible for, and bear the expense of, any damage to person or property resulting therefrom. Any such damage shall be determined by the Board and collection by the Association.

12.5 Encroachments.

None of the rights and obligations of the Unit Owners created herein or by the deed conveying the Condominium shall be altered in any way by encroachment due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of any such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor a Unit Owner(s), if encroachment occurred due to the willful conduct of the Unit Owner(s).

12.6 Common Elements.

The Common Elements and Limited Common 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 Units. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in, or removed from, the Common Elements or Limited Common Elements without the prior written consent of the Association.

12.7 Nuisance.

No noxious or offensive activity shall be allowed upon the Condominium Property, nor any use or practice which is the source of annoyance or nuisance to Unit Owners or guests or which interferes with the peaceful

possession and proper use of the Condominium Property by residents. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist.

12.8 Lawful Use.

No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be the same as is elsewhere herein specified.

12.9 Leasing.

There is no restriction on the leasing of the Units nor on the term thereof. Provided that any noncompliance with the terms and conditions of this Declaration, the Articles, Bylaws or Rules and Regulations by such lessee shall be the responsibility of the Unit Owner.

12.10 Exterior Improvements; Landscaping.

No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association, subject always to the provisions hereof.

12.11 Parking Spaces.

Only operable passenger vehicles with no advertising may be parked upon the Common Elements. The Board may make further rules and regulations with respect to use of parking spaces that it may deem fair and reasonable.

12.12 Trash.

All trash shall be placed in the designated containers in strict compliance with any disposal requirements set forth by the garbage servicing company.

12.13 Window Coverings.

All window coverings and treatments shall be white or off white when viewed from outside the Unit. No reflective or metallic materials may be used.

12.14 Vehicle Storage.

No boats, trailers or recreational vehicles of any type may be stored upon the Common Elements. No washing or repair of vehicles shall be permitted on or about the Common Elements or Limited Common Elements except at the locations specified therefor.

12.15 Regulations.

Reasonable regulations and rules concerning the use of the Condominium Property may be promulgated, modified or amended from time to time by the Board. These rules and regulations shall be posted in a common area.

12.16 Enforcement.

The Association shall have the right to enforce all the restrictions set forth in this Article, the Declaration and the Bylaws in any manner it deems necessary including without limitation, injunctions, suit for damages, or fines.

13. RESERVED RIGHTS OF DECLARANT.

13.1 In addition to various rights reserved by the Declarant elsewhere provided in this Declaration, the Declarant reserves the following rights:

Declarant's Use of Units.

Until Declarant has conveyed all of the Units, Declarant may make such use of any unsold Units and Common Elements as may facilitate sale, including, but not limited to, rental, maintenance of a sales office, model unit, the showing of the Unit and the display of signs.

13.2 Changes to Boundaries and Unit Dimensions.

The Declarant reserves the right to change the interior design and arrangement of all Units, to alter the boundaries between Units so long as Declarant owns the Units so altered and to change the boundaries of Common Elements. Provided, however, if a Unit to be changed abuts the Common Elements where the boundaries are to be changed, the Declarant shall own such Unit. The Declarant reserves the right to further subdivide the Units owned by the Declarant into more than one Unit. If more than one Unit is altered, the Declarant shall apportion between the Units, the shares in the Common Elements and Common Expenses appurtenant to the Units altered. An amendment of this Declaration reflecting such authorized alteration of the Unit or Common Elements by Declarant need be signed and acknowledged only by the Declarant, and need not be approved by the Association, Unit Owners, lienors or Mortgagees of any Units or interests therein. In each event, all Assessments, votes and shares of the Common Elements shall be calculated as if such Units were as originally designated on the Exhibits attached to this Declaration, notwithstanding the fact that several Units are used as one.

13.3 Easement Rights of Declarant.

(a) Roads.

Declarant hereby reserves for itself and its designees, an easement over the Condominium Property as it may deem necessary for preserving, maintaining or improving the common roadways, provided however, this reserved easement shall not be construed to constitute an obligation on the part of the Declarant to perform such maintenance.

(b) Declarant's Easement to Correct Drainage.

For a period of five years from the date of conveyance of the first Unit, the Declarant reserves for itself and its designees an easement and right on, over and under the ground within the Condominium Property to maintain and to correct drainage of surface water and other erosion controls in order to maintain reasonable standards of health and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected Condominium Property to its original condition as nearly as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. The rights granted hereunder may be exercised at the sole option of Declarant and shall not be construed to obligate Declarant to take any affirmative action in connection therewith.

13.4 Rights of Declarant to Sell or Lease Units.

So long as Declarant, or any mortgagee succeeding Declarant in title, shall own any Unit, it shall have the absolute right to lease or sell any such Unit to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interests. In connection therewith, Declarant reserves the right to use Units for sales purposes and to maintain a model unit. The Declarant may further maintain such signs as it deems reasonable or convenient for the purpose of advertising the sales and marketing of the Condominium.

13.5 Declarant's Right to Add Units

Although the Declarant has no specific plans therefore the Declarant reserves the right, but not the obligation, for seven (7) years from the date of recording this Declaration to subject additional condominium units which may be constructed within the Fairway Villas at Mount Mitchell Community to this Declaration of Condominium.

In the event the Declarant exercises the development right reserved herein, the Declarant shall record an amendment to the Declaration in accordance with N.C.G.S. 47C-2-108, 47C-2-110 and 47C-2-117 and comply with N.C.G.S. 47C-2-109. The Amendment to the Declaration shall assign an identifying number to each new Unit created, and, reallocate the allocated interests among all Units and contemporaneously therewith the Declarant shall record a Plat depicting the Units, Common Elements and Limited Common Elements.

In connection with the exercise of any of the foregoing rights the Declarant hereby reserves an easement over and through the Common Elements as may be reasonable.

