

Melanie Arthur 69P  
CARTERET COUNTY  
HD Date 05/04/2006 Time 14:29:00  
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NORTH CAROLINA, CARTERET COUNTY  
This instrument and this certificate are duly filed at the  
date and time and in the Book and Page shown on the  
first page hereof.

Melanie Arthur Register of Deeds  
By *Boa Reus*  
Asst. Deputy, Register of Deeds

**DECLARATION OF CONDOMINIUM**

**OF**

**THE VILLAS AT MAGENS BAY I CONDOMINIUMS**  
May 4, 2006

**Town of Cedar Point, Carteret County**  
**North Carolina**

**Declarant: VILLAS AT MAGENS BAY I, LLC.**

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**DECLARATION OF CONDOMINIUM**

**OF**

**THE VILLAS AT MAGENS BAY I CONDOMINIUMS**

**ARTICLE I**

**SUBMISSION: DEFINITIONS:**

Section 1.1. Declarant; Premises; County: Name: Villas at Magens Bay I, LLC, a North Carolina Limited Liability Company, 9816 Clarendon Court, Emerald Isle, NC, 28954, herein "Declarant" and the owner in fee simple of the real property described on Exhibit A attached hereto, located in the Town of Cedar Point, Carteret County, North Carolina, hereby submits the real property including all easements, rights and appurtenances there unto belonging and the buildings and improvements erected thereon (collectively, the "Premises") to the provisions of the North Carolina Condominium Act Codified as Chapter 47C of the North Carolina General Statutes, G. S. 47C-1-101 et seq. ("Act"), and hereby creates with respect to the premises a condominium to be known as The Villas at Magens Bay I Condominiums (the "Condominium").

Section 1.2. Easements. Included among the easements, rights and appurtenances referred to in Section 1.1 above are the following recorded easements:

(a) Rights granted to Carteret Craven Electrical Membership Cooperative for the installation, repair and maintenance of electrical lines and equipment to serve the premises;

(b) Easement granted to Carolina Telephone & Telegraph Company and/or Sprint for the placement, installation and repair of telephone lines and equipment to serve the premises;

(c) Easements to West Carteret Water Company for water lines and equipment to serve the premises;

(d) A non-exclusive access easement by all unit owners and their heirs, successors in interests and assigns together with their guests and invitees, for access to and from NC Highway 24 over Bodie Drive and the asphalt drives and parking areas constituting the northernmost portions of Phases II and III as shown on a Parker and Associates Plat recorded in Map Book 30, page 684, Carteret County Registry, showing the Village at Magens Bay PUD, to the property described on Exhibit A hereto, in favor of all unit owners and their heirs, successors, assigns, guests and invitees.

Section 1.3. Definitions:

(a) Capitalized terms not otherwise defined in this Declaration shall have the meanings specified or used in the Act.

(b) The following terms are used or defined in general terms in the Act and shall have specific meanings herein as follows:

(1) "Allocated Interest" means the undivided interests in the common elements, the common expense liability, and votes in the Association allocated to each unit.

(2) "Association" or "Unit Owners' Association" means Villas at Magens Bay I Association, Inc., the unit owners' association organized under G. S. 47C-3-101, pursuant to the Articles of Incorporation herein.

(3) "Common Elements" means all portions of the condominium other than the units.

(4) "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

(5) Under definition "Common Expense Liability" means the liability for common expenses allocated to each unit pursuant to G. S. 47C-2-107.

(6) "Condominium" means the real estate subject to this declaration, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(7) "Declarant" means Villas at Magens Bay I, LLC or any person or group of persons acting in concert with Villas at Magens Bay I, LLC, who (i) as part of a common promotional plan offers to dispose of his or its interest in a unit not previously disposed of or (ii) reserves or succeeds to any special Declarant right.

(8) "Declaration" means this document and any other instrument, however denominated, which creates condominiums, and any amendments to those instruments.

(9) "Development Rights" means any right or combination of rights reserved by Declarant in the Declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.

(10) "Dispose" or "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

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(11) "Executive Board" means the body, regardless of name, designated in the Declaration to act on behalf of the Association.

(12) "Identifying Number" means a symbol or address that identifies only one unit in a condominium.

(13) "Limited Common Element" means a portion of common elements allocated by the Declaration or by operation of G.S. 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all the units.

(14) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(15) "Purchaser" means any person, other than a Declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest (including renewal options) of less than five years, or as security for an obligation.

(16) "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by a custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real Estate" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(17) "Residential Purposes" means use for dwelling or recreational purposes, or both.

(18) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to G. S. 47C-2-105 (a) (5) .

(19) "Unit Owner" means a Declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely for security as an obligation.

(20) The terms "Affiliate of a Declarant", "Leasehold Condominium", "Offering", "Special Declarant Rights", "Time Share", and "Lessee" though not intended to be applicable to this Declaration unless otherwise noted shall have those definitions set forth in G. S. 47C-1-103 which definitions are incorporated herein by reference.

(c) The following terms when used herein shall have the meanings set forth below:

(1) "Alteration(s)" means the combination or separation of Units permitted by this Declaration and the Act which entails one or more of: (i) the construction of all or a portion of one or more intervening partitions, walls, floors or ceilings (each of which will then become part of the Common Elements) to form separate Units; (ii) the removal or alteration of all or a portion of one or more partitions, walls, floors or ceilings (each of which is part of the Common Elements) between Units; or (iii) the creation, alteration or removal of one or more apertures in one or more intervening partitions, walls, floors or ceilings (each of which is part of the Common Elements) between units.

(2) "Building" means that certain three level structures designated Buildings 1 and 2 on the property described on Exhibit A and as shown on the plats and plans, and containing the units.

(3) "Building Limited Common Elements" means the common elements contained within a building.

(4) "Condominium Documents" means this Declaration, the plats and plans, Bylaws and Rules and Regulations, and any amendments hereto.

(5) "Date of First Conveyance" means the date of the first conveyance of a unit to a person other than the Declarant.

(6) "Date of Transfer" means the date upon which control of the Executive Board by Declarant is completely transferred to the unit owners under Section 11.2 hereof.

(7) "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage on a unit and who has requested notice of one or more certain matters in accordance with Section 6.3 hereof.

(8) "Eligible Mortgagee" means a lender who holds a first mortgage on a unit and who has requested notice of one or more certain matters in accordance with Section 6.3 hereof.

(9) "Insurance Trust Agreement" means that certain agreement between the Association and the Insurance Trustee providing for the management and disbursement of insurance proceeds in accordance with Section 7.1 hereof.

(10) "Insurance Trustee" means that certain entity responsible for the management of insurance proceeds pursuant to the Insurance Trust Agreement, which entity's deposits are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or another federally constituted body serving in an equivalent function.

(11) "Party-Wall" means a common wall located between the boundaries of two or more units.

(12) "Percentage Interest" means the undivided ownership interests in the common elements appurtenant to each unit as set forth in Exhibit C attached hereto, as the same may be amended from time to time.

## ARTICLE II

### GENERAL DESCRIPTION OF PLANNED DEVELOPMENT; SURVEY DESCRIPTION OF IMPROVEMENTS; PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES; UNIT BOUNDARIES; RELOCATION OF UNIT BOUNDARIES; MAINTENANCE RESPONSIBILITIES

Section 2.1. General Description of Planned Development. Declarant intends to develop the property hereinafter described as a condominium project developed in 2 buildings joined by a common elevator tower and containing twelve units. Buildings 1 and 2 would each contain 6 units each as shown on the recorded plats. A chart showing the percentage interest in the common elements of each unit is attached hereto as Exhibit C and made a part hereof by reference. A legal description of the property which is being submitted to unit ownership is set forth on Exhibit A attached hereto. The property will further include a non-exclusive easement for access to and from the project to NC Highway 24, the nearest public street, over Bodie Drive and the northern portions of Phases II and III as shown on the Village at Magens Bay PUD recorded in Map Book 30, page 684, Carteret County Registry.

Section 2.2. Description of Project. Declarant owns fee simple title to the property described on Exhibit A, subject only to easements and the lien of a development/construction loan Deed of Trust to Sound Bank. The real property hereby submitted to unit ownership under Chapter 47C of the North Carolina General Statutes by this Declaration is described on Exhibit A attached hereto and made part hereof by reference.

Section 2.3. Survey and Description of Improvements. Attached hereto at the time this Declaration of Unit Ownership is filed for record and incorporated herein by reference as if fully set forth in full is an as-built survey and site plans showing the location of the two buildings and other improvements, a set of floor plans of the buildings and units which show typically the dimensions, area and the location of each unit therein, and the dimensions, area and location of the general common elements and limited common elements for each unit of the project. Each unit is identified thereon by a specific number and no unit bears the same designation as any other unit. Such survey, site plan and set of floor plans (hereinafter collectively called "the Condominium plans") are recorded as indicated on Exhibit B. The units and buildings of the project are more particularly described on Exhibit B attached hereto and incorporated herein by reference.

Section 2.4. Percentage Interests. Attached as Exhibit C is a list of the 12 Units by their Identifying Numbers and the Percentage Interest appurtenant to each Unit, determined on the basis of the approximate square footage for each unit as determined by the Declarant as of the date of this

Declaration, by dividing the approximate total square footage of each unit by the approximate aggregate gross square footage of all units within the project, and then rounding the final percentages so that the sum of all percentage interests is One Hundred (100%) percent.

2.5. Votes. Each Unit shall be allocated one vote, which shall represent that unit's undivided interest percentage, which vote shall be cast by the Unit Owner in any Association meetings. The vote allocated to a Unit shall not be divisible. In the event a Unit is owned by more than one Owner, then if only one of the multiple owners of a Unit is present at a meeting of the Association, he is entitled to cast all of the votes allocated to that Unit. If more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners. A majority agreement of multiple owners is conclusively presumed if anyone of the multiple owners casts the votes 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.

Section 2.6. Common Expenses Liabilities. The Common Expenses Liability of each Unit shall be assessed in accordance with the respective Percentage Interest of each Unit.

Section 2.7. Unit Boundaries.

(a) The title lines or boundaries of each Unit are situated as shown on the Plats and Plans and are formed by the following planes:

(1) The Unit-side surface of all doors, and their sills and hardware, leading from such Unit to interior corridors of the Building or directly to the outside of a Building and the Unit-side surface of the door frames in which such doors are set;

(2) The Unit-side surface of the sashes of windows which are set in the exterior walls of such Unit, the exterior surfaces of the panes of such windows and the Unit-side surface of the frames and sills for such windows;

(3) The Unit-side surface of the portion of the structure to which the plaster or plasterboard is attached, with respect to ceilings and perimeter walls located at the perimeter of such Unit that are not Party-Walls;

(4) The center line of Party-Walls;

(5) The Unit-side face of the subfloor of each Unit;

(6) The Unit-side surface of the furring, as extended, around columns and "stacks" containing pipes, ducts, wires, conduits, chutes and flues that are either Common Elements or Limited Common Elements; and

(7) The exterior surface of through-wall air conditioner units which serve only one Unit, and the Unit-side face of all air conditioning grilles which are attached to the outside face of a Building.

(b) Each Unit consists of all portions of the Buildings within the aforesaid title lines, except the air space displaced by: (i) structural members and bearing columns within or passing through such Unit which are deemed to be Common Elements; and (ii) other Common Elements within such Unit including without limitation, chutes, flues, ducts, wires, conduits and pipe runs which serve more than one Unit. With respect to such chutes, flues, ducts, wires, conduits and pipe runs, then any portion thereof serving only that unit and lying partially within and partially outside the designated boundaries of a Unit, shall be a Limited Common Element allocated exclusive 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.

(c) Other than the twelve units, no additional units may be created by subdivisional conversion of units owned by Declarant within this Condominium. Those portions of any air conditioning units, heat pumps, lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit and which lie either partially within and/or partially outside the title lines of a Unit or lie totally outside the title lines of a Unit shall be deemed to be a part of such Unit, and shall not be part of the common elements.

(d) Any shutters, awnings, window boxes, steps, stoops, stairs, porches, patios, and all exterior doors and windows or other fixtures including heat pumps, designed to serve a single Unit but located outside the Unit's boundary are Limited Common Elements allocated exclusively to that Unit.

Section 2.8. Relocation of Unit Boundaries by Combination or Subdivision of Units.

(a) Upon compliance with the requirements of Section 2.5(d) hereof, two or more entire adjacent Units may be combined into a larger Unit, provided that both of the combined Units are under common ownership at the time of effecting such combination, whereupon the Percentage Interest appertaining to such combined Unit shall be the sum of the respective Percentage Interests appertaining to each of the Units that have been combined. The Identifying Number on the combined Units shall consist of the numbers of the Unit having the lowest numbered Identifying Number, followed by a hyphen and the last two digits of the Identifying Number of each other combined Unit, arranged in numerical order. By way of illustration, if Units with Identifying Numbers of "A206" and "A208" were to be combined, the Identifying Number of the combined Unit would be "A206-08."

(b) No Unit may be divided or subdivided by any Unit owner, including the Declarant, into a smaller Unit nor may any portion thereof less than the entire Unit be sold or otherwise transferred, unless all Mortgagees give their prior written consent thereto. Any subdivision of Units carried out pursuant to this Section 2.5(b) is also required to meet the requirements of Section 2.5(d) hereof. The respective Percentage Interest appertaining to such

separate Units and the respective Identifying Numbers of the subdivided Units shall be determined by the Executive Board.

