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STATE OF NORTH CAROLINA

COUNTY OF CARTERET

DECLARATION OF CONDOMINIUM OF  
VILLAGE WEST CONDOS AT EMERALD ISLE, A CONDOMINIUM

THIS DECLARATION, made this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by A-TEAM VILLAGE WEST, INC., a North Carolina corporation, hereinafter referred to as "DECLARANT";

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the Declarant is the owner of record of the fee simple title of certain real property located entirely in the Town of Emerald Isle, County of Carteret, State of North Carolina, which is more particularly described in Exhibit "A" hereto attached and incorporated herein by reference (the "Property"); and

WHEREAS, the Declarant is the owner of the five (5) multi-unit buildings, and certain other improvements heretofore constructed upon the aforesaid Property; and

WHEREAS, it is the desire and the intention of the Declarant to market, sell and convey interests in the Property and the improvements thereon as a condominium project, with the first floor units for commercial use, and the two-story units constituting the second and third floors of the building for residential use, pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled "The North Carolina Condominium Act"; and

WHEREAS, it is the desire and intention of the Declarant in the recordation of this DECLARATION in the Office of the Register of Deeds of Carteret County, North Carolina, to submit said condominium project to the provisions of the said Chapter 47C;

NOW, THEREFORE, THE DECLARANT DOES HEREBY DECLARE THAT ALL OF THE PROPERTY DESCRIBED IN EXHIBIT "A" HERETO ATTACHED AS WELL AS ALL OF THE IMPROVEMENTS CONSTRUCTED THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED, USED, OCCUPIED, AND IMPROVED SUBJECT TO THE FOLLOWING ARTICLES OF COVENANTS, CONDITIONS,

RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS, ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A BENEFIT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, AND ANY PERSON OR ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND IMPROVEMENTS, OR ANY SUBDIVISION THEREOF, THEIR GRANTEEES, SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

THIS DOCUMENT PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA AS WELL AS OTHER FLAGS, AND THE DISPLAY OF POLITICAL SIGNS, TO THE MAXIMUM EXTENT PROHIBITED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO N.C.G.S. SECTION 47C-3-121.

## ARTICLE I.

### Definitions

For the purposes of this Declaration and the By-Laws of the Association, hereinafter defined, the following definitions for the term used herein and therein shall apply unless otherwise defined by the context thereof:

1.1 “Act” shall mean and refer to The North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

1.2 “Assessment” shall mean and refer to a share or all of the funds required for the payment of the common expenses, hereinafter defined, of the Association which from time to time shall be levied or assessed against a Unit owner(s) by the Association, all as provided for hereinbelow.

1.3 “Allocated Interests” shall mean and refer to the undivided interest(s) in the common elements, the common expense liability and votes in the Association allocated to each Unit.

1.4 “Association” shall mean and refer to Village West at Emerald Isle Condo Owners' Association, Inc., the mandatory association of all Unit Owners, as is more particularly described in Article VII hereinbelow and organized pursuant to North Carolina General Statutes 47C-3-101, et seq.

1.5 “Board” shall mean and refer to the Board of Directors of the Association and “Director” shall mean and refer to a member of said Board.

1.6 “By-Laws” shall mean and refer to those By-Laws of the Association providing for the government of the Association as they are duly adopted and amended from time to time by the Association.

1.7 “Common Elements” generally shall mean and refer to all of the real property, described on Exhibit "A", and all of the present or proposed improvements and facilities thereon which are not Units, as defined hereinafter, and is also from time to time referred to herein as the “common areas and facilities”.

1.8 “Common Expenses” shall mean and refer to the expenditures, costs and expenses incurred by the Association for the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the Common Elements as well as any other financial liability incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein or by law and designated as common expenses. Common Expenses are additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association as common expenses of the Association.

1.9 “Common Expense Liability” shall mean the liability for Common Expenses allocated to each Unit (allocated interests) pursuant to North Carolina General Statutes 47C-2-107.

1.10 “Common Surplus” shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the Common Expenses.

1.11 “Condominium” shall mean and refer to the entire proposed development created pursuant to this Declaration consisting of all the real property including Units, all improvements and structures thereon, all Common Elements and facilities, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith, which are intended to be submitted to the provisions of the act by this Declaration, and the supplements and amendments hereto, as are provided for hereinbelow.

1.12 “Declarant” shall mean A-Team Village West, LLC, its successors and assigns, as the owner of the property and which as a part of a common promotional plan offers to dispose of its interest in a Unit not previously disposed of or reserves or succeeds to any special declarant right.

1.13 “Declaration” shall mean the Declaration of Condominium for Village West at Emerald Isle, a Condominium, and any and all amendments.

1.14 “Development Rights” shall mean any right or combination of rights reserved by the Declarant in this Declaration to add real estate to a condominium; to create Units; to create 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.

1.15 “Identifying Number” means the symbol or address that identifies only one specific Unit in the Condominium.

1.16 “Limited Common Element” shall mean a portion of the Common Elements if any allocated by this Declaration for the exclusive use of one or more but fewer than all of the Units

created in this Condominium, as identified herein, on Exhibit B affixed hereto and incorporated herein by reference or on the plats and plans for the Condominium as referenced on Exhibit A.

1.17 “Master Association” shall mean the Village West at Emerald Isle Owners’ Association, Inc., a North Carolina nonprofit corporation.

1.18 “Master Covenants” shall mean the Declaration of Covenants, Restrictions and Easements recorded in Deed Book \_\_\_\_, Page \_\_\_\_, Carteret County Registry.

1.19 “Occupant” shall mean any person or persons in possession of a Unit, including Unit Owners, and the family members, tenants, guests, and invitees of such person or persons.

1.20 “Person” shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

1.21 “Purchaser” shall mean any person, other than the 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 (i) a leasehold interest (including renewal options) of less than five (5) years, or (ii) as security for an obligation.

1.22 “Special Declarant Rights” shall mean rights reserved herein for the benefit of the Declarant to complete improvements indicated on plats and plans filed with the Declaration under General Statutes 47C-2-109; to exercise any development rights under General Statutes 47C-2-110; to maintain sales offices, management offices, signs advertising the condominium and models under General Statutes 47C-2-115; to use easements through the common elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium under General Statutes 47C-2-116; to make the Condominium part of a larger Condominium under General Statutes 47C-2-121; or to appoint or remove any officer of the Association or any executive board member during any period of Declarant control under General Statutes 47C-3-103(d); to have access across all common areas for any legal purpose whatsoever including but not limited to the purpose of access to all parts and areas of the real property described in Exhibit "A" and for access and egress, and installation and maintenance of utilities to the other parts of Village West planned community.

1.23 “Structure” shall mean and refer to each multi-unit building in which the Declarant has constructed Units and which is located upon the real Property, with the first floor Units to be used for commercial purposes, and the two-story Units on the second and third floors to be used for residential purposes, as hereinafter provided. The structures shall be referred to collectively as the “Structures”. The Condominium Plat as defined herein contains the survey of the Property showing the location of the Structures thereon and the plans for the condominium. Said Structures are more particularly described in the plans of said Structures, showing all particulars as required by law. If additional Structures and Units are annexed into the Condominium as provided herein, Structure(s) shall include any of such additional