13.6 Additional Easements Reserved.

The real property submitted to condominium ownership herewith is subject to conditions, limitations, restrictions, reservation, all matters of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service and drainage now existing or hereafter granted by the Declarant for the benefit of such persons as the Declarant designates. The Declarant shall have the right to grant such easements over and upon the Condominium Property and designate the beneficiary thereof until five years after the recording of the Declaration or until such time as Declarant transfers control of the Association to the Unit Owners, whichever shall first occur. Thereafter the Association shall be empowered to grant such easements on behalf of its members. During the period of time that Declarant has the right to grant the foregoing easements, the consent and approval of the Association and its members shall not be required. The right to grant the foregoing easements shall be subject to the requirement that the easements not structurally weaken the Condominium building(s) and improvements upon the Condominium Property nor unreasonably interfere with the enjoyment of the Condominium Property by Unit Owners.

14. COMPLIANCE AND DEFAULT.

Each Unit Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association, and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act:

14.1 Negligence.

A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents, lessees or other invitees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances, or of the Common Elements.

14.2 Compliance.

In the event a Unit Owner or occupant fails to maintain a Unit or the Limited Common Elements appurtenant to the Unit, or fails to cause such Unit or Limited Common Elements to be maintained, or fails to observe and perform all applicable provisions of the Declaration, the Bylaws, the Articles of Incorporation of the Association, applicable rules and regulations, the Declaration of Covenants, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in court of equity to require performance and/or compliance, to sue in a court of law for damages, to assess the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance and to collect such sums by placing a lien on the Unit and enforcing the Claim of Lien in the same manner as provided in Articles 15 and 16.

In addition to the foregoing, the Association may effect compliance by assessing damages or fines in the manner set forth in the Bylaws.

14.3 Costs and Attorney's Fees.

In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, the Articles of Incorporation and Bylaws of the Association, or any and all regulations applicable to such owner as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

14.4 No Waiver of Rights.

The failure of the Association, or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation and Bylaws of the Association, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

15. ASSESSMENTS: LIABILITY AND DETERMINATION.

To provide the funds necessary for proper operation and management of the Condominium, the Association has been granted the right to make, levy and collect Assessments against all Unit Owners and Units. The following provisions shall govern the making, levying and collecting of such Assessments and the payment of the costs and expenses of operating and managing the Condominium by the Association.

15.1 Liability for Assessments.

Assessments by the Association against each Unit Owner and his Unit shall be computed by multiplying the total budget for the Condominium by a fraction, the numerator of which shall be "1" and the denominator of which shall be the number of Units subject to the Declaration as set forth in Exhibit B.

Should the Association become the Owner of any Unit(s), the Assessment which would otherwise be due and payable to the Association by the Owner(s) of such Unit(s), reduced by an amount of income which may be derived from the leasing of such Unit(s) by the Association, shall be apportioned and the Assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests in the Common Elements exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

The Owner(s) of each Unit shall be personally liable, jointly and severally, as the case may be, to the Association for the payment of all Assessments, regular or special, fines on such delinquent Assessments or installments thereof as above provided, and for all costs of collecting the Assessments and interest thereon, including a reasonable attorney's fee, whether suit be brought or not, levied or otherwise coming due while such person(s) or entity own(s) a Unit.

No Owner of a Unit may exempt himself from liability for any Assessment levied against such Owner and his Unit by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Unit, or in any other manner.

15.2 Time for Payment.

The Assessment levied against the Owner of each Unit and his Unit shall be payable monthly or such other installments and unless changed by the Board, shall be payable on the first day of each month commencing upon the conveyance of the Unit to a purchaser.

15.3 Annual Budget.

The Board shall establish an annual budget in advance for each fiscal year which shall estimate Common Expenses for the forthcoming fiscal year required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves. Common Expenses include the operation, maintenance, repair or replacement of Common Elements, costs of carrying out the powers and duties of the Association, and such Common Expenses as are designated in this Declaration. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element must be assessed against the Units to which the Limited Common Element is appurtenant equally. Provided that any Common Expense or portion thereof benefiting fewer than all the Units must be assessed exclusively against the Units benefited. Common Expenses may also include without limitation, insurance for the directors and officers, in-house communications and security services, which are reasonably related to the general benefit of the Unit Owners, even if such expenses do not attach to the Common Elements of the Condominium.

15.4 Reserve Fund.

The Board, in establishing each Annual Budget, shall include therein a sum to be collected and maintained as a reserve fund for the capital expenditures, deferred maintenance and replacement of Common Elements and personal property held for the joint use and benefit of the Unit Owners. The amount to be reserved shall be determined by the Board of Directors or as may be required under the provisions of the Condominium Act or as may be required by the Mortgagees.

15.5 General Operating Reserve.

The Board, when establishing each Annual Budget, may, when deemed necessary or desirable, include therein a sum to be collected and maintained as a general operating reserve to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by owners of Units, as a result of emergencies or for other reason placing financial stress upon the Association. The annual amount allocated to such operating reserve and collected therefor shall not exceed five percent (5%) of the current annual Assessment levied against the Owners of all Units. Upon accrual in the operating reserve of an amount equal to but not exceeding twenty five percent (25%) of the current annual Assessment, no further payments shall be collected from the Unit Owners as a contribution to such operating reserve, unless it shall be reduced below the twenty-five percent (25%) level, in which event, the annual Assessment against each Unit Owner and/or Unit shall be increased to restore the operating reserve to an amount which will equal but not exceed twenty-five percent (25%) of the current annual amount of said Assessment.

15.6 Use of Association Funds.

All moneys and Assessments collected by the Association shall be treated as the separate property of the Association, and such moneys may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles, and Bylaws. As the moneys for Assessments are paid to the Association by any Unit Owner, the same may be commingled with moneys paid to the Association by the other owners of Units. Although all funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of Common Elements, including, without limitation, Common Surplus, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein except as an appurtenance to his Unit.