(c) Other than the twelve units which may be created by this Declaration, no additional Units may be created by subdivision or conversion of Units owned by Declarant.

(d) Any Unit Owner who wishes to perform any Alteration to his Unit or Units shall:

(1) Refrain from making any Alteration that will: (i) impair the structural integrity of the Buildings or any mechanical or electrical system therein; (ii) adversely affect either the fire retardant or sound absorbent quality of a Building; (iii) lessen the support of any portion of a Building; or (iv) violate any applicable law, ordinance or governmental rule, regulation or order;

(2) Obtain the approval of the Executive Board (which approval shall not be unreasonably withheld or delayed) for any Alteration to a Building prior to the commencement of any such Alteration;

(3) Expediently complete all Alterations: (i) in accordance with the plans and specifications therefor which have been prepared at such Unit Owners' expense and which have been approved by the Executive Board prior to the commencement of such Alterations; and (ii) without incurring any mechanics' or materialmen's liens;

(4) Pay the full cost of performing all such alterations; and

(5) Pay all costs and expenses incurred in connection with the preparation, review, execution and recording of any amendment to this Declaration (including the Plats and Plans) needed in order to reflect the condition of a Building after completion of such Alterations, which amendment shall be recorded by the Executive Board if such amendment conforms to the requirements of the Act and if such amendment is approved in writing by (i) all Owner(s) of all Units the appearances of which on such amendment differ from their respective appearances on the Plats and Plans prior to such amendment, and (ii) all mortgagees, in connection with a proposed division or subdivision of any Unit.

Section 2.9. Maintenance Responsibilities and Restrictions on Exterior Changes. No unit owner shall make any changes to the exterior of his unit or to the limited common elements of said unit without the prior written approval of the Executive Board of the Association. The buildings are located in the Town of Cedar Point and the original design and improvements have been approved by the Planning Board of the Town. Accordingly, the exterior of each building, the landscaping and exterior appearances of the property, and the exterior design and appearance of each unit and its limited Common Elements shall be maintained as closely as possible to the original design and appearance as approved and completed, and no changes to the exterior of the property or its buildings or the Limited Common Elements (porches, stairs, terraces, garage, etc.) or the landscaping shall be carried out without the prior written approval of the Executive Board.

It shall be the responsibility of the Association to maintain, repair or reconstruct all buildings, Common Elements and portions of the property which are either not part of the interior portion of a unit or are not the specific responsibility of a unit owner hereunder. It shall be the responsibility of each unit owner to repair and maintain the interior portion of his or her individually owned unit, to specifically include the breakage of glass and the repair or replacement of heat pumps. It shall also be the responsibility of each unit owner to perform normal maintenance and repair of the Limited Common Elements for said unit, including but not limited to interior stairs. Other than the specific duties regarding maintenance and repair imposed herein on the Association and/or unit owners, the responsibility for all other maintenance and repair duties and costs for either the Association or an individual unit owner shall be assigned and interpreted in accordance with N.C.G.S. 47C-3-107, 3-107A, 3-115, and 3-116 of the Act, except as expressly set forth to the contrary herein.

### ARTICLE III

#### DESCRIPTION AND ALLOCATION OF LIMITED COMMON ELEMENTS

Section 3.1. Description of Limited Common Elements. Limited Common Elements shall include those portions of the Building defined as such pursuant to G. S. 47C-2-102(2)(4), or as identified and designated as Limited Common Elements in the Plats and Plans, Section 3.2 hereof, or both. Those portions of the Limited Common Elements serving only the Unit above, below or adjacent to such Limited Common Elements, as the case may be, are Limited Common Elements allocated only to the Unit which they serve. Those Limited Common Elements (if any) shown and identified as such on the Plats and Plans shall be allocated to the Unit indicated therein.

The allocation of Limited Common Elements to each Unit may not be altered without the unanimous consent of the Unit Owners whose units are affected.

#### Section 3.2. Specified Limited Common Elements.

The following portions of a Building are hereby designated as Limited Common Elements:

- (a) Window and door sills, frames and hardware which are not part of the Unit but which are adjacent to and serve only such Unit;
- (b) Siding, walls, railings and the flooring constituting any porches or decking adjacent to a Unit;
- (c) Any lighting fixture mounted on an exterior surface of the Building and intended to illuminate one or more adjacent porches.
- (d) The porches and steps on the north and south sides of each Unit on the first, second and third floors of the buildings are Limited Common Elements for each Unit to which said porches are attached.

Section 3.3. Building Limited Common Elements. All Common Elements contained within the buildings shall be Building Limited Common Elements, and shall be allocated to the Units contained within that Building.

#### ARTICLE IV

#### EASEMENTS:

Section 4.1. Easements. In addition to the easements specifically granted by the Act, the Condominium shall be subject to the following easements and restrictions:

(a) An easement in favor of the appropriate utility companies for such services as are desirable or necessary to adequately serve the Premises and all appurtenances thereto; including (by way of illustration and not limitation) the right to install, lay, maintain, repair, relocate and replace water mains and pipes, steam lines, gas mains and pipes, sewer and drain lines, telephone and other communication wires, cables and equipment, electrical wires and conduits, elevators and associated equipment, over, under, through, in, along and on the Premises (including, without limitation, one or more Units therein).

(b) The Common Elements (other than the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the Unit owners and their invitees, employees, tenants and servants, the Association and the agents and employees of the Association for access, egress and ingress over, through and across each portion thereof, pursuant to such requirements and subject to such charges as the Executive Board may from time to time prescribe; provided that nothing contained herein shall create any access easement in favor of Unit Owners with respect to such portions of the Common Elements which are not needed in order to gain access to one or more Units and as to which the Executive Board may from time to time determine it to be necessary or desirable to limit or control access by Unit Owners or the occupants of Units, or both (including, by way of illustration and not limitation, machinery and equipment rooms, any management agent's office and any portions of the Premises occupied by agents or employees of the Association as a residence).

(c) The Common Elements (including, but not limited to the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements (including, but not limited to, the Limited Common Elements), and in connection therewith, the Association may grant easements, licenses or permits over the Common Elements for utilities, roads or other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

(d) The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to the following easements in favor of the Units benefitted:

(1) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or exclusively serve a single Unit and which pass across or through a portion of the Common Elements or another unit.

(2) For the installation, repair, maintenance, use, removal and/or replacement of overhead lighting fixtures, electrical receptacles and the like which are located in a portion of the ceiling, wall or floor adjacent to a Unit which is a part of the Common Elements; provided that the installation, repair, maintenance, use, removal or replacement of such fixtures, receptacles and the like does not unreasonably interfere with the common use of any part of the Common Elements or impair or structurally weaken a Building.

(3) For driving and removing nails, screws, bolts and the like into the Unit-side surface of walls, ceilings and floors which are part of the Common Elements; provided that such action will not unreasonably interfere with the common use of any part of the Common Elements or impair or structurally weaken a Building.

(4) For the maintenance of the encroachment of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of any Common Element or Limited Common Element on the date this Declaration is recorded.

(5) To the extent necessary, each Unit shall have an easement for structural support over every other Unit in a Building, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Building, the Common Elements and the Limited Common Elements.

(6) The Units and the Limited Common Elements are hereby made subject to the following easements:

(a) In favor of the Association and its agents, employees and independent contractors, (i) for inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible, (ii) for inspection, maintenance, repair, and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements, or both, (iii) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units, and (iv) for any of the purposes set forth in Section 4.1(i) or Section 4.1(j) hereof, it being understood and agreed that the Association and its agents, employees and independent contractors shall take reasonable steps to minimize any interference with a Unit Owner's use of his Unit resulting from the Association's exercise of any rights it may have pursuant to this Section 4.1(f)(1), Section 4.1(f)(2) hereof, or both; and

(b) In favor of the Unit owner benefitted thereby and the Association and its agents, employees and independent contractors, for the installation, repair, maintenance, use, removal and/or replacement of elevator parts, car, shaft and electronic equipment; pipes, ducts, electrical, telephone, telegraph or other communications systems and all other utility lines and conduits which are part of the Common Elements and which pass across or through a portion of one or more Units.

(c) The exclusive easement for use of porches by the owners and occupants (and their invitees, employees, tenants and servants) of the Unit adjacent to such Limited Common Elements shall be limited to lawful uses normally associated with porches serving residential apartments. The Executive Board shall have the right to promulgate Rules and Regulations regarding the use of the porches that are consistent with the provisions of the immediately preceding sentence, and in any event no decoration or other surface finish or covering of any portion of any Limited Common Element may be performed without the prior written consent of the Executive Board.

(d) The exclusive easement for use of the Building Limited Common Elements by the Unit Owner and lawful occupants of each Building (and their invitees, employees, tenants and servants) shall be limited to lawful uses normally associated with such Limited Common Elements. The Executive Board shall have the right to promulgate Rules and Regulations regarding the use of the Building Limited Common Elements that are consistent with the provisions of the immediately preceding sentence.

(e) Whenever in this Declaration and the Plats and Plans a title line of a Unit is described as being the upper surface of the subfloor, it is intended thereby, and it is hereby declared, that the owner of such Unit shall have an easement for the purpose of affixing and removing carpeting; parquet flooring and other floor coverings; and otherwise decorating, cleaning and maintaining such surface, all at the cost and expense of the Owner of such Unit; it being understood and agreed that the Association, acting by its Executive Board on behalf of all Unit Owners, shall, at all times while this Declaration is in effect, retain the right and duty to maintain, repair and/or replace the structural subfloors of which said surfaces are a part, notwithstanding the fact that such maintenance, cleaning, repair or replacement may temporarily adversely affect the Unit Owner's aforesaid easement and right to use the Unit-side surface of said structural subfloor.

(f) In the event any portion of any Unit or Common Element encroaches on any other Unit or Common Element, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Condominium or for any other reason, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

(g) The Association and its officers, agent, employees, contractors, subcontractors and members shall have an easement within the buildings and on and over the common elements in order to use, access, cross, repair, reconstruct, maintain, replace and carry out

repairs, maintenance and construction to the Association's sewage system, pipes, pumps and equipment, elevator system, parking areas, streets, alleys, accesses, and other portions of the property, for which the Association may be responsible for under this Declaration.

(h) The common elements and all units within the project are hereby made subject to easements reserved by Declarant for and in favor of the Village at Magens Bay Master Association, Inc. for the upkeep, maintenance, repair and reconstruction of all streets, sales, storm water facilities, utilities and other amenities of the Village at Magens Bay PUD, to include the ability to go upon the common areas and within the units for all purposes deemed necessary in connection therewith.

(7) All easements, rights and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the Real Estate, including (by way of illustration but not limitation) the Units and the Common elements, and (except as may be expressly otherwise provided in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration, as it may be amended from time to time.

(8) Until the Date of Transfer the Declarant shall have an easement through the Units to provide for modifications and additions to the air conditioning, television antenna, security/intercom systems and kitchen appliances and any other portion of the Unit necessary to complete planned upgrades.

#### ARTICLE V

##### RESTRICTIONS ON USE; LEASE OF UNITS

Section 5.1. Residential Uses. The following restrictions shall apply to the use of the Condominium in addition to any restrictions that may be set forth in the Rules and Regulations referred to in Section 5.1(j) hereof:

(a) The Units in the Condominium are restricted to residential use and may not be used for any other purposes by the Unit Owner or by any future Unit Owner. No Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

(b) No Unit Owner may obstruct the Common Elements in any way. No Unit Owner may store anything in or on the Common Elements without the prior written consent of the Executive Board. The Executive is specifically authorized to prohibit the parking and placement of Recreational Vehicles, boats, trailers, commercial vehicles, vans and the like from the common areas and parking lots, to require the parking and placement of the same in specific areas, and to impose fines and to tow vehicles in violation thereof.

(c) The Common Elements (other than the Limited Common Elements and such other portions of the Premises as to which the Executive Board may, from time to time, limit or control access by the Unit owners or other occupants of Units, or both), shall be used only for the benefit or enjoyment of the Unit Owners and the occupants of all Units. No Unit Owner may carry on any practice, or permit any practice to be carried on, which unreasonably interferes with the quiet enjoyment by the occupants of any other Unit. The Premises shall be maintained in a clean and sanitary condition, and no Unit Owner may place any garbage, trash or rubbish anywhere in the Premises other than in his own Unit and in or on such parts of the Common Elements as may be designated for such purpose by the Executive Board.

(d) No Unit shall be used, occupied or kept in a manner which in any way increases the fire insurance premiums for the Premises without the prior written permission of the Executive Board, which permission may be conditioned upon the Unit Owner of such Unit being required to bear the full cost of such increase. No Unit or any part of the Common Elements shall be used, occupied or kept in a manner which violates any law, statute, ordinance or regulations of any governmental body or which leads to the cancellation of any hazard insurance policy or policies on the Premises.

(e) Except for a single small standard non-illuminated name sign on the door to this Unit, no Unit Owner may erect any sign on or in his Unit or any Limited Common Element which is visible from outside his Unit or from the Common Elements, without in each instance having obtained the prior written permission of the Executive Board. This provision is not intended to prevent the Executive Board from maintaining on the Common Elements a register of Unit occupants, or owners, or both.

(f) Nothing shall be done or be permitted to be done which would jeopardize the soundness or safety of a Building or impair any easement or hereditament therein without the consent of all Unit Owners and all Mortgagees.