15.7 Special Assessments.

There shall be two types of Special Assessments (i) those which are assessed equally against all Units for the purpose of funding any services or acquisitions permitted under the Articles of Incorporation or Bylaws which are not part of the annual budget and (ii) those Special Assessments which are assessed against an individual Unit Owner for damage or injury caused by such Unit Owner, his family, guests or invitees a failure to perform such Unit Owner's obligations hereunder.

The specific purpose or purposes of any Special Assessment of the type described in (i) above approved in accordance with the condominium documents shall be set forth in a written notice of such Assessment sent or delivered to each Unit Owner. The funds collected pursuant to such approved Special Assessment shall be used only for the specific purposes or purposes set forth in such notice or returned to Unit Owners. However upon completion of such specific purpose or purposes any excess funds shall be considered Common Surplus. Such Special Assessments shall be collected in accordance with the provisions of Section 16.1. Any Special Assessment to pay a judgment against the Association pursuant to N.C.G.S. 47C-3-117(a) may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

Special Assessment made against a Unit Owner for the purposes provided in subsection (ii) of this section shall be assessed by the Board after a hearing at which the Unit Owner is provided an opportunity to be heard.

15.8 Delinquency or Default.

The payment of any Assessment or installment thereof due to the Association shall be in default if not paid to the Association on or before the due date thereof. If any Assessment or installment is not paid by the due date, the Owner and the Unit shall be assessed an automatic late penalty of fifteen dollars (\$15) if not paid within 10 days of the due date or a late penalty of twenty-five dollars (\$25) if not paid within 30 days of the due date. In addition to those sums, Assessments and installments thereof not paid within thirty (30) days from the date they are due shall bear interest at the rate of eighteen percent (18%) per annum.

16. ASSESSMENTS: LIEN AND ENFORCEMENT.

16.1 Lien for Assessment.

The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements subordinate to prior bona fide liens of record, which lien shall and does secure the moneys due for all: (1) Assessments levied against the Owner(s) of and each Unit, including late fees, interest and approved Special Assessments as described in Section 15.7(i), (2) all advances for taxes, and payments on account of superior mortgages, liens or encumbrances made by the Association to preserve and protect its lien, together with interest at the highest rate permitted by law on all such advances made for such purpose, (3) costs and expenses, including a reasonable attorney's fee, filing fees and court costs which may be incurred by the Association in collecting and enforcing its lien upon the Unit and its appurtenances and (4) any Special Assessment duly made by the Board. Any Assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit when filed in the office of the Clerk of Superior Court of the County in the manner provided by Article 8 of Chapter 44 of the General Statutes. The Association's lien may be foreclosed in a like manner as a Mortgage on real estate (including power of sale under Article A of Chapter 45 of the General Statutes).

In any suit for the foreclosure of the lien, the Association shall be entitled to rental from the Owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a Receiver for the Unit. The rental required to be paid shall be the amount deemed reasonable by the court, in its discretion.

A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the office of the Clerk of Superior Court.

16.2 Recording and Priority of Lien.

The lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit.

In the event that any person, firm or corporation shall acquire title by a purchase at the public sale resulting from the first Mortgagee's foreclosure judgment or foreclosure suit in which the Association has been properly named as a defendant junior lienholder or as a result of deed given in lieu of foreclosure, such person, firm or corporation so acquiring title shall only be liable and obligated for Assessments as shall accrue and become due and payable for the Unit and its appurtenant undivided interest in Common Elements subsequent to the date of acquisition of such title, and shall not be liable for the payment of any Assessments which were in default and delinquent at the time it acquired such title, except that such person, firm or corporation shall acquire such title. In the event of the acquisition of title to a Unit by foreclosure, deed in lieu of foreclosure, or judicial sale, any Assessment or Assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Units as a part of the Common Expense, although nothing herein contained shall be construed as

releasing the party personally liable for such delinquent Assessment from the payment therefor the enforcement of collection of such payment by means other than foreclosure.

16.4 Effect of Voluntary Transfer.

When the Owner of any Unit proposes to sell or mortgage the same in compliance with other provisions of this Declaration, the Association, upon written request of the Unit Owner, shall within fifteen (15) days thereof furnish to the Unit Owner, proposed purchaser or Mortgagee, a statement verifying the status of payment of any Assessment which shall be due and payable to the Association by the Owner of such Unit. Such statement shall be executed by any officer of the Association and any purchaser or Mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event that a Unit is to be sold or mortgaged at the time when payment of any Assessment against the Owner of the Unit and Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such sale or mortgage proceeds, as the case may be, shall be applied by the purchaser or mortgagee first to payment of any then delinquent Assessment or installment thereof due to the Association before payment of the balance of such proceeds of sale or mortgage to the Owner of the Unit responsible for payment of such delinquent Assessment.

In any voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor made prior to the transfer of title, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

16.5 No Election of Remedies.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent Assessment which shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

16.6 Possession of Unit.

Any person who acquires an interest in a Unit, (except Mortgagees) through foreclosure of a first Mortgage of record (or deed in lieu thereof) including, without limitation, persons acquiring title by operation by law, shall not be entitled to occupancy of the Unit nor enjoyment of the Common Elements, until such time as all unpaid Assessments and other charges due and owing by the former Owner if any, have been paid.

17. TERMINATION.

The Condominium may be terminated in the manner, provided in Section 47C-2-118 by the Condominium Act.

17.1 Destruction.

In the event it is determined, in the manner elsewhere herein provided, that the Improvements shall not be reconstructed because of total destruction, major damage, or condemnation, the condominium plan of ownership will be thereby terminated.

17.2 Agreement.

The Condominium may be terminated at any time by the approval in writing of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and by Mortgagees holding liens on eight percent (80%) of the Units. Upon approval of the Termination Agreement the rights of the parties and obligation of the Association shall be as set forth in the Condominium documents.

17.3 Amendment.

This Article cannot be amended without consent of all Unit Owners and of all Mortgagees.

18. CONDEMNATION

18.1 Complete Taking of Unit.

If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant of its Unit which may not be practically or lawfully used for any purpose permitted by the Declaration, the condemnation award must compensate the Unit Owner for his Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemnor acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking exclusive of the Unit taken, the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Any remnant of a Unit remaining after part of a Unit is taken under this provision is thereafter a Common Element.

18.2 Partial Taking of Unit.

If a part of a Unit is acquired by eminent domain leaving the Unit Owner with remnant which may be practically and lawfully used for the purposes permitted in the Declaration, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interests in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) that the Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or any other basis specified in the Declaration; and

(b) the portion of the allocated interest divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining units in proportion to the allocation of interests of those Units before taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

18.3 Common Elements.

If a part of the Common Elements is acquired by eminent domain, the portion of the award not payable to the Unit Owners under Section 18.1 must be paid to the Association. Any portion of the award attributable to the acquisition of a Limited Common Element, must be apportioned among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

18.4 Recording of Court Decree.

The court decree shall be recorded in every county in which any portion of the Condominium is located.

19. RIGHTS OF MORTGAGEES

19.1 Mortgagees' Right to Information.

Any Mortgagee of a Condominium Parcel who makes a request in writing to the Association for the items provided in this section shall have the following rights:

(a) To be furnished with at least one (1) copy of any annual financial statement and report of the Association.

(b) To be given written notice by the Association of the call of a meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Condominium, or the Articles of Incorporation and Bylaws of Association, which notices shall state the nature of the amendment being proposed.

(c) To be given notice of default (if such default remains uncured for 60 or more days) by any Owner of a Unit encumbered by a mortgage or deed of trust held by such Mortgagee, such notice to be given in writing and to be sent to the principal office of such Mortgagee or to the place which it or they may designate in writing to the Association.

(d) To be given an endorsement to the insurance policies covering the Common Elements requiring that such Mortgagee be given any notice of cancellation provided for in such policy.

(e) To examine the books and records of the Association upon reasonable notice during ordinary working hours, provided that the cost of copies of any records shall be made by such Mortgagee.

(f) To obtain current copies of the Declaration, By-Laws and other rules concerning the project.

(g) To obtain written notice of any condemnation loss, eminent domain procedures or any casualty loss which affects a material portion of the Condominium or any Unit upon which such Mortgagee has a first Deed of Trust.

(h) To obtain notice of any lapse, cancellation or material modification of any fidelity bond maintained by the Association.

19.2 Mortgagees' Rights to Approve.

Except as shall be elsewhere provided herein, unless Mortgagees having loans secured by fifty-one percent (51%) of the Units have given their prior written approval, the Association shall not be entitled to make a material change. A material change shall be deemed to include a change in the following:

- (a) voting rights;
- (b) Assessments, Assessment liens or the priority of Assessment liens;
- (c) reserves for maintenance, repair or replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of the ownership of Common Elements or the rights of use;
- (f) redefinition of any Unit boundaries;
- (g) conversion of Units to Common Elements or vice versa;
- (h) expansion or contraction of the Condominium;

- (i) insurance or fidelity bonds;
- (j) imposition of any restrictions on a Unit Owner's right to sell or transfer the Unit;
- (k) change in the manner of restoration or repair from that set forth in Article 11;
- (l) any action to terminate the Condominium;
- (m) any provisions which presently benefit the Mortgagees.

The approval of a Mortgagee shall be assumed to be given when a Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with "return receipt" requested.

19.3 Mortgagees' Right to Reimbursement.

In the event the Association fails to pay, when due, taxes assessed against the Common Elements or premiums of insurance covering the improvements on the Common Elements, then any one or more of the Mortgagees may pay such taxes or insurance premiums, and the Association shall be obligated to reimburse such Mortgagee or Mortgagees for such payments, and until paid, the same shall constitute a lien upon the Common Elements in favor of the party or parties, entity or entities, paying same, which lien may be enforced in a court of competent jurisdiction of the State of Florida in the same manner as a judgment lien may be enforced.

19.4 Registry of Owners and Mortgagees.

The Association shall at all times maintain a register of the names of the Owners and Mortgagees of all Units. Upon the transfer of title to any Unit, the transferee shall notify the Association in writing of his interest in such Unit together with recording information identifying the instrument by which such transferee acquired his interest in the Unit. The Owner of each Unit encumbered by a Mortgage shall notify the Association of the name and address of the Mortgagee, the amount of such mortgage, or mortgages, and the recording information identifying the same. The holder of any mortgage encumbering a Unit may notify the Association of any such Mortgage(s), and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

20. MISCELLANEOUS.

20.1 Severability.

The invalidity in whole or in part of any covenant or restriction, or any Article, sub-article, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws and regulations of the Association shall not affect the validity of the remaining portions thereof.

20.2 Applicability of Declaration of Condominium.

All present or future owners, lessees, tenants, or any other person who might use the facilities of the Condominium Property in any manner, are subject to the provisions of this Declaration, and the mere acquisition or rental of any Unit, or mere act of occupancy of any Unit, shall signify that the provisions of this Declaration of Condominium are accepted and ratified in all respects.

20.3 Construction.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership, the North Carolina Condominium Act, as amended to the date hereof, is hereby adopted and made a part hereof. In the event of any conflict between the provisions of this Declaration and the Condominium Act, the provisions of the Condominium Act shall prevail.

20.4 Parties Bound.

The restrictions and burdens imposed by this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute and equitable servitude upon each Unit and its appurtenant undivided interest in Common Elements and this Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who may subsequently become owners of Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

20.5 Enforcement.

The Association, any Unit Owner and the Declarant have the right to enforce the provisions of this Declaration against any person or the Association who fails to comply with this Agreement by obtaining specific performance or such other remedies as may be appropriate at law or in equity.

20.6 Attorneys Fees and Costs.

In the event that the Association, the Declarant or any Unit Owner brings an action to enforce the provision of this Declaration, the prevailing party shall be entitled to receive reasonable attorney's fees and costs, from the other party(ies).