(g) Installation, removal, reconstruction or repair of any electrical lighting, signal transmission and/or power circuit or electric outlet box or terminal device included in such outlet box, or any item of heating or air conditioning equipment, or by any ventilation or exhaust duct or related equipment, any of which is located within an interior partition of a Unit or within the ceiling above a Unit, may be undertaken by the Unit Owner of such Unit only after application has been made to and written approval has been received from the Executive Board. Such approval shall be granted only if the work performed shall be of similar or superior quality to that then prevailing in the Building and shall be performed by qualified personnel. The cost of such installation, removal, reconstruction or repair, whether undertaken by a Unit Owner or by the Association (under procedures to be established by the Executive Board) shall be borne by the Unit Owner of the Unit benefitted thereby.

(h) No pets or other nonhuman animals shall be raised, bred or kept in any Unit or in the Common elements unless a Unit Owner obtains the prior written consent of the Association. The Executive Board of the Association is authorized but not required to allow or approve

domesticated pets or other nonhuman animals as pets of an owner, and may specify the maximum number, kind, and weight of each pet in writing which may be permitted or allowed.

(i) Owners of Units containing porches may not make any modifications to their porches which shall be visible from the exterior or which would result in a change of the physical appearance of the Building.

(j) Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Premises may be promulgated from time to time by the Executive Board, subject to the right of a majority of Unit Owners to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Association promptly after the adoption of such Rules and Regulations or any amendments thereto.

(k) The owner of a Unit shall be responsible at his sole expense for the cleanliness of any Limited Common Element serving his Unit.

(l) Unit owners may not install window air conditioners, exhaust fans or any other item which protrudes through any window serving the Unit without the prior written approval of the Executive Board.

(m) Unit Owners may not install or replace, or have installed or replaced, any locks on any doors to any Unit without the prior written approval of the Executive Board.

(n) A unit owner shall not make any changes to the exterior features, walks, doors, porches, windows, roof or exterior boundaries without the prior written approval of the Association Executive Board.

Section 5.2. Lease of Units. Any Unit (but not less than an entire Unit), including a Unit possessed or owned by a mortgagee, may be leased or subleased at any time and from time to time subject to the following requirements:

(a) No Unit may be leased or subleased without a written lease or sublease;

(b) Either a copy of such lease or sublease or the names of the tenants and other essential elements of the lease or sublease shall be furnished to the Executive Board prior to occupancy of the Unit or as soon thereafter as is reasonably feasible;

(c) The rights of any lessee or sublessee of any Unit (under a lease or sublease whose current term or current renewal or extension thereof commences on or after the date of recordation of this Declaration) shall be subject to, and each such lessee, or sublessee shall be bound by, the covenants, conditions and restrictions contained in this Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under such lease or sublease;

provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any assessments on behalf of the Owner of that Unit; and

(d) The liability of the Unit Owner under law, this Declaration, Bylaws and Rules and Regulations shall continue during the tenancy or subtenancy of any lease or sublease.

(e) The right or ability of an unit owner to lease his unit in accordance with this section may not be impaired, restricted or prohibited, except upon the unanimous approval of all unit owners and lien or mortgage holders of the units.

#### ARTICLE VI

#### MORTGAGES

##### Section 6.1. Unit Mortgages.

(a) Whether or not they expressly so state all Unit mortgages and the obligations secured thereby shall be deemed to provide, generally, that the mortgage, and the rights and obligations of the parties thereto, shall be subject to the terms and conditions of the Act, this Declaration, Bylaws, Plats and Plans and the Rules and Regulations, and shall be deemed to provide specifically, but without limitation, that the obligation secured by the mortgage shall be pre-payable, without premium or penalty, upon the happening of a termination of the condominium form of ownership of the Premises or determination not to restore or replace the affected Unit, and that no mortgagee shall have any right to:

(1) Participate in the adjustment of losses with insurers or in the decisions as to whether or not or how to repair or restore damage to or destruction of the Premises, subject to Section 7.1(a)(v) hereof;

(2) Receive or apply the proceeds of insurance to the reduction of the mortgage debt or otherwise, except in the event and to the extent either of a distribution of such proceeds to Unit Owners pursuant to N.C. G.S. 47C-3-113 of the Act or of insurance proceeds in excess of the cost of repair or restoration being received by the Owner of the Unit encumbered by a mortgage; or

(3) Accelerate the mortgage debt or be entitled to exercise any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere in the Premises other than within the Unit encumbered by the mortgage.

(b) Each Unit Owner or prospective purchaser shall notify in writing the Executive Board as to the name and address of the proposed mortgagee and of the amount of the debt proposed to be so secured. An executed or conformed copy thereof shall be provided to the Executive Board, and upon receipt of the same, the Secretary of the Executive Board shall instruct the insurer of the premises to add the name of the mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the premises and to provide such mortgagee a Certificate of

Insurance showing that such mortgagee's name has been so added. The Secretary shall maintain a register of mortgages, showing the amount secured thereby and the names and addresses of the mortgages.

**Section 6.2. Rights of Eligible Mortgagees**

(a) Subject to the provisions of N.C. G.S. 47C-2-118 of the Act, the Condominium may be terminated by agreement of Eligible Mortgagees of Units which have at least fifty-one percent (51%) of the votes of Units subject to first mortgages.

**Section 6.3. Notice Requests.** Upon written request to the Association, identifying the name and address of the Eligible Mortgagee, Insurer or Guarantor and the Unit encumbered by the first mortgage, such Eligible Mortgagee, Insurer or Guarantor shall be entitled to receive one or more of the following:

(a) An annual audited financial statement of the Association for the immediately preceding fiscal year, furnished free of charge and within a reasonable time following such request;

(b) Timely written notice of substantial damage to or destruction of any part of the Common Elements (the repair of which would cost in excess of \$2,500.00) or any Unit (the repair of which would cost in excess of \$1,000.00) on which there exists a first mortgage held, insured or guaranteed by such Eligible Mortgagee, Insurer or Guarantor;

(c) Timely written notice of any delinquency in the payment of assessments or charges owed by an Owner of the Unit subject to a first mortgage held, insured or guaranteed by such Eligible Mortgagee, Insurer or Guarantor which delinquency remains uncured for a period of sixty (60) days;

(d) Timely written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(e) Timely written notice of any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Sections 6.2, 7.1(a)(v) or 12.2 hereof.

Any such requests made pursuant to this Section 6.3 shall specify which of the above items are requested, and shall indicate the address to which such documents or notices shall be sent by the Association. The Association need not inquire into the validity of any requests made under this Section 6.3. Failure to comply with the requirements set forth in this Section 6.3 shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

**Section 6.4. Books and Records.** Any mortgagee shall have the right, upon reasonable prior notice to the Executive Board, to examine the books and records of the Association at the office of the Association during its normal business hours.

ARTICLE VII

INSURANCE

Section 7.1. Types and Amounts. In addition to and in supplementation of the insurance required under N. C. G. S. 47C-3-113 of the Act, the Association shall obtain the following types and amounts of insurance:

(a) Hazard insurance, with an endorsement for extended coverage, or such other fire and casualty insurance as the Executive Board may determine provides equal or greater protection for the Unit Owners and their mortgagees, if any, in each case complying with the applicable requirements of Section 7.2 hereof. Such hazard insurance shall, if and to the extent reasonably available, provide coverage of at least all portions of the Premises outside of the Units, any Common Elements located within any Unit and any fixtures, equipment or other property within the Units which are financed using the proceeds of a first mortgage on any Unit. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against. If such hazard insurance no longer becomes available in the future, the Association shall obtain such comparable insurance as is then available. The amount of any such hazard insurance obtained pursuant to this paragraph shall be equal to the full insurable replacement value of the insured property, without deduction or depreciation, (i.e., 100% of current "replacement cost" of the Condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage, but including all Building service equipment and the like and any fixtures, equipment or other property within the Units which are financed using the proceeds of a first mortgage on any Unit) with an "agreed amount endorsement" or its equivalent, if available, an "inflation guard endorsement," if available, and "steam boiler coverage," if applicable, in an amount not less than One Hundred Thousand Dollars (\$100,000.00) per accident per location. Notwithstanding the foregoing, in no event shall the aggregate amount of the insurance obtained be less than the amount of the initial principal sum of all mortgages in effect from time to time. Such hazard insurance shall afford protection against at least the following.

(1) Loss or damage caused by fire and other hazards normally covered by the standard extended coverage endorsement, and all perils normally covered by the standard "all risk" endorsement, including, without limitation, loss caused by sprinkler leakage, vandalism, malicious mischief, wind storm and water and the costs of debris removal and the cost of demolition, in the event same is necessary following such loss or damage; and

(2) Such other risks as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation may require by reason of their holding one or more mortgages; and

(3) Such other risks as are customarily covered in similar projects.

Such hazard insurance policy may at the option of the Association contain a "deductible" provision in an amount to be determined by the Executive Board but not to exceed Twenty-Five Hundred Dollars (\$2,500.00).

(i) It shall be terminable by either party, without cause and without penalty, upon not more than ninety (90) days' written notice;

(ii) If the money paid to the Insurance Trustee in any one instance exceeds Fifty Thousand Dollars (\$50,000.00) such monies shall be held by the Insurance Trustee in escrow and shall be disbursed by the Insurance Trustee in accordance with the terms and conditions of the Insurance Trust Agreement, which terms and conditions shall be consistent with Section G. S. 47C-3-113 of the Act;

(iii) If the money paid to the Insurance Trustee in any one instance exceeds Twenty Thousand Dollars (\$20,000.00) but does not exceed Fifty Thousand Dollars (\$50,000.00), the Insurance Trustee shall have the option of holding and disbursing such monies as provided in the immediately preceding paragraph (ii) or disbursing such monies to the Association for further disbursement by the Executive Board as provided in the immediately following paragraph (iv);

(iv) If the money paid to the Insurance Trustee in any one instance does not exceed Twenty Thousand Dollars (\$20,000.00), the Insurance Trustee upon receipt thereof shall disburse such monies to the Association for further disbursement by the Executive Board as provided in G. S. 47C-3-113 of the Act; and

(v) Any restoration or repair of the Premises shall be performed substantially in accordance with this Declaration and the Plats and Plans, unless other action is approved by Eligible Mortgagees of Units which have at least fifty-one percent (51%) of the votes of Units subject to first mortgages, and such action is consistent with G. S. 47C-3-113 of the Act.

If the Executive Board fails within sixty (60) days after the date of an insured loss to initiate a claim for damages recoverable under the policy or policies obtained pursuant to this subparagraph, any mortgagee may initiate such a claim on behalf of the Association. At least once every three (3) years, but more frequently if in the Executive Board's judgment the Condominium is unusually rapidly appreciating in value, the Executive Board shall cause an appraisal of the Condominium to be made for the purpose of determining the current full insurable replacement value of the insured property, without deduction for depreciation, and the Association shall change the amount of such insurance required to be carried pursuant to the provisions of the first subparagraph of this Section 7.1(a).

(b) Comprehensive liability insurance policies, complying with the requirements of Section 7.2 hereof, insuring the Unit Owners, in their capacity as Unit Owners, and Association members and any managing agent retained by the Association, against any liability to the public or to other Unit Owners, their tenants or invitees, relating in any way to the ownership and/or use of

the Common Elements and any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Unit Owner because of the negligent act of the Association or another Unit Owner. Limits of liability shall be at least One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence. Such insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, employers' liability, legal liability arising out of lawsuits related to employment contracts of the Association, contractual and all-written contract insurance, and if applicable: elevator coverage, garage-keeper's liability, host liquor liability and such other risks as are customarily covered in similar projects. The scope and amount of insurance of all liability insurance policies shall be reviewed at least once each year by the Executive Board and may be changed in its discretion provided that such policies shall continue to comply with the requirements of this Section and Section 7.2 hereof.

(c) A fidelity bond or insurance coverage against dishonest acts on the part of such Persons (including by way of illustration and not limitation, members, officers, directors, trustees, agents, employees and volunteers of the Association and its managing agent) responsible for handling funds belonging to or administered by the Association. Such fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than a sum equal to three (3) months' aggregate Common Expense Assessments on all Units plus reserve funds. In connection with such coverage, an appropriate endorsement to such policy or bond in order to cover any Persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. Such fidelity bond or insurance shall also: (i) Name the Association as an obligee; and (ii) Contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee; or similar terminology.

(d) Insurance to satisfy the indemnification obligation of the Association and all Unit Owners set out in Section 9.3 hereof, if and to the extent available.

(e) Flood insurance covering the buildings, units and common elements in not less than the replacement values and containing such terms, deductibles provisions as may be recommended by the Association's insurance carrier and as may be determined appropriate and necessary by the Executive board and mortgages holding liens on units within the project.

(f) Such other insurance as the Executive Board may deem appropriate from time to time.

(g) The Executive Board shall have the power to require all Unit owners to carry such types of insurance on their Units as the Executive Board may reasonably require, including, without limitation, insurance on all portions of the Unit. All insurance carried by Unit Owners shall comply with the provisions of Section 7.2(c) and 7.2(d) hereof and shall be carried with insurance companies satisfying the requirements of Section 7.2(a) hereof.

Section 7.2. Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of North Carolina and, for the hazard insurance policy described in Section 7.1(a) hereof, such company must be in a category of Class VI or better, as designated in Best's Key Rating Guide.

(b) Exclusive authority to adjust losses under policies hereafter in force on the Premises shall be vested in the Executive Board or its authorized representative. Prior to the adjustment of any such loss the Executive Board shall decide whether, if the Association uses a public adjuster in connection therewith, the proceeds of any applicable insurance policy on the Premises are likely to be sufficiently increased through the efforts of such adjuster to warrant the additional expense of retaining such an adjuster. If such decision shall be in favor of using a public adjuster, the Executive Board shall cause the Association to retain a public adjuster, licensed as such by the State of North Carolina, which adjuster shall, at the Executive Board's option, either act solely in the capacity of adviser to the Association with respect to such adjustment or also act as the Association's authorized representative with respect thereto.