IN WITNESS WHEREOF, the Declarant has caused the foregoing Declaration of Condominium to be executed on the date set forth above.

FAIRWAY VILLAS AT MOUNT MITCHELL, LLC
("DECLARANT")

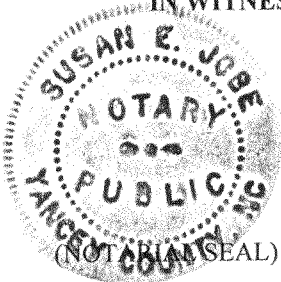
By: James M. Floyd
JAMES M. FLOYD, MEMBER/MANAGER

(CORPORATE SEAL)

STATE OF NORTH CAROLINA
COUNTY OF YANCEY

This is to certify that on the 18th day of APRIL, 2008, before me, a notary public of the state and county aforesaid, personally appeared JAMES M. FLOYD, who I am satisfied is the person who executed this Declaration on behalf of Fairway Villas at Mount Mitchell, LLC, as Member/Manager, and I have first made known to him the context thereof, he did acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have set my hand and affixed my seal this 18th day of APRIL, 2008.



Susan E. Jobe
NOTARY PUBLIC

My Commission Expires 8/19/2008

EXHIBIT 'A'

The land is lying and being in South Toe Township, Yancey County, North Carolina adjoining the lands of Mount Mitchell, Inc. and is described as follow:

BEGINNING on a monument in the line of Mount Mitchell Lands, Inc. located N 79 02 02 W 91.41 feet from the southwestern corner of the southernmost building located on the herein described parcel and running thence N 09 07 54 E 145.71 feet to another found monument located S 79 25 34 W 49.61 feet from the southwestern corner of the northernmost building on the herein described parcel; thence N 12 07 05 E 147.92 feet to a found iron pin; thence N 51 14 18 E 112.95 feet to an iron pin; thence the same course 30.00 feet to a point on the centerline of N.C. Hwy. 80; thence down and with the centerline of the highway in a southerly direction S 04 55 45 E 782.01 feet to a point; thence leaving said highway S 88 48 06 W 30.66 feet to a point; thence N 19 12 04 W 32.97 feet to a point; thence N 45 02 09 W 38.09 feet to a point; thence N 51 41 28 W 9.50 feet to a point; thence N 24 54 59 W 372.50 feet to the point of BEGINNING, containing 2.29 acres by DMD according to a map and plat of a survey by Dallas G. Miller, P.L.S., bearing the Drawing No. 0202-06-01D, dated 14 January, 2008.

EXHIBIT 'B'

Each of the ten units shall have a one-tenth (1/10) undivided interest in the common elements of the Condominium and the surplus, if any, of the Association. The Declarant does not intend to add additional units or land to the Condominium.

EXHIBIT 'C'

BYLAWS
OF
FAIRWAY VILLAS AT MOUNT MITCHELL CONDOMINIUM ASSOCIATION, INC.

A North Carolina Corporation Not for Profit

I. IDENTITY

A. Applicability. These are the Bylaws of FAIRWAY VILLAS AT MOUNT MITCHELL CONDOMINIUM ASSOCIATION, INC. (the "Association"), a North Carolina corporation not for profit organized pursuant to the provisions of Chapters 55A and 47C, General Statutes of North Carolina, as amended from time to time to the date of filing of the Articles of Incorporation. The purpose and object of the Association shall be to administer the operation and management of FAIRWAY VILLAS AT MOUNT MITCHELL ("Condominium"), which shall be established in accordance with the North Carolina Condominium Act, Chapter 47C, General Statutes of North Carolina, 1987 ("Act"), upon certain real property in Yancey County, North Carolina ("County").

B. Office. The office of the Association shall be at 11484 State Hwy. 80 S., Burnsville, Yancey County, North Carolina 28714, or at such other place as may be established by resolution of the Board of Directors.

C. Fiscal Year. The fiscal year of the Association shall be the calendar year.

D. Seal. The seal of the Association shall bear the name "FAIRWAY VILLAS AT MOUNT MITCHELL CONDOMINIUM ASSOCIATION, INC.," the word "North Carolina," the words "Corporation Not For Profit," and the year of incorporation. An impression of the seal is as follows:

(SEAL)

E. Definitions. All terms used herein shall have the same meaning and definitions as are set forth in the Declaration of Condominium for FAIRWAY VILLAS AT MOUNT MITCHELL, A CONDOMINIUM ("Declaration").

II. MEMBERSHIP, VOTING, QUORUM, PROXIES

A. Membership. The qualification of Members of the Association ("Members"), the manner of their admission to Membership and termination of such Membership, and voting by

Members, shall be as set forth in Article VI of the Articles of Incorporation for the Association ("Articles"), the provisions of which are incorporated herein by reference.

B. Quorum. A quorum is deemed present throughout any meeting of Members, if Members entitled to cast twenty percent (20%) of votes are present in person or by proxy at the beginning of the meeting.

C. Voting.

1. If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast the vote allocated to that Unit. If more than one of the multiple Owners are present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.
2. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each Owner of a Unit may vote or register protest to the casting of votes by the other Owners of a Unit through duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person residing over the meeting of the Association. Any proxy is void if it is not dated. A proxy terminates one year after its date unless it specifies a shorter term.

D. Approval. Evidence of the approval or disapproval of the holder of the vote upon any matter, whether or not the subject of an Association meeting, shall be given to the Association by the same person who would cast the vote if in an Association meeting.

E. Vote Required. Except as otherwise required under the provisions of the Articles, these Bylaws, the Declaration or where the same otherwise may be required by law, at any duly called meeting of the general Membership of the Association where the Members are entitled to vote and at which a quorum is present, the acts approved by the affirmative vote of the of the Members representing a majority of the Units entitled and authorized to vote whether in person or by proxy upon any question shall be binding upon the Members. No vote for a Unit owned by the Association may be cast.