(c) Each Unit Owner may obtain additional insurance at his own expense; provided, however, that: (i) such policies shall not be invalidated by the waivers of subrogation contained in this declaration; and (ii) no Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on the Premises at any particular time.

(d) Any Unit Owner who obtains individual insurance policies covering any portion of the Premises, other than: (i) personal property belonging to such owner; or (ii) the individual Unit of such owner, shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after purchase of such insurance.

(e) With respect to the insurance policies or fidelity bonds issued to the Association, the Association shall endeavor to cause such policies or bonds to provide that:

(1) The enforceability of such policies or bonds is not affected by any waiver of subrogation as to any and all claims against the Association, any managing agent, the Unit Owners and their respective tenants, employees, agents, customers and guests, such subrogation being hereby waived;

(2) Such policies or bonds cannot be canceled, invalidated or suspended by means of the conduct of any one or more Unit Owners, all defenses based upon co-insurance or acts of the insured being waived by the insurer, and in no event can cancellation, material modification, invalidation or suspension for any reason be effected without at least thirty (30) days' prior written notice to the Association, each Unit Owner and all mortgagees whose names and addresses are on file with the insurer;

(3) Such policies or bonds cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Association or any managing agent without a prior demand in writing that the Association or any managing agent, as the case may be, cure the defect and without providing a reasonable period of time thereafter in which to cure same; and

(4) Any "no other insurance" clause in such policies shall not prohibit Unit Owners from obtaining insurance on their individual Unit provided such insurance policy conforms with the requirements of this Article VII.

(f) The insurance reviews which the Executive Board is required to conduct by the provisions of the last paragraph of Section 7.1(a) hereof shall include an appraisal of the improvements in the Premises by a real estate appraiser acceptable to the insurance carrier or carriers writing the Association's hazard insurance policy or policies.

(g) Each policy required pursuant to this Article VII shall be issued in the name of the Insurance Trustee for the use and benefit of the Unit Owners and their mortgagees. Each policy shall be endorsed to provide that any proceeds shall be payable to the Insurance Trustee, as Trustee for each Unit Owner and its mortgagees, if any, as their respective interests may appear.

(h) Coverage may not be prejudiced by: (1) any act or negligence of one or more Owners of Units when such act or neglect is not within the control of the Association; or (2) any failure of the Association to comply with any warranty or condition regarding any portion of the Premises over which the Association has no control.

(i) All policies of property insurance shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (i) without the prior written approval of the Executive Board (or any Insurance Trustee) or (ii) when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party or with any requirement of law.

(j) Each policy required pursuant to this Article VII shall contain a standard mortgage clause, or equivalent endorsement, without contribution.

(k) Insurance coverage obtained and maintained pursuant to the requirements of this Article VII may not be brought into contribution with insurance purchased by Unit Owners or their mortgagees.

(l) Insurance coverage obtained and maintained pursuant to the requirements of this Article VII shall not provide that contributions or assessments may be made against any Unit owners, mortgagees or the Association.

#### ARTICLE VIII

## ASSESSMENTS; LIABILITY OF UNIT OWNERS

Section 8.1. Assessments; Monthly Payments. All assessments for Common Expenses and Limited Expenses made in order to meet the requirements of the Association's annual budget shall be (i) deemed to be adopted and assessed on not less than a quarterly basis (rather than on an annual basis, but payable in either quarterly or monthly installments as the Executive Board shall determine), (ii) made according to the Common Expense Liability of each Unit, and (iii) due and payable in advance on the first day of each month by each Unit Owner, or quarterly on the first of each quarter as determined by the Executive Board. Such assessments shall first become due and payable upon the Date of First Conveyance. The Association shall temporarily establish a reasonably reduced assessment for all unoccupied Units owned by Declarant for a period of ninety (90) days immediately following the Date of First Conveyance.

Section 8.2. Reserve Fund. The Association shall establish an adequate reserve fund for maintenance, repair and replacement of those Common Elements (including without limitation Limited Common Elements and Building Limited Common Elements) which are anticipated to require maintenance, repair or replacement on a periodic basis. The reserve fund shall be maintained out of the assessments described in Section 8.1 hereof.

Section 8.3. Working Capital Fund. Upon the initial transfer of title from the Declarant to the Purchaser of each Unit, the Association shall collect from such Purchasers an amount equal to a minimum of two (2) months' estimated Common Expense Liability, which monies shall be deposited in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association within sixty (60) days after the date of the first conveyance of a Unit to a Person other than the Declarant. The purpose of this fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Executive Board. Amounts paid by Purchasers into the working capital fund are not refundable and are not to be considered as advance payments of the assessments described in Section 8.1 hereof. Amounts paid by Declarant into the working capital fund shall be refunded to Declarant by the Association upon the initial transfer of title from the Declarant to a Purchaser of a previously unsold Unit and upon the receipt by the Association from such Purchaser of an amount equal to a minimum of two (2) months' estimated Common Expense Liability.

Section 8.4. Failure to Fix New Assessments. If the Executive Board shall fail to fix new assessments for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners shall continue to pay the same sums they were paying for such assessments during the fiscal year just ended and such sums shall be deemed to be the new assessments for the succeeding fiscal year, and further deemed to be adopted and assessed on a monthly basis (rather than on an annual basis payable in monthly installments) and shall be due and payable in advance on the first day of each month. If the Executive Board shall change the assessment at a later date, such new assessment shall be treated as if it were an additional assessment under Section 8.5 hereof.

**Section 8.5. Additional Assessments.** If the annual budget shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason (including, by way of illustration and not limitation, any Unit Owner's nonpayment of his assessment), the Executive Board shall have the power, at any time (and from time to time) it deems necessary and proper, to levy one or more additional assessments against each Unit Owner, which assessments shall be deemed adopted and assessed on a monthly basis and shall be due and payable in advance on the first day of each month.

**Section 8.6. No Exemption by Waiver.** No Unit Owner may exempt himself from liability with respect to Common Expenses or Limited Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of his Unit or otherwise.

**Section 8.7. Personal Liability of Unit Owners.** All sums assessed by the Association under this Article VIII, together with such interest thereon as may be established by the Association, shall constitute the personal liability of the Owner of the Unit so assessed and also shall, until fully paid, constitute a lien against such Unit pursuant to G. S. 47C-3-116 of the Act. The Association may take action for failure to pay any assessment or other charges pursuant to G. S. 47C-3-116, and may assess fees and charges for nonpayment or late payment of assessments, including a reasonable fine not to exceed One Hundred Fifty Dollars (\$150.00) for violation of any Declaration, Bylaws or Rules and Regulations of the Association, with said fees, charges and interest being authorized by G. S. 47C-3-102(10)(11), G. S. 47C-3-107, G. S. 47C-3-107A, and G. S. 47C-3-116. In addition the delinquent owners shall be obligated to pay (i) all expenses of the Executive Board including reasonable attorneys' fees incurred in the collection of the delinquent assessment by legal proceedings or otherwise and (ii) any amounts paid by the Executive Board for taxes or on account of superior lien or otherwise to protect its lien, which expenses and amounts, together with accrued interest and late charges, if any, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

**Section 8.8. Subordination of Certain Charges.** Any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to N. C. G. S. 47C-3-116 of the Act shall be subordinate to the lien of any mortgage.

**Section 8.9. Unpaid Assessments.** Any unpaid assessments which cannot be promptly collected from the former Unit Owner may be reassessed by the Executive Board as a Common Expense to be collected from all of the Unit owners, including (by way of illustration and not limitation) the purchaser who acquired title to the Unit at the sheriff's sale, his successors and assigns and any mortgagee who comes into possession of a Unit by deed in lieu of foreclosure or assignment in lieu of foreclosure.

**Section 8.10. Liability of Purchaser of Unit for Unpaid Assessments.**

(a) Notwithstanding the provisions of Section 8.9 hereof (but subject to the provisions of G. S. 47C-3-116(f) of the Act), upon the voluntary sale, conveyance or transfer of a Unit or any interest therein, the grantee thereof shall be jointly and severally liable with the grantor

thereof for all unpaid assessments for Common Expenses which are a charge against the Unit as of the date of consummation of the sale, conveyance or transfer, but such joint and several liability shall be without prejudice to such grantee's right to recover from such grantor the amount of any such unpaid assessments which such grantee may have paid, and until any such assessments are paid, they shall continue to be a lien against the Unit which may be enforced in the manner set forth in N.C.G.S. 47C-3-116 of the Act.

(b) Upon an involuntary sale, conveyance or transfer of a Unit or any interest therein, the grantee thereof shall be liable for any and all assessments for Common Expenses which are charged against the Unit after the date of consummation of the sale, conveyance or transfer.

Section 8.11. Separate Metering of Certain Utility Charges. Electricity shall be separately submetered for each Unit.

#### ARTICLE IX

##### REMEDIES; LIMITATION OF LIABILITY

Section 9.1. Remedies. The Association and any aggrieved Unit Owner shall have an appropriate right of action, together with any and all appropriate remedies under the Act, in law or equity, against any of the Unit Owners or the Association for failure to comply with any provision of any Condominium Document or with any decision of the Association made pursuant thereto.

Section 9.2. Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to Persons or property caused by the elements or by another Unit Owner or Person on the Premises, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members' duties for any mistake of judgment, negligent or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to a Unit Owner or any other Person under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;

(d) Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

(e) Shall have no personal liability in tort to a Unit Owner or any other Person, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

(f) Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board Members' own willful misconduct or gross negligence.

Section 9.3. Indemnification. Each Executive Board member, officer, or both shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit Owners set forth in this Section 9.3 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

Section 9.4. Joint and Several Liability of Unit owners and Lessees. Each Unit Owner shall be jointly and severally liable with any lessees or sublessees of the Unit owned by such Unit Owner for all liabilities arising out of the ownership, occupancy, use, misuse or condition of such Unit or any portion of the Common Elements or Limited Common Elements.

Section 9.5. Defense of Claims. Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board, which shall promptly give written notice thereof to the Unit Owners and mortgagees, and such complaints shall be defended by the Association. The Unit Owners and mortgagees shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 9.4 hereof against one or more but less than all Unit Owners or Units shall be defended by such Unit Owners

who are defendants themselves and such Unit Owners shall promptly give written notice of the institution of any such suit to the Association and to the mortgagees of their Units.

#### ARTICLE X

##### UNIT'S SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN

Section 10.1. Applicability of Condominium Documents. Each present and future owner, lessee, sublessee, occupant and mortgagee of a Unit shall be subject to and shall comply with the provisions of the Act, this Declaration, Plats and Plans, Bylaws attached as Exhibit D, and Rules and Regulations and with the covenants, conditions and restrictions as set forth in this Declaration, Plats and Plans, Bylaws, Rules and Regulations and the deed to such Unit; provided that nothing contained herein shall impose upon any lessee, sublessee or mortgagee of a Unit any obligation which the Act or one or more of such documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, Plats and Plans, Bylaws, Rules and Regulations and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee, lessee, sublessee or mortgagee. All of such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Section 10.2. Eminent Domain. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any portion thereof. In the event of a taking or acquisition of the Common Elements or any portion thereof, the award or proceeds of settlement shall be paid to the Association, for the use and benefit of the Unit Owners and their respective mortgagees, if any, as their interests may appear, subject to G. S. 47C-1-107 of the Act.

#### ARTICLE XI

##### TRANSFER OF CONTROL

Section 11.1. Initial Control. Declarant shall initially appoint the first three (3) members of the Executive Board and any successors thereto until control of the Executive Board has been completely transferred to the Unit Owners pursuant to Section 11.2 hereof.

Section 11.2. Final Control. Not later than the earlier to occur of (i) one hundred twenty days (120) after conveyance of seventy-five percent (75%) of all Units to Unit Owners other than the Declarant or (ii) three years after the date of first conveyance, a special meeting of the Association shall be held for the purpose of electing members to the Executive Board to replace those members of the Executive Board appointed by the Declarant.

ARTICLE XII

AMENDMENT OF DECLARATION

Section 12.1. Amendment Generally. This Declaration may be amended only in accordance with the procedures specified in N. C. G.S. 47C-2-117 of the Act, the other Sections of the Act referred to in G.S. 47C-2-117, and the express provisions of this Declaration.

Section 12.2. Rights of Eligible Mortgagees

(a) Subject to the limitations imposed by G. S. 47C-2-117 of the Act, and except as set forth below, no amendment of this Declaration may be made without the prior written approval of all Unit Owners and the approval of 51% of Mortgagees of Units holding first mortgages on Units, if and to the extent that any such amendment would add or amend any material provisions of the Declaration relating to any of the following:

- (i) Voting;
- (ii) The creation or increase of any special or Declarant's right;
- (iii) Increase in the number of Units or a change as to the boundaries of any Unit;
- (iv) The allocated interest of a Unit;
- (v) The uses to which any Unit is restricted;
- (vi) Assessments, assessment liens or subordination of such lien; or
- (vii) Interest in the Common Elements or Limited Common Elements.

(b) Subject to the limitations imposed by G.S. 47C-2-117 and except as set forth below, no amendment of the Declaration may be made without the prior written approval of Unit Owners of Units to which at least sixty-six and two-thirds percent (66.67%) of the votes in the Association are allocated, and 66.67% of the Eligible Mortgagees of Units subject to first mortgages, if and to the extent that such amendment would add or amend any material provisions of the Declaration in connection with any of the following:

- (i) reserves or responsibility for maintenance, repair and replacement of the Common Elements or Units;
- (ii) insurance or fidelity bonds;

- (iii) rights to the use of the Common Elements;
- (iv) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (v) convertibility of Units into Common Elements or of Common Elements into Units;
- (vi) leasing of Units;
- (vii) the imposition of any right of first refusal on the right of the unit owner to sell, transfer or otherwise convey his unit, provided the proposed imposition would be reasonable as to terms and conditions; or
- (viii) any provisions which are for the express benefit of Eligible Mortgagees, Insurers or Guarantors.
- (ix) any other amendment of the Declaration except as limited or restricted by Section 12.2(a) above, those amendments that may be executed by Declarant under G.S. 47C-2-109(D) or 47C-2-110, by the Association under G. S. 47C-1-107, 47C-1-106(D), 47C-2-112(A), or 47C-2-113, or certain Unit Owners under G. S. 47C-2-108(B), 47C-2-112(A), 47C-2-113(B), or 47C-2-118(B).
- (c) Any Eligible Mortgagee who receives a written request to approve any amendments to this Declaration, and fails to deliver or mail a negative response to the Association within thirty (30) days of the date of such request shall be deemed to have approved such request.

Section 12.3. **Corrective Amendments.** If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of this Declaration that is defective, missing or inconsistent with any other provision hereof or with the Act, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with respect to condominium projects, then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or Eligible Mortgagees, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. Each amendment of the type described in this Section 12.3 shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more officers of the Executive Board.

### ARTICLE XIII

#### TERMINATION OF CONDOMINIUM

**Section 13.1. Percentage of Votes**

(a) Except in the case of a taking of all the Units by Eminent Domain (G.S.47C-1-107), a Condominium may be terminated only by agreement of Unit Owners of Units to which at least eighty percent (80%) of the Votes in the Association are allocated, as well as fifty-one percent (51%) of the Votes of Eligible Mortgagees holding first mortgage on the subject Units.

(b) Termination Agreement. An Agreement to Terminate shall be evidenced by the execution of a Termination Agreement, or Ratification thereof, in the same manner as a deed, and the Termination Agreement shall specify the date after which the Agreement will be void unless recorded before that date. The Termination Agreement and all Ratification thereof must be recorded in Carteret County and shall be effective only upon recordation. The Termination Agreement may provide that all the Common Elements and Units of the Condominium shall be sold following termination, and in the event the real estate in the Condominium is to be sold following termination, said Agreement must set forth a minimum terms of the sale.

(c) Sale. The Association, on behalf of the Unit Owners, may contract for the sale of real estate in the Condominium, but the Contract is not binding on the Unit Owners until approved pursuant to Subsections (a) and (b) above. If any real estate in the Condominium is to be sold following Termination, title of that real estate, upon termination, vest in the Association as Trustee for the holders of all interest in the Units. Thereafter, the Association shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Unit Owners and lien holders as their interest may appear, in proportion to the respective interest of Unit Owners as provided herein. So long as the Association holds title to the real estate, each Unit Owner and his successors in interest shall have the exclusive right to occupy that portion of the real estate that formerly constituted his Unit. During the period of occupancy, each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by this Act or this Declaration.

(d) If the real estate constituting the Condominium is not to be sold following termination, title to the Common Elements and, in the Condominium vest in the Unit Owners upon termination as tenants in common in proportion to their respective interest as provided hereafter, and liens on the Units shift accordingly. While the tenancy in common exist, each Unit Owner and his successor in interest shall have the exclusive right to occupancy of the portion of the real estate that formerly constituted his Unit.

(e) Following termination of the Condominium, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as Trustee for Unit Owners and holders of liens on the Units as their interest may appear. Following termination, creditors of the Association holding liens on the Unit, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the Association are to be treated as if they perfected liens on the Units immediately before termination.

(f) The respective interest of Unit Owners referred to in the above Subsections are as follows:

(1) Except as provided in Subparagraph 2 below, the respective interest of Unit Owners are the fair market value of their Units, Limited Common Elements, and Common Element Interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and become final unless disapproved within thirty days (30) after distribution by Unit Owners of Units to which twenty-five percent (25%) of the Votes in the Association are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by the dividing the fair market value of that Unit Owner's Unit and Common Element Interest by the total fair market value of all the Units and Common Elements.

(2) If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interest of all Unit Owners are their respective Common Element Interests immediately before the termination.

#### ARTICLE XIV

#### CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS

Section 14.1. Required Votes. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the Votes in the Association, including eighty percent (80%) of the Votes allocated to Units not owned by a Declarant, as well as fifty-one percent (51%) of the Votes of Eligible Mortgagees holding first mortgages on the Unit; provided, that all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Distribution of the proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Unit Owners to which it is allocated and the Association. Proceeds of the sale or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association.

Section 14.2. Requisites of An Agreement for Security Interest. An Agreement to Convey Common Elements or subject them to a security interest must be evidenced by the execution of an Agreement, or Ratification thereof, in the same manner as a deed, by the requisite number of Unit Owners. The Agreement must specify a date after which the Agreement will be void unless recorded before that date. The Agreement and all Ratification must be recorded in Carteret County, and shall only be effective upon recordation.

Section 14.3. Rights of the Association. The Association, on behalf of the Unit Owners, may contract to convey Common Elements, or subject them to a Security Interest, but the Contract is not enforceable against the Association until approved pursuant to Sections 14.1 and 14.2 above. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

Section 14.4. Void Transactions. Any property conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements unless made pursuant to this Article shall be void.

Section 14.5. Rights of Access and Support. A conveyance or encumbrance of Common Elements pursuant to this Article shall not deprive any Unit of its rights of access and support.

#### ARTICLE XV

#### MEMBERSHIP AND RESPONSIBILITIES

#### IN MAGENS BAY MASTER ASSOCIATION, INC.

Section 15.1 Required Membership in Master Association. This condominium project is located within the Village at Magens Bay PUD and is subject to a Declaration of Restrictive Covenants, Conditions and Storm water Easements recorded in Book 1124, page 337, Carteret County Registry. The Covenants obligate this Association to pay its prorata share of the costs of maintaining repairing, reconstructing and operating the storm water utility systems, roads, utilities and other common areas of the PUD. This association and its members shall be required to be members of the Village at Magens Bay Master Association, Inc. and shall pay the dues, assessments and expenses levied and ordered from time to time by the Master Association Executive Board.

Section 15.2 Responsibilities of Membership, Voting, Payment of Dues and Assessments

The Villas at Magens Bay I Association, Inc. and the owners of units within this condominium project as members thereof shall be required to comply with the Articles of Incorporation and Bylaws of the Village at Magens Bay Master Association, Inc., and the rules and regulations adopted from time to time by its executive board. The Villas at Magens Bay I Association and the members thereof shall have the privileges of membership in the master association as set out in the Covenants for the Pud and as established in the Bylaws of the Master Association, with the same being incorporated herein by reference, including the right to vote on all master association matters. This Association shall have the percentage computed by and assigned it by the Cedar Point Associates, Inc. or the Master Association with regard to Master Association matters which should not exceed 10.144 percent when the PUD has been fully developed out. The Villas I Association shall also be obligated to collect as part of its budget such costs and expenses as are the responsibility of this Association as part of the Master Association's costs of operations, and the unit owners shall be obligated to pay such dues and assessments as may be approved and levied by the Master Association for its operations and the costs of maintaining, repairing, replacing and reconstructing the roads, storm water systems, utilities and other common areas of the PUD. The Villas I Association and/or the Master Association upon failure or default of an owner or member to pay the dues and assessments due to the Master Association shall have the same rights and remedies with regard to the filing and foreclosure of liens as are set out in Article VIII above.

ARTICLE XVI

MISCELLANEOUS

Section 16.1. Governing Law. This Declaration shall be governed in accordance with the laws of the State of North Carolina and more particularly Chapter 47C of the North Carolina General Statutes, as amended. Any reference to specific Sections of Chapter 47C herein shall also be interpreted as referring to any amendments or substitutions thereof.

Section 16.2. Interpretation. The provisions of this Declaration shall be liberally construed in order to effectuate Declarant's desire to create a uniform plan for development and operation of a condominium project. The table of contents and captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 16.3. Gender; Number. The use of the masculine gender in this Declaration shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 16.4. Process Agent: Kathryn Gorham, 9816 Clarendon Court, Emerald Isle, NC 28954, is hereby designated as the person to receive service of process as to any matters arising hereunder or in connection with the Villas at Magens Bay I Condominiums or said Association, and the Executive Board by simple majority vote may change the process agent by a recorded amendment.

Section 16.5. Arbitration. In the event the owners or the Executive Board reach an impasse and are unable to agree as to any matter affecting the governance of this Association, the maintenance or insurance of common elements of the Condominium or similar matters regarding the ownership, operation or administration of the Condominium, the Owners or Executive Board shall be required to submit the matter to arbitration. The Owners or Executive Board at an impasse shall attempt to agree on one arbitrator, and in the event agreement cannot be reached as to the single arbitrator or the single arbitrator resigns or is unable to serve, then each party involved in the impasse shall choose an arbitrator and the arbitrators so chosen shall choose a third party and the decision of a single arbitrator or the majority of the arbitrators so appointed shall be binding upon all Owners. In the event an impasse is reached regarding the appointment of an arbitrator or arbitrators, any party may request the Clerk of Superior Court for Carteret County, North Carolina, to appoint an arbitrator to hear said cause in law or in equity.

Section 16.6. Effective Date. This Declaration shall become effective when it and the Plats and Plans have been recorded.

Section 16.7. Exhibits: All of the following Exhibits are a part hereof and are incorporated herein by reference:

Exhibit A - Legal Description of Real Estate;

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Exhibit B - Plats and Plans;

Exhibit C - Schedule of Percentage Interest for the Project;

Exhibit D - Articles of Incorporation;

Exhibit E - By-Laws;

Exhibit F - Proposed Budget;

Exhibit G - Proposed Monthly Association Dues;

Exhibit H - Consent to the Declaration by Lien Holders;

Exhibit I - Certification of Engineer

IN WITNESS WHEREOF, Declarant, intending to be legally bound hereby, has duly executed this Declaration on this 25<sup>th</sup> day of April, 2006.

Villas at Magens Bay I, LLC

By: [Signature]  
Manager

By: [Signature]  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF CARTERET

Before the undersigned Notary Public personally appeared Richard Farrington & Kathryn Gorham being managers of The Villas At Magens Bay, I, LLC, a North Carolina Limited Liability Company, who personally acknowledged the due execution of the foregoing instrument and that said mangers have been granted the express authority by the terms of the Operating Agreement to execute the same on behalf of said Company and as the act of said company.

This the 25<sup>th</sup> day of April, 2006.

[Signature]  
Notary Public

My Commission Expires



**EXHIBIT A**

**Legal description of  
The Villas At Magens Bay I**

**Lying and being in the Town of Cedar Point, Carteret County, North Carolina:**

**Beginning at a point on the west line of tract 4 as the same is shown on a plat recorded in Map Book 30, page 382, said beginning point being located S 40-30-25 W 68.31 feet and S 17-36-52 E 291.57 feet from the point of intersection of the west line of tract 4 and the south line of NC Highway 24; running thence from said point of beginning N 68-12-11 E 214.28 feet to the northwest corner of The Villas at Magens Bay II tract; thence S 21-47-49 E 102.96 feet to a point; thence S 25-11-42 W 325.53 feet to the southwest corner of tract 4 as shown on map book 30, page 382; thence N 17-36-52 W 326.87 feet to the point of beginning; and being shown as Phase I on a Parker and Associates plat of the Village at Magens Bay PUD dated February 2, 2005, containing approximately 1.42 acres and being shown on a plat recorded in Map Book 30, page 684, Carteret County Registry.**

**Together with an appurtenant access easement from NC Highway 24 over Bodie Drive and over the northernmost portions of Phases II and III (asphalt drive and parking area) of The Villas at Magens Bay project as shown on the Parker and Associates PUD plat dated August 31, 2004, for access to and from the condominium to NC Highway 24; as shown on said recorded plat.**

## EXHIBIT B

### PLATS AND PLANS

The Villas at Magens Bay I consists of two buildings with six total living units therein per building, all as shown on plats and engineering drawings recorded in Map Book 105 at pages 931-941, Carteret County Registry. The site plan, plats and drawings as recorded aforesaid, which are incorporated herein by reference as if fully set out, show the location, name, dimensions, unit designations, and location of common elements and limited common elements affording access to each unit within the Project. The two buildings are joined by a common elevator tower which will serve each building and the units therein. Twelve condominium units are the maximum number of units which the Declarant has the right to create hereunder.

The real property on which the two buildings are located and the access easement appurtenant thereto are described on Exhibit A and the twelve units are shown on the plats. Each building has 3 floors with 2 units per floor located therein. Each unit has 2 bedrooms and 2 baths, a combination family room/dining area, and a kitchen. The units on the first floor are shown as units A-1, B-1, C-1 and D-1, the units on the second floor are identified as Units A-2, B-2, C-2 and D-2, and the units on the third floor as identified as units A-3, B-3, C-3 and D-3. Each unit has approximately 1200 square feet.