G. Consent to Action. To the extent permitted by law, these Bylaws, the Declaration and the Articles, any action on any matter to be taken by the Association may be taken by written consent without meetings, setting forth the action so taken, approved by Members holding not less than the minimum number of votes necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voting.

III. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

A. Annual Meeting. The annual meeting of the Members shall be held at the office of the Association or such other place in North Carolina and at such time as may be specified in the notice of the meeting, on the first day of July of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members. No meetings of Members shall be required until such time as the first Unit is conveyed to a Member other than Fairway Villas at Mount Mitchell, LLC ("Declarant").

B. Member Approval Matters. All matters to be determined by the Association shall be determined by the Board of Directors, except the following:

1. Termination of the Condominium;
2. Amendment of the Declaration;
3. Initiation of lawsuits by the Association;
4. Amendment of the Articles of Incorporation;
5. Election of Directors;
6. Determine the qualifications, powers, duties, compensation or terms of the Board.

C. Special Meetings. Special meetings of the entire Membership of the Association shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from Members entitled to cast twenty percent (20%) of the votes.

D. Notice of Meetings.

1. Generally. Written notice of all meetings of Members shall be given by the Secretary or, in the absence of the Secretary, another officer of the Association, to each Member unless waived in writing. Each notice shall state the time and place of and purpose for which the meeting is called including, if applicable, the general nature of any proposed amendment to Declaration or Bylaws, any budget changes and any proposal to remove a director.

2. Annual. Notice of the annual meeting shall be given to each Member not less than ten (10) days nor more than fifty (50) days prior to the date set for the meeting, and shall be mailed to each Member or personally delivered. Such notice shall be deemed properly given when deposited in the United States mail addressed to the Member at his post office address as it appears on the records of the Association, with postage thereon prepaid. If delivered personally, receipt of notice shall be signed by the Member indicating the date received.

3. Special. Notice of special meetings shall be given to each Member not less than ten (10) and not more than fifty (50) days prior to the date set for the meeting and shall be mailed by regular mail or delivered personally to the Member.

4. Waiver. Any Member may, in writing, signed by such Member, waive notice of any meeting prior to such meeting, and such waiver, when filed in the records of the Association, shall be deemed equivalent to the giving of notice to such Member.

5. Meetings by Written Consent. Members may take action by written agreement without meetings.

6. Adjourned Meetings. If any meeting of Members cannot be held because a quorum is not present, or because a greater percentage of the Membership required to constitute a quorum for a particular purpose is not present, whenever required by the applicable provisions of the Articles, the Bylaws or the Declaration, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance, if greater than a quorum, is present.

D. Presiding Officer and Minutes. At meetings of Members, the President, or in his absence, the Vice President, shall preside, or in the absence of both, the Members present shall select a chairman of the meeting. Minutes shall be kept in a businesslike manner and available for inspection by Directors, Members and their authorized representatives during normal business hours at the principal office of the Association.

E. Order of Business. The order of business at annual meetings of Members, and, as far as practical, at other meetings of Members, shall be:

- (1) Calling of the roll and certifying of proxies,
- (2) Proof of notice of meeting or waiver of notice,
- (3) Reading or waiver of reading of minutes of previous meeting of Members,
- (4) Reports of officers,
- (5) Reports of committees,
- (6) Appointment of Chairman of inspectors of election,
- (7) Election of Directors,
- (8) Unfinished business,
- (9) New business, and
- (10) Adjournment.

IV. BOARD OF DIRECTORS

A. Members of Board. The first Board of Directors shall consist of not less than three (3) persons as designated in the Articles of Incorporation. Pursuant to the Articles of Incorporation, the Declarant reserves the right to appoint Directors to the Board as set forth therein.

B. Election of Directors. Directors shall be elected in the following manner:

1. Commencing with the election of the Board to succeed the first Board as designated in the Articles, Declarant shall appoint the number and the identity of the Members of the Board which Declarant is entitled to appoint in accordance with the Articles and these Bylaws, and upon such appointment by Declarant, and upon written instrument presented to the meeting at which such election is held, the persons so appointed by Declarant shall be deemed and considered for all purposes Directors of the Association and shall thenceforth hold the offices and perform the duties of such Directors until their successors shall have been elected or appointed, as the case may be, and qualified in accordance with the provisions of these Bylaws.

2. For so long as the Declarant retains the right to appoint at least one Member of the Board of Directors, all Members of the Board except those who Declarant is entitled to appoint under these Bylaws, shall be elected at large by a plurality of the votes cast at the annual meeting of the general Membership, such vote to occur immediately following designation of the Members of the Board whom Declarant is entitled to appoint. Commencing with the first annual election of Directors after the Declarant has lost or relinquished the right to appoint at least one Director, the Members shall elect all the Directors by a plurality of the votes cast at the annual meeting of the general Membership.

3. Vacancies on the Board may be filled, through the unexpired term thereof, by the remaining Directors except that, should any vacancy on the Board be created in a directorship previously filled by any person appointed by Declarant, such vacancy shall be filled by Declarant appointing by written instrument delivered to any officer of the Association, the successor Director, who shall fill the vacated directorship for the unexpired term thereof.

4. Until such time as the Members are entitled to elect all of the Directors, each Director shall serve for one year until the next annual meeting or such other time as his successor is elected. At the first annual meeting at which the Members are entitled to elect all of the Members of the Board of Directors, at least one directorship shall be designated as a two-year term director and the other shall be for one year. The intent hereof is to stagger the terms of the directorships so that there shall be some Members of the Board with prior experience.

5. In the election of Directors, there shall be appurtenant to each Unit one (1) vote for each Director to be elected. Provided, however, that no Member may cast more than one vote for any person nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative.

6. Within sixty (60) days after Members other than the Declarant are entitled to elect a Director(s), the Association shall, in accordance with the provisions of these Bylaws, call in a manner as elsewhere provided in these Bylaws, and give not less than ten (10) days nor more than fifty (50) days notice to a meeting of the Members for this purpose. Such meeting may be called and the notice given by any Member if the Association fails to do so within the time prescribed herein. Election of such Directors shall be conducted in the manner provided in these Bylaws.