The twelve condominium units in the 2 buildings are separated by common walls as depicted and shown on the plats and plans recorded as set out above. Each building has 3 floors with each floor above the other, and each condominium unit consists of the area or space between the unit-side surface or face of the subfloor on the level the unit is located on and the surface of the ceiling on level directly above the unit as defined in Section 2.4 of the Declaration.

Each building is brick and/or concrete footings and pier supported, and is of wood-frame construction, the exterior of which consists of siding, and the roof being an architectural shingle. Interior walls consist of wood-framing with wall paper or painted sheetrock, and wood, tile or carpeted floors.

Interior finishes are as follows:

Floors - Tile, wood or carpet in all areas except kitchen and baths. Kitchen and bath floors are vinyl.

Walls - Painted drywall or wallpaper, except in bath. Tub and Shower recesses.

Ceilings - Painted or spray finish on sheet rock.

Each unit has porches and steps which are limited common elements for that unit as shown on the plans and plats. Said units and their exact locations are shown on the recorded plans referenced herein.

The site plat and plans of the Villas at Magens Bay I condominiums as recorded fully depict and designate the location, layout, ceiling and floor elevations, unit numbers and dimensions of the building and units, and the area and location of the common elements and facilities. The common elements and facilities consist of the entire real estate, including all parts of the building other than the twelve condominium units, and include without limitation, the following:

(a) The real estate on which the buildings are erected as described in Exhibit A of this Declaration.

(b) All foundations, piers, columns, girders, beams and supports.

(c) All exterior walls of the buildings not including the portions thereof on the unit-side of such walls; all walls and partitions separating units from corridors, stairs, and mechanical equipment spaces, other than the portions thereof between the unit side of such walls and partitions and wood-framing of such walls and partitions; the wood framing of all walls and partitions separating units; the portions of the sheet rock in which frame partition separating units between the center lines of the sheet rock of each side of such partition; all wood floors and ceilings.

(d) Roofs, halls, stairs and entrances to and exits from the buildings.

(e) All yards, parking areas, access easements and driveways, sewer systems and facilities, walkways, and porches, except those porches shown as limited common elements for a unit on the site plat and plans of the project referred to above.

(f) All central and appurtenant installation facilities such as power, lights, telephone, gas, hot and cold water, heat, refrigeration, elevator car and components, and air conditioning (including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common elements or units) and all other mechanical equipment spaces.

(g) All tanks, pumps, motors, fans, compressors, and control equipment.

(h) All sewer lines, water pipes, equipment and fixtures.

(i) All other parts of the real estate and all apparatus and installations existing in the buildings or on the real estate for common use or necessary or convenient to the existence, maintenance or safety of the property.

**EXHIBIT C**

**THE VILLAS AT MAGENS BAY I  
SCHEDULE OF PERCENTAGE INTEREST**

<b>Unit Designation:</b>	<b>Percentage Interest: (ROUNDED OFF)</b>
<b>Building 1</b>	
A-1	8.33
B-1	8.33
A-2	8.33
B-2	8.33
A-3	8.33
B-3	8.33
<b>Building 2</b>	
C-1	8.33
D-1	8.33
C-2	8.33
D-2	8.33
C-3	8.33
D-3	8.33
	<hr/>
	100.00%

**EXHIBIT D**

**ARTICLES OF INCORPORATION**

**OF**

**THE VILLAS AT MAGENS BAY I ASSOCIATION, INC.**

**A NON-PROFIT CORPORATION**

In compliance with the requirements of Chapter 55A of the North Carolina General Statutes entitled "Nonprofit Corporation Act," and the several amendments thereto, the undersigned, natural person of full age, has this day executed these Articles of Incorporation for the purpose of forming a non-profit corporation and hereby certifies:

**ARTICLE I.**

The name of the corporation is the Villas at Magens Bay I Association, Inc. (hereinafter called "the Corporation" or "Association").

**ARTICLE II.**

The registered office of the Corporation is located at 9816 Clarendon Court, Emerald Isle, 28594, Carteret County, North Carolina. The principal office of the Corporation is located at 9816 Clarendon Court, Emerald Isle, Carteret County, North Carolina, 28594.

**ARTICLE III.**

Kathryn Gorham, whose address is 9816 Clarendon Court, Emerald Isle, Carteret County, North Carolina, 28594, is hereby appointed the initial Registered Agent of the Corporation.

**ARTICLE IV.**

The Corporation does not contemplate pecuniary gain or profit to the members thereof and no part of the Corporation's net income shall inure to the benefit of any of its officers, directors or members or any other private individual. The purposes and objects of the corporation shall be to administer the operation and management of properties and common areas conveyed, transferred or leased to said Corporation within or without the Villas at Magens Bay I Condominiums being developed in the Town of Cedar Point, Carteret County, by The Villas at Magens Bay I, LLC, said condominium development consisting of a maximum of 12 residential units as shown on a site plat as recorded in the Carteret County Registry, with as-built drawings to be hereafter recorded and reflected on Exhibit B to the Declaration; to undertake the performance of the acts, duties, rights and responsibilities incident to the administration of the operation and management of the common areas and property of the Villas at Magens Bay I Condominiums as more particularly assigned and

described in the Declaration of Condominium as recorded in the Carteret County Registry; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration and management of association properties located within said condominium development.

#### ARTICLE V.

The Corporation shall have the following powers:

1. The Corporation shall have all of the powers and privileges granted to Non-Profit Corporations under the law pursuant to which this Corporation is chartered, and all of the powers and privileges which may be granted unto said Corporation under any other applicable laws of the State of North Carolina.

2. The Corporation shall have all the powers reasonably necessary to implement and effectuate the purposes of the Corporation, including, but not limited to, the following:

(a) To make and establish reasonable rules and regulations governing the use of Association properties and Common Elements within the condominium development as said terms may be defined herein and in the Declaration of Condominium for the Villas at Magens Bay I;

(b) To levy and collect assessments against members of the Corporation to defray the common expenses of the Association as may be provided in the Declaration of Condominium and the By-Laws of this Corporation which may be hereafter adopted, including the right to levy and collect assessments for the purpose of acquiring, operating, leasing, managing and otherwise trading and dealing with Association properties, whether real or personal, which may be necessary or convenient in the operation and management of the Association Properties and Common Elements within or without the Villas at Magens Bay I Condominiums, and for the purpose of accomplishing the purposes set forth in the Declaration for said Condominiums.

(c) To maintain, repair, replace, operate and manage Association Properties, real or personal, including the right to reconstruct improvements after casualty and to make further improvements to Association Properties within the Condominiums and to make and enter into any and all contracts necessary or desirable to accomplish said purpose.

(d) To contract for the management of the Association and to delegate to such management firm all of the powers and duties of the Association except those which may be required by these Articles of Incorporation, By-Laws hereafter adopted, or the Declaration of Condominium, to have the approval of the Board of Directors or membership of the Corporation.

(e) To acquire and enter into, now or at any time hereafter, leases and agreements whereby the Association acquires leaseholds, undivided interests in real property, memberships, and their possessory, ownership or use interests in land or facilities including, but not limited to recreation facilities, whether or not contiguous to the lands of the Villas at Magens Bay I

Condominiums, to provide enjoyment, recreation or other use or benefit to the owners of units within said development.

(f) To enforce the provisions of the Declaration of Condominium, these Articles of Incorporation, the By-laws of the Corporation which may be hereafter adopted, and the rules and regulations governing the use of Association Properties as the same may be hereafter established from time to time.

(g) To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Corporation pursuant to the Declaration of Condominium for the Villas at Magens Bay I.

#### ARTICLE VI.

The qualification of the members, the manner of their admission to membership and termination of such membership, and voting by members shall be as follows:

1. There shall only be one type of membership. Every purchaser of a condominium unit within the Villas at Magens Bay I Condominiums shall be required to be a regular member of the Association, and regular membership shall be limited to purchasers of condominium units within said development.

2. Regular memberships shall be appurtenant to and may not be separated from ownership of a condominium unit. Persons or entities who hold an interest in the unit merely as security for the performance of an obligation shall not be regular members.

3. When more than one person holds an interest in any condominium unit, all such persons shall be entitled to the privileges and responsibility of a regular membership, but said condominium unit shall only have one vote, and the purchasers of said unit shall designate one of them as the voting regular member. If the unit is owned by a corporation or other business entities, an officer or employee shall be designated as the voting regular member.

4. Each unit shall have a vote at all meetings of the membership of the Association in the amount of the undivided percentage of ownership in the Common Elements appurtenant to said unit as shown on Exhibit C to the Declaration of Condominium as recorded in the office of the Carteret County Register of Deeds.

5. The interest of a member in the funds and assets of the Corporation cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to ownership of the condominium unit. The funds and assets of the Corporation shall belong solely to the Corporation subject to the limitation that the same be expended, held or used for the benefit of the membership and for the purposes authorized herein, and the Declaration of Condominium and By-Laws which may be hereafter adopted.

6. As each condominium unit is sold and conveyed to a purchaser, a roster or other written documentation shall be maintained containing the names and addresses of all purchasers of units. The vote of each unit may be cast or exercised by the Owner or Owners of each condominium units in such manner as may be provided in the By-Laws hereafter adopted by the Corporation.

#### ARTICLE VII.

The Corporation shall have perpetual existence.

#### ARTICLE VIII.

The affairs of the Corporation shall be managed by the Executive Board, and the Chief Officer of the Corporation shall be the President, assisted by the Secretary/Treasurer, subject to the directions of the Executive Board. The Executive Board may employ a management firm and/or such other managerial and supervisory personnel or entities to administer or assist in the administration of the operation and management of the Association, and the affairs of the Corporation, and any such person or entity may be a member of the Corporation or a Director or Officer of the Corporation, as the case may be.

#### ARTICLE IX.

The number of members of the First Executive Board of the Corporation shall be three (3). The number of members of the succeeding Executive Board shall be as provided from time to time by the By-Laws of the Corporation but shall not be less than three (3). The members of the Executive Board shall be elected by the members of the Corporation at the annual meeting of the membership as provided by the By-Laws of the Corporation. A majority of directors shall be members of the Association. Villas at Magens Bay I, LLC as the Declarant in the Declaration of Condominium shall initially appoint the first three members of the Executive Board and any successors thereto until control of the Executive Board has been completely transferred to the unit owners, and the three members so appointed need not be members of the association. Not later than 120 days after conveyance of 75% of the units within the project to unit owners other than the Declarant which are to be submitted to condominium ownership, a special meeting of the Association shall be held for the purpose of electing members to the Executive Board to replace those members of the Executive Board appointed by the Declarant.

#### ARTICLE X.

The Executive Board shall elect a President and Secretary/Treasurer. The President and Secretary/Treasurer shall be elected from among the membership of the Executive Board. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created by the Executive Board.

#### ARTICLE XI.

The names and post office addresses of the initial Executive Board who, subject to the provisions of these Articles of Incorporation, the By-Laws and the laws of the State of North Carolina, shall hold office until the first annual meeting of the Membership (or until their successors are elected and qualified) are as follows:

Kathryn Ferguson Gorham  
9816 Clarendon Court  
Carteret County  
Emerald Isle, NC 28594

Richard A. Farrington  
8802 Sound View Court  
Carteret County  
Emerald Isle, NC 28594

David Barefield  
394 Yacht Club Drive  
Carteret County  
Newport, NC 285706

#### ARTICLE XII.

The original By-Laws of the Corporation shall be adopted by a majority vote of the initial members of the Corporation as provided for in Paragraph 1 Article VI, herein, present at a meeting of said members at which a majority of the membership is present, and thereafter, such By-Laws may be altered or amended only in such manner as said By-Laws provide.

#### ARTICLE XIII.

Every Director and every officer of the Corporation shall be indemnified by the Corporation against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Corporation, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the Corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

#### ARTICLE XIV.

An amendment or amendments to these Articles of Incorporation shall require the assent of sixty six and two thirds percent (66-2/3%) of the Board of Directors.

ARTICLE XV.

In the event of dissolution of this Corporation, all of its then assets shall be distributed as follows:

(i) The dissolution shall be conducted under Court supervision, if required or permitted under the statutes of the State of North Carolina, as now enacted or as hereafter amended or supplemented, and, subject to prior compliance with N.C.G.S. 47C-2-118 et. seq. of the North Carolina Statutes, as then amended or supplemented, the assets of this Corporation shall be distributed to the members of this Corporation pro rata in accordance with their respective interests in the common elements of the condominium property.

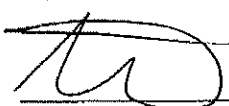
(ii) If the dissolution under Court supervision is not required or permitted under the Statutes of the State of North Carolina, as now enacted or as hereafter amended or supplemented, the assets of this Corporation shall be distributed, subject to prior compliance with N.C.G.S. 47C-2-118 et. seq. of the North Carolina Statutes, as then amended or supplemented, to the members of this Corporation pro rata in accordance with their respective interests in the common elements of the condominium property.

ARTICLE XVI.

The name and address of the incorporator is as follows:

Richard L. Stanley  
613 Cedar Street  
P. O. Box 150  
Beaufort, N.C. 28516

IN TESTIMONY WHEREOF, I, being the incorporator, have hereunto set my hand and seal, this the 4 day of May, 2006.

  
Richard L. Stanley  
Incorporator

STATE OF NORTH CAROLINA  
COUNTY OF CARTERET

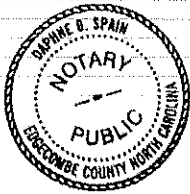
Daphne B. Spain, the undersigned Notary Public hereby certify that Richard L. Stanley, personally appeared before me, and being by me first duly sworn, declares that he signed the foregoing document in the capacity indicated and that the statements therein contained are true.

Witness my hand and notarial seal, this the 4 day of May, 2006.

Daphne B. Spain  
Notary Public

My commission expires: 11/30/2008

Daphne B. Spain



**EXHIBIT E**

**BY-LAWS**

**OF**

**THE VILLAS AT MAGENS BAY I ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

Section 1. **The Name:** The name of the corporation is the Villas at Magens Bay I Association, Inc.

Section 2. **The Principal Office:** The principal office of the Association shall be located at 9816 Clarendon Court, Emerald Isle, Carteret County, North Carolina, 29594, but the meetings of the members and Directors may be held at such places within the State of North Carolina as may be designated by the Board of Directors.

**ARTICLE II**

**DEFINITIONS**

Section 1. **"Association"** shall mean and refer to the Villas at Magens Bay I Association, Inc., its successors and assigns.

Section 2. **"Property"** shall mean and refer to that certain real property described in Exhibit "A" of the Declaration of Condominium for the Villas at Magens Bay I Condominiums as recorded in the Carteret County Registry.

Section 3. **Other Definitions:** The terms "Allocated Interest", "Common Elements", "Common Expenses", "Common Expense Liability", "Declarant", "Declaration", "Development Rights", "Dispose or Disposition", "Executive Board", "Identifying Number", "Limited Common Element", "Person", "Purchaser", "Real Estate", "Residential Purposes", "Unit", "Unit Owner" shall have those terms and definitions as defined in the Declaration of Condominiums as recorded aforesaid, and as set forth in N.C.G.S. 47C-1-103, said definitions being incorporated herein by reference as if fully set out.

ARTICLE III

THE VILLAS AT MAGENS BAY I ASSOCIATION, INC.

Section 1. **General:** Every purchaser of a condominium unit in the Villas at Magens Bay I Condominiums shall be a member of the Association upon the terms and conditions hereinafter set forth. Regular memberships in the Association shall be limited to purchasers of condominium units.

Section 2. **Administration of the Condominium** The operating entity of the condominium shall be the Villas at Magens Bay I Association, Inc.

a. **Powers:** The Association shall have all of the powers and duties set forth in North Carolina General Statute 47C-3-102, as amended, as well as all of the powers and duties granted to or imposed upon it by the Declaration of Condominium, the Articles of Incorporation and By-Laws of the Association, and this Agreement of Association, and all of the powers and duties necessary to operate the condominium as the same may be amended from time to time.

All affairs of the Association shall be conducted by the Executive Board who shall be designated in the manner provided for in these By-Laws and Articles of Incorporation of the Association.

In the administration of the operation and management of the condominium, the Association is hereby granted the authority and power to enforce the provisions of these By-Laws and Articles of Incorporation, rules and regulations governing the use of the condominium units, common elements and limited common elements as the Executive Board of said Association may deem to be in the best interest of the condominium.

b. **Purposes:** The Association does not contemplate pecuniary gain or profit to the members thereof and no part of the Association's net income shall inure to the benefit of its officers, directors or members or any other private individual. The purposes and objectives of the Association shall be to administer the operation of the acts and duties incident to the administration of the operation and management of said Condominium in accordance with the terms, provisions or conditions and authorizations contained in these By-Laws, Agreement and Association, as well as the Declaration of Unit Ownership above referred to; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of said condominium.

In carrying out the foregoing purposes the Association shall have all of the powers reasonably necessary to implement and effectuate the purposes of the Association, including, but not limited to the power to make and establish reasonable rules and regulations governing the use of condominium units and Common Elements in the condominium to levy and collect assessments against unit purchasers in accordance with the Declaration of Unit Ownership and these By-Laws, to maintain, repair, replace and manage the condominium, to acquire or lease real and personal property for the benefit of the purchasers or the condominium units, and generally to possess all powers necessary in order to carry out the foregoing purposes.

**Section 3. Easements of Enjoyment:** Every purchaser of a unit in the Villas at Mogens Bay I Condominiums shall have a right and easement of enjoyment in and to the common elements which shall be appurtenant to and shall pass with the title to every unit subject to the following provisions:

a. The right of the Association to charge dues and assessments to be used for maintenance of the common elements.

b. The right of the Association to suspend the right to use of the common elements and recreation area by any unit purchaser for any period which any dues or assessments against such purchaser's unit are over due and unpaid, and to impose and levy a reasonable fine not to exceed One Hundred Fifty Dollars (\$150.00) for violation of the Declaration, Bylaws, and Rules and Regulations of the Association.

c. The use of the common elements shall be subject to the joint rights of all other purchasers to use the elements, all pursuant to rules and regulations established by the Association from time to time.

d. This right of use shall extend to the purchaser, members of the family of the purchaser, lessees of the purchaser so long as the tenancy exists, and contract purchasers from a purchaser who resides on the property, but the right to use shall extend to only one family of purchasers, lessees, contract purchasers, at any one time, and in no event shall exceed 8 persons for any one unit.

**Section 4. Membership and Voting Rights:** There shall only be one form of membership designated a "regular membership".

Every purchaser of a unit in the Condominiums shall be a member of the Association. Regular membership shall be appurtenant to and may not be separated from ownership of a unit. Persons or entities who hold an interest in the unit merely as security for the performance of an obligation shall not be members.

Each unit shall have a vote at all meetings of the membership of the Association in the amount of the undivided percentage of ownership in the common elements appurtenant to said unit as shown on Exhibit C to this Declaration. When more than one person or entity holds an interest in any one unit, the purchasers of said unit shall designate one of them as the voting member. If the unit is owned by a corporation or other business entity, an officer or employee shall be designated the voting member. Members may vote either in person or by proxy, but if by proxy, the same must be in writing and delivered to the Secretary of the Association prior to, or at the start of, the meeting at which the proxy is to be exercised. Every proxy shall be revocable and shall automatically cease upon the conveyance by the member of his unit.

The Secretary of the Association shall keep a list of any and all purchasers of a unit in the Villas at Mogens Bay I Condominiums, including all fractional or percentage of undivided interests in the common elements and in the common expenses allocated to each unit, for purposes of determining what members shall be entitled to vote. The membership list shall be arranged

numerically by condominium units and shall be located on the common elements of the Condominiums which is accessible to all members of the Association.

Section 5. Meeting of Regular Membership: There shall be an annual meeting of the membership held each year between March 1 and March 31 with the specific date, time, and place to be determined by the President of the Association unless the Board of Directors or a meeting of the membership has already specified the exact date, time and place. The presence at the meeting of a member or members entitled to cast, either in person or by proxy, 51% of all eligible votes of persons entitled to vote for election of the Executive Board shall constitute a quorum for the transaction of all business except such as may otherwise expressly be provided for in this Instrument. Special meetings of the membership may be called at anytime either by the President, the Board of directors, or one-third of the members. Such request for a special meeting shall state the purpose or purposes of the proposed meeting. At the annual meeting, the members shall elect the new members of the Executive Board, and transact such other business as may properly come before the meeting. Written notice of the annual and special meetings of the membership shall be given to each member entitled to vote at least 10 days prior to said meetings as specified in Section 4 above. The Secretary shall maintain a list of all members entitled to vote at annual and special meetings with said list containing a mailing address of each member. All members shall be responsible for notifying the said Secretary of any change in their address between annual meetings, and all written notice of annual and special meetings sent to the addresses of the members as shown on the membership list shall be effective as notice by the Association.

Section 6. Special Meetings: Special meetings of the regular members for any purpose or purposes unless otherwise prescribed by statute or by these By-Laws, may be called by the President, the Board of directors or members holding one-third of the total eligible votes. Such request shall be in writing and shall state the purpose or purposes of the proposed special meeting. Written notice of the special meeting of members stating the time, place and purpose thereof, shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the list of the Secretary of the Association, at least 10 days before such meeting. Business transacted at all special meetings shall be confined to the objects and purposes stated in the notice thereof, unless 100% of the members present at such meeting in person or by proxy consent to the transaction of business not stated in the notice.

Section 7. Quorum: 51% of the total number of eligible votes of the Association, present in person or represented by written proxy, shall be requisite to and shall constitute a quorum at all meetings of the members of the Association for the transaction of business, except as otherwise provided by Statute, by the Condominium Declaration, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 8. Order of Business: The order of business at the annual Association meetings and as far as practical at other meetings of the membership, will be as follows:

1. Roll call and certifying of proxies;
2. Proof of notice of meeting without waiver of notice;
3. Reading of minutes of prior meeting;
4. Officers' reports;
5. Committee reports;
6. Approval of budget;
7. Election of directors;
8. Unfinished business;
9. New business;
10. Adjournment.

Section 9. Officers: The Association shall have three officers, a President, a Secretary and Treasurer. The officers shall be elected by the Executive Board for a term of one year or until their successors have been elected. The President shall act for the Association, but shall not have the authority to obligate the credit of the Association, nor the members thereof, without authorization of either the Executive Board or the membership. All checks written on any bank account of the Association shall be signed by the Treasurer and by the President. The duties of the officers shall be as follows:

a. President: The President shall preside at all meetings of the members and Directors; he shall have general and active management of the business of the Association; he shall see that all orders and resolutions of the Executive Board are carried into effect; he shall have equal superintendence and direction of all the other officers of the Association, and shall see that their duties are performed properly. He shall report on the operations of the Association for the fiscal year to the directors when ever called for by them, and to the members at the annual meeting, and from time to time shall report to the Executive Board all matters within his knowledge which the interest of the Association may require to be brought forward. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of an Association.

b. Vice-President: If a Vice-President is hereafter elected, the Vice-President shall be vested with all of the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Executive Board.

c. Secretary: The Secretary shall keep the minutes of the meetings of the members and the Executive Board; he shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law. He shall keep a register of the post-office address of each member, which shall be furnished to the Secretary by all members.

d. Treasurer: The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may be designated by the Executive Board. He shall disburse the funds of the Association as ordered by the Board, taking proper vouchers for such disbursements and shall render to the President and Directors at the regular meetings of the board or whenever they may require it an account of all his transactions as Treasurer and of the financial condition of the Association. Such records shall be open to inspection by

members at a reasonable time. In addition he may be required to give the Association at the Association's costs a bond in the sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Association, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Association. He shall maintain a register for the names of any mortgage holders or lien holders on units who have requested in writing that they be registered to whom the Association will give notice of default in case of non-payment of assessments. No responsibility by the Association or its members is assumed with respect to said register except that it will give notice of default to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor. In general he shall perform all duties as may from time to time be assigned to him by the President or by the Board of Directors.

Section 10. Executive Board:

a. Number and Term. The initial Executive Board shall consists of three Directors. The number of Directors shall remain three. The majority of Directors shall be members of the Association and each Director shall be elected at the annual meeting of the membership for a term of one year, or until their successors shall be elected and shall qualify.

b. If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority vote of the membership at a properly called meeting of the membership shall elect a replacement to fill the unexpired term in respect to which said vacancy occurs.

c. The Unit Owners by at least 66.67% of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, in accordance with G.S. 47C-3-103.

d. Pending transfer of control of the Association in accordance with Article XI of the Declaration of Condominium, the Declarant shall have the right to remove any member of the Executive Board with or without cause, and to appoint and elect successors to the Board in the event of the death, resignation, retirement, disqualification, removal from office or otherwise of a Director.

e. Powers. The property and business of the Association shall be managed by the Executive Board, which may exercise any and all authority over the management of the Association and the common elements not specifically prohibited by Statutes, these By-Laws, or the Condominium Declaration. The powers of the Board shall specifically include all of those powers enumerated in G.S. 47C-3-102, which powers are incorporated herein by reference as if fully set out, and shall include but not be limited to the following:

1. To make and collect regular and special assessments and establish the time within which payment of the same are due.
2. To use and expend the assessments collected to maintain, care for and preserve the units and condominium property, except those portions thereof which are required to be maintained, cared for and preserved by the purchasers.

3. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above.

4. To enter into and upon the units when necessary and at as little inconvenience to the purchaser as possible in connection with such maintenance, care and preservation.

5. To insure and keep insured said condominium property in the manner set forth in the Declaration against loss from fire and/or other casualty, and the unit purchasers against public liability, and to purchase such other insurance as the Board may deem advisable.

6. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from purchasers for violations of these By-Laws and the terms and conditions of the condominium documents.

7. To employ and compensate such personnel as may be required for the maintenance and preservation of the property.

8. To make appropriate changes in the Rules and Regulations for the occupancy of the condominium units as may be deemed necessary. Any such changes shall be approved at the next meeting of the membership by a majority of the votes cast.

9. To acquire and/or rent and/or lease a condominium unit in the name of the Association or a designee.

10. To contract for management of the condominium and to delegate to such other party all powers and duties of the Association except those specifically required by the condominium documents to have specific approval of the Board or membership.

11. To carry out the obligations of the Association under any restrictions and/or covenants running with any land submitted to the condominium ownership of this Association or its members.

12. To designate, as the board deems appropriate, assigned parking spaces for each unit, visitors, service vehicles, boats, and other vehicles.

13. To adopt Rules and Regulations pursuant to Article IV of these By-Laws pertaining to "Default".

14. To impose a special assessment against any purchaser, not to exceed \$150.00 for each occurrence, for the violation by the purchaser or his guests of any rule or regulation adopted by the Board or the breach of any By-Laws contained herein, or the breach of any provision of the Declaration.