7. In the event that Declarant selects any person or persons to serve on the Board, Declarant shall have the absolute right at any time, in its sole discretion, to replace any such person or persons with another person or other persons to serve on the Board. Replacement of any person or persons designated by Declarant to serve on the Board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name or names of the person or persons designated as successor or successors to the persons so removed from the Board. The removal of any Director and designation of his successor shall be effective immediately upon delivery of such written instrument by Declarant to any officer of the Association.

C. Organizational Board Meeting. The organizational meeting of a newly elected or designated Board shall be held within fifteen (15) days of their election or designation, at such time and place as shall be fixed at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary; provided, that a quorum shall be present.

D. Regular Board Meeting. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least seven (7) days prior to the day named for such meeting, unless notice is waived.

E. Special Meeting. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of any two of the Directors. Not less than three (3) days' notice of a special meeting shall be given to each Director, personally or by mail, telephone or telegram, which notice shall state the time, place and purpose of the meeting, unless notice is waived.

F. Board Minutes. Minutes of all meetings of the Board shall be kept in a businesslike manner and available for inspection by Members and Directors during normal business hours at the principal office of the Association.

G. Waiver of Notice. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

H. Quorum. A quorum at meetings of the Board shall consist of the Directors entitled to cast at least fifty percent (50%) of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as may be specifically otherwise provided in the Articles, these Bylaws or the Declaration. If any meeting of the Board cannot be held because a quorum is not present, or because the greater percentage of the Directors required to constitute a quorum for particular purposes is not present, whenever the latter percentage of attendance may be required as set forth in the Articles, these Bylaws or the Declaration, the Directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

A Director who is present at a meeting of the Board at which action or any corporate matter is taken, shall be presumed to have assented to the action taken, unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

I. Action without a Meeting. To the extent now or from time to time hereafter permitted by the laws of North Carolina, the Board may take any action which they might take at a meeting of the Board without a meeting; provided, that a record of all such actions so taken and approval thereof, signed by each Director, shall be filed and retained in the minute book of the Association.

J. Removal. Directors, other than those appointed by the Declarant, may be removed with or without cause from office by the Members by at least sixty-seven percent (67%) vote of all Members present and entitled to vote at any meeting of the Members at which a quorum is present.

K. Presiding Officer. The presiding officer of meetings of the Board shall be the President of the Association. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

L. Powers. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the laws of North Carolina, the Articles, these Bylaws and the Declaration. Such powers and duties shall be exercised in accordance with the Articles, these Bylaws and the Declaration, and shall include, without limitation, the right, power and authority to perform all powers set forth in Article V of the Articles as well as the following:

M. Duties. Without limiting any of the foregoing powers or other duties of the Board, elsewhere set forth herein or in the Declaration or the Articles, it shall be the duty of the Board of Directors to:

1. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to Members at least annually.
2. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
3. Fix the amount of the Assessment against each Lot or Dwelling Unit, send written notice thereof to each Member and to take such remedial action as may be necessary or convenient to collect such Assessments.
4. Issue or cause to be issued a certificate setting forth the status of payment of Assessments for any Lot or Dwelling Unit.
5. Procure and maintain adequate liability and hazard insurance on the Common Property.

6. Cause the Common Property to be maintained.
7. Pay all costs of power, water, sewer and other utility services rendered to the Common Property and not billed to the Members individually.
8. Pay all taxes and assessments which are liens against any part of the Property other than Lots or Dwelling Units and the appurtenances thereto, and assess the same against the Members and their respective Lots and Dwelling Units subject to such liens.

V. OFFICERS

A. Generally. The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall deem advisable from time to time. The President shall be elected from the Membership of the Board, but no other officer need be a Director. The same person may hold the offices of Secretary, Treasurer, Assistant Secretary or Assistant Treasurer; however, no other person may hold more than one office simultaneously. The Board may from time to time elect such other officers, and designate their powers and duties, as the Board may deem necessary to properly manage the affairs of the Association. Officers may be removed from office by the Board.

B. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Board and shall see that orders and resolutions of the Board are carried out. He shall have all of the powers and duties which are usually vested in the office of President of a corporation not for profit, including but not limited to the power to appoint committees from among the Members from time to time, as he may in his discretion determine appropriate, the power to sign all amendments to the Declaration, Articles and Bylaws, leases, mortgages, deeds of trust, deeds and other written instruments, co-sign all checks and promissory notes, to assist in the conduct of the affairs of the Association. He shall have such additional powers as the Board may designate.

C. Vice President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

D. Secretary. The Secretary shall keep the minutes of all proceedings of the Board and the Members. He shall attend to the affairs of the Association. He shall have such additional powers as the Board may designate. He shall attend to the giving and serving of all notices to the Members and the Board, and such other notices as may be required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of a corporation not for profit and as may be required by the Board and the President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.

E. Treasurer. The Treasurer shall have custody of all of the property of the Association including funds, securities and evidences of indebtedness. He shall keep the assessment roll and accounts of the Members; he shall keep the books of the Association, in accordance with good accounting practices, and he shall perform all other duties incident to the office of Treasurer.

F. Compensation. No compensation shall be paid to any officer of the Association except with the approval of a majority of the Members entitled to vote. No officer who is appointed by the Declarant shall receive any compensation for his services as an officer.

G. Conflict of Interest. Nothing herein shall be construed so as to prohibit or prevent the Board of Directors from employing any director or officer of the Association at such compensation as the Board shall determine for the management of the Association for such compensation as shall be mutually agreed by the Board and such officer, director or corporation for the purpose of making available to the Members such services as are contemplated by provisions of the Articles or of these Bylaws. It is expressly acknowledged and contemplated that the first Board of Directors may enter into such contracts with persons who are initial officers or directors of the Association of which corporations having officers, directors, employees who are also Members of the first Board of the Association.

H. Term. The officers shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve.

I. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

J. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

VI. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

A. Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Member and his respective Unit. Such account shall designate the name and mailing address of the Member owning each Unit, the amount of each assessment against the Member, the amount of each assessment and due date thereof, all amounts paid, and the balance due upon each assessment.

B. Annual Budget. The Board shall adopt, for, and in advance of, each fiscal year, a budget for the Condominium showing the estimated costs of performing all of the functions of the Association as to the Condominium for the year. The budget shall show the total estimated expenses of the Association for that year and shall contain an itemized breakdown of the Common Expenses which shall include, without limitation, the costs of operating and maintaining the Common Elements, taxes on Association property, wages and salaries of Association employees, management, legal and accounting fees, office supplies, public utility services not metered or charged separately to Units, premiums for insurance carried by the Association and any reserve accounts and/or funds which may be established from time to time by the Board. Each budget shall also show the proportionate share of the total estimated expenses to be assessed against and collected from the Members and due date(s) and amounts of installments thereof. Copies of the proposed budgets and proposed assessments shall be transmitted to each Member within thirty (30) days after adoption of the proposed budget and the Board, shall set a date for a meeting of the Members to consider ratification which is not less than fourteen (14) and not more than thirty (30) days after mailing the summary. There shall be no requirement that a quorum be present at the meeting. The budget will be deemed ratified unless at the meeting a majority of all owners present at the meeting reject the budget. In the event that a budget is rejected, the budget last ratified shall continue in effect until such time as the Unit Owners ratify a subsequent budget.

Delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as a limitation upon the additional assessment in the event that any budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

C. Assessments. Unless otherwise determined by the Board of Directors, assessments shall be payable monthly on the first day of each month, but in no event shall amounts be payable less often than quarterly. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the fiscal year for which an amended assessment is made shall be payable in equal installments through the end of the fiscal year; provided nothing herein shall serve to prohibit or prevent the Board of Directors from imposing a lump sum assessment in case of any immediate need or emergency.

D. Special Assessments. Special assessments shall be levied and paid in the same manner as heretofore provided for regular assessments. Special assessments can be of two kinds: (i) those chargeable to all Members in the same proportions as regular assessments to meet shortages or emergencies, to construct, reconstruct, repair or replace all or any part of the Common Elements (including fixtures and personal property related thereto) and for such other purposes and in such amounts as shall have been approved by the majority of Members at a duly convened meeting at which a quorum is present; or (ii) those assessed against one Member alone to cover repairs or maintenance for which such Member is responsible and which he has failed to make, which failure impairs the value of or endangers the Common Elements or the

Condominium, or which are for expenses incident to the abatement of a nuisance within his Unit which may be assessed when approved by the Board.

E. The Depository. The depository of the Association shall be such bank or banks or savings and loan association or associations as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks or withdrawals signed by such persons as are authorized and may include in its provisions authority for the manager of the Association to sign checks on behalf of the Association for payment of the obligations of the Association.

F. Audit or Review. An audit or review of the accounts of the Association may be made from time to time as required by the Condominium Act. Copies thereof shall be delivered to Institutional Mortgagees if requested.

J. Fidelity Bonds. Fidelity bonds shall be required for the Board and any persons handling or responsible for Association funds as the Board of Directors shall direct in an amount to be determined by the Board based upon its best business judgment. The premiums of said bonds shall be paid by the Association.

VII. PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Declaration, Articles of Incorporation or these Bylaws.

VIII. BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

IX. AMENDMENTS

Amendments to these Bylaws shall be proposed and adopted in the following manner:

A. Proposal. Amendments to these Bylaws may be proposed by the Board, acting upon vote of a majority of the Directors, or by Members owning Units in the Condominium, to which twenty percent (20%) of the vote are allocated whether meeting as Members or by instrument in writing signed by them.

B. Notice. Upon any amendment or amendments to these Bylaws being proposed by the Board or Members, such proposed amendment or amendments shall be transmitted to the President of the Association or acting chief executive officer in the absence of the President, who shall thereupon call a special meeting of the Members for a date not sooner than ten (10) days or

later than fifty (50) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each Member written or printed notice of such meeting in the same form and in the same manner as notice of a special meeting of the Members is required as herein set forth; provided, that proposed amendments to the Bylaws may be considered and voted upon at annual meetings of the Members.

C. Content of Amendment. No Bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended; new words inserted in the text shall be underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw...for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

D. Voting. In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of Members owning not less than fifty-one percent (51%) of the Units in the Condominium(s). Thereupon, such amendment or amendments to these Bylaws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the Public Records of County as an amendment to the Declaration of Condominium within thirty (30) days from the date on which any amendment or amendments have been affirmatively approved by the Members.

E. Written Notice. At any meeting held to consider such amendment or amendments to these Bylaws, the written vote of any Member shall be recognized if such Member is not present at such meeting in person or by proxy, provided such written vote is delivered to the Secretary at or prior to such meeting.

F. Declarant's Reservation. Notwithstanding the foregoing provisions of this Article IX, no amendment to these Bylaws which shall abridge, amend or alter the right of Declarant to designate Members of the Board of Directors of the Association, as provided in Article IV hereof or any other right of the Declarant provided herein or in the Articles of Incorporation, may be adopted or become effective without the prior written consent of Declarant.

G. Proviso. Provided, however, that no amendment shall discriminate against any Member or group of Units unless the Members so affected shall consent. No amendments shall be made that is in conflict with the Act, the Declaration, or the Articles.

X. MISCELLANEOUS

In the case of any conflict between the Articles and these Bylaws, the Articles shall control and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

The foregoing were adopted as the Bylaws of FAIRWAY VILLAS AT MOUNT MITCHELL CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of North Carolina, at the first meeting of the Board of Directors on the ____ day of _____, 2007.

Dated: _____

Secretary

APPROVED:

President