15. To terminate any lease or rentals whether by written or oral agreement; and to remove from a unit, any lessee, tenant or guest who fails to comply with the terms of the condominium documents.

**Section 11. Meetings of the Executive Board:**

a. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general membership meeting.

b. Special meetings shall be held whenever called by the Director or the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally or by mail, or telegram, at least three (3) days before the date of such meeting, but the directors may, in writing, waive notice of the calling of the meeting, before or after such meeting.

c. A quorum shall be deemed present throughout any meeting of the Executive Board of persons entitled to cast 50% of the votes on that Board, if present at the beginning of the meeting. The act of a majority present at such meeting and which there is a quorum shall be the act of the Board. If the quorum shall not be present at the meeting, the Directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

d. **Order of Business:** The order of business at all meetings of the Executive Board shall be as follows:

- i. Roll call;
- ii. Proof of notice of meeting or waiver of notice;
- iii. Reading of minutes of last meeting;
- iv. Consideration of communications;
- v. Reports of officers
- vi. Report of committees;
- vii. Unfinished business;
- viii. Election of officers at annual meeting;
- ix. New Business;
- x. Adjournment.

e. **Annual Statement:** The Board shall present, no less often than at the annual meeting, a full and clear statement of the business and condition of the Association, including a report of the operating expenses of the Association and the assessments paid by each member.

**Section 12. Liability:** The officers, and directors shall not be liable to the owner for any mistake in judgment, negligence, or otherwise except for their own individual willful misconduct, bad faith, or gross negligence.

Section 13. Compensation: Neither Directors nor officers shall receive compensation for their services as such.

Section 14. Removal of Officers and Directors: Any one or more of the officers and Directors may be removed at any time, with or without cause, by a vote of the Unit Owners representing at least 66 2/3% of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present. Upon the removal of any officer or Director, the membership shall elect a replacement to fill the unexpired term subject to the Declarant's rights set forth in Section 10(d) above.

#### ARTICLE IV

##### FINANCES

Section 1. Fiscal Year: The fiscal year shall be the calendar year.

Section 2. Checks: All checks or demands for money and notes of the Association shall be signed by the following officers: President or Vice-President and Treasurer, or by such officer or officers or such other persons as the Executive Board may from time to time designate.

Section 3. Determination of Assessments:

a. The Board shall determine from time to time the sum or sums necessary and adequate for the common expenses of the condominium property. The Board shall adopt a proposed budget for the condominium, and within 30 days after adoption of the proposed budget, the Executive Board shall provide a summary of the budget to all Unit Purchasers, and shall set a date for a meeting of the Unit Purchasers to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the Unit Purchasers reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified increased by 100% annually shall be continued until such time as the Unit Purchasers ratify a subsequent budget proposed by the Executive Board.

The budget shall constitute the basis for all assessment for common expenses against Unit Purchasers, which assessments shall be due and payable periodically as determined by the Executive Board. Common Expenses shall include expenses for operation, maintenance, repair or replacement of the common elements and facilities and the limited common elements and facilities, cost of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, and any other expenses designated as common expenses from time to time by the Executive Board.

b. The Board is specifically empowered on behalf of the Association to make and collect assessments and to maintain, repair and replace the common elements and facilities and the limited common elements and facilities of the condominium. Funds for the payment of common expenses shall be assessed against the unit purchasers in the proportions or percentages of sharing

common expenses provided for in the Condominium Declaration. Assessments shall be payable periodically as determined by the Board.

c. Special assessments for common expenses not adequately funded through the regular assessments may be required by the Board and shall be levied and paid in the same manner as hereinbefore provided for regular assessments. Notwithstanding anything in these By-Laws or the Condominium Declaration which authorize assessments and expenditures, no special assessment exceeding \$200 per unit per annum or expenditure for the improvement of the common elements exceeding \$10,000 per annum for all units shall be made without the approval of unit owners holding not less than 60% of the undivided interest of the condominium, except for the repair of the condominium project due to damage and destruction, which shall occur as provided for in the Declaration.

d. When the Board has determined the amount of any assessment, the Treasurer of the Association shall mail or present a statement of the assessment to each of the assessed owners. All assessments shall be payable to the Association, and upon request, the Treasurer shall give a receipt for each payment made.

e. The Board may enter into a management contract with third parties to whom the Board of Directors may delegate the power to levy and collect assessments approved by the Board or required by the condominium documents.

f. All assessments not paid when due shall bear interest at the highest legal rate of interest.

#### ARTICLE V

#### DEFAULT

Section 1. Dues and Assessments: Each purchaser of a unit in the Villas at Magens Bay I Condominiums by the acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such monthly dues and special assessments as shall be established from time to time by the Executive Board or membership of the Association. Such monthly dues and special assessments, together with interest, cost, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien on the land against which each assessment is made, until paid. In addition such monthly dues and special assessments shall also be the personal obligation of the purchaser of the unit at the time the dues or assessments become due. This personal obligation shall not pass to a successor in title to the purchaser unless expressly assumed by such successor. The dues and any assessments shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association and for improvements, maintenance of the common element or elements, buildings or improvements within said condominium development. The lien of the monthly dues and special assessments provided for herein shall be subordinate to the lien of any first mortgage. No sale or transfer of any unit shall affect the lien for unpaid dues or special assessments. The monthly dues shall be payable monthly in advance, unless otherwise directed by the Executive Board. The pro rata portion of the dues levied for the month purchased shall be collected by the Declarant from the purchaser of each unit at the time the

sale is closed. This money shall be paid by the Declarant to the Association. The amount of the monthly dues for each year shall be fixed at the annual meeting of the membership for the following fiscal year of the Association. The monthly dues shall commence as to all units on the date a deed to the unit from the Declarant is recorded. In addition to the monthly dues the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the common elements, or for acquiring additional land for the common elements, or for the purpose of meeting obligations of the Association, or for any other related notice of the meeting clearly stating that a vote is to be held on whether to levy such special assessment.

Section 2. Enforcement of Lien for Assessments: In the event a purchaser does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association, acting on its behalf or through its Executive Board, may enforce its lien for assessments and to take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the Declaration, G. S. 47C-3-116, 47C-3-115, and 47C-3-107.

Section 3. Governmental Liens and Assessments: In the event that a purchaser fails to pay any tax or assessment lawfully assessed by any governmental subdivision within which the property is situated, by the date such tax or assessment is due, the Executive Board may pay the same from the funds of the Association and assess such purchaser for that amount paid, plus interest thereon.

Section 4. Legal Costs: In the event such legal action is brought against any purchaser and results in a judgment for the Association; the purchaser shall pay the Association's reasonable attorney's fees; costs of collection, and court costs.

Section 5. Foreclosure: If the Association becomes the purchaser of a unit by reason of foreclosure, it shall offer said unit for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums or money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the unit, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the unit in question. All monies remaining after deducting the foregoing items of expenses shall be returned to the former purchaser of the unit so foreclosed.

Section 6. Other Remedies: In the event of violation of the provisions of the condominium documents as the same are defined in the Declaration for 30 days after notice from the Association to the unit purchaser to correct said violation, the Association, on its own behalf or by and through its Executive Board, may bring appropriate action to enjoin such violation or may enforce the provisions of said condominium documents or may sue for damages, or take other courses of action, or any other legal remedy as it or they may deem appropriate. The Association shall have all the rights and remedies provided for in Chapter 47C of the North Carolina General Statutes, including but not limited to G. S. 47C-3-107, 107A, 115, and 116.

Section 7. Intent: Each purchaser, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to collection of dues and assessments, default and abatement of

nuisances, regardless of the harshness of the remedy available to the Association and regardless of the availability of the other equally adequate legal procedures. It is the intent of all purchasers of units to give the Association a method of procedure which will enable the Association at all times to operate on a business-like basis, to collect the monies due and owing it from the purchasers of units, and to preserve each unit purchaser's right to enjoy his unit, free from unreasonable restraint and nuisance.

ARTICLE VI

AMENDMENTS

The By-Laws may only be altered, amended or added to at any duly called meeting of the members; provided (1) that the notice of the meeting shall contain a full statement of the proposed amendment; and (2) that the quorum requirements for such purposes shall be a 51 percent of the eligible votes in person or by proxy. In addition, it shall be necessary that there be an affirmative vote of the Executive Board, in order to amend the By-Laws. No amendment to these By-Laws shall be passed which would operate to impair or prejudice the rights and/or liabilities of any mortgagee, and no amendment shall become operative unless set forth in an Amended Declaration and duly recorded. All unit purchasers shall be bound to abide by an amendment upon the same being passed and duly set forth in an Amended Declaration, duly recorded in the Office of the Register of Deeds of Carteret County, North Carolina.

ARTICLE VII

CONSTRUCTION

Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

Should any of the covenants herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

IN WITNESS WHEREOF, The Villas at Magens Bay, I, the Declarant herein, has caused this instrument to be executed in its corporate name and affixed with its corporate seal on this the 25th day of April 2005.

VILLAS AT MAGENS BAY I, LLC

By: *Richard L. Lamm*  
MANAGER

By: *Arthur J. Saham*  
MANAGER

STATE OF NORTH CAROLINA

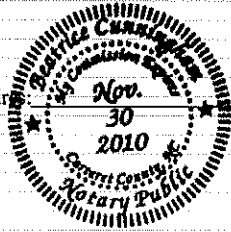
COUNTY OF CARTERET

Before the undersigned Notary Public personally appeared Richard Farrington and Katherine Gorham, managers of Villas at Magens Bay I, LLC, a North Carolina Limited Liability Company, who personally acknowledged the due execution of the foregoing instrument and that said members have been granted the express authority by the terms of the Operating Agreement to execute the same on behalf of said Company as the act of said company.

This the 25<sup>th</sup> day of April, 2005.

Frederic A. [Signature]  
Notary Public

My Commission Expires



**EXHIBIT F:**

**PROPOSED BUDGET FOR THE VILLAS AT MAGENS BAY I**

**Estimated Annual Expenses:**

Administrative Office	\$ 500.00
Landscaping maintenance	\$ 3150.00
Maintenance	\$ 500.00
Insurance (Property, casualty, and Directors and Officers liability)	\$ 14560.00
Utilities and pest control	\$ 500.00
Elevator maintenance	\$ 1000.00
Reserve/Contingency	\$ 400.00

**Total Estimated Annual Expenses:** \$ 20610.00

**Annual Income Estimated:** \$ 20610.00

**Monthly Assessment and Dues:** \$ 1717.50

**EXHIBIT G:**

**PROPOSED MONTHLY ASSOCIATION DUES**

Unit:	Amount:
<b>Building 1</b>	
A-1	\$143.12
B-1	\$143.12
A-2	\$143.12
B-2	\$143.12
A-3	\$143.12
B-3	\$143.12
<b>Building 2</b>	
C-1	\$143.12
D-1	\$143.12
C-2	\$143.12
D-2	\$143.12
C-3	\$143.12
D-3	\$143.12
	<u>\$1717.50</u>

EXHIBIT H:

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

CONSENT TO DECLARATION

Sound Bank, a North Carolina Banking Corporation with an office in Morehead City, Carteret County, North Carolina, herein "Beneficiary", and S. Phillip Collins, Trustee, Carteret County, North Carolina, as designated in that certain Deed of Trust executed by Villas at Magens Bay I, LLC., dated February 25, 2005, in the amount of \$1,325,825.00 as recorded in Book 1098, Page 379, Carteret County Registry, has executed this Exhibit to the Declaration of Unit Ownership for the Villas at Magens Bay I for the purpose of subordinating said Deed of Trust recorded aforesaid to this Declaration of Unit Ownership for the Villas at Magens Bay I so that said real property currently the subject of the Deed of Trust to Sound Bank on the property in Cedar Point, North Carolina, Map Book 30, Page 604, Carteret County Registry, may be hereafter acquired, conveyed, mortgaged, occupied and used in accordance with said Declaration of Unit Ownership.

IN WITNESS WHEREOF, Beneficiary and the Trustee have executed this Subordination on this the 26 day of April, 2006.

SOUND BANK

By: [Signature]  
Vice-President

Trustee: [Signature]  
President / CEO

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BOOK 1170 PAGE 106

P 002/004

(FAX) 252 7283881

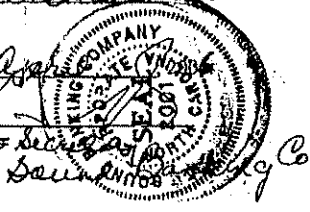
APR-27-2006 (THU) 11:24

STATE OF NORTH CAROLINA  
COUNTY OF CARTERET

I, a Notary Public of the County and State aforesaid, certify that Sam O'Berry personally came before me this day and acknowledged that he is the Vice-President of Sound Bank, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice-President, sealed with its corporate seal and attested by Malcolm C. Garland as its Secretary.

Witness my hand and official stamp or seal, this the 28 day of April

Notary Public



My Commission Expires: 7/28/2010

STATE OF NORTH CAROLINA  
COUNTY OF

I, a Notary Public for the aforesaid County and State, do hereby certify that S. Philip Calver, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said Trustee.

Witness my hand and seal, this 28<sup>th</sup> day of April, 2008



Ann T. Borden  
Notary Public  
Ann T. Borden

My Commission Expires: 4-12-2010

EXHIBIT I:

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

CERTIFICATION OF ENGINEER

The certification of the Engineer appears on Page \_\_\_\_\_ of the Plats and plans of The Villas at Magens Bay I Condominiums recorded in Map Book 105, Pages 931-941, Carteret County Registry.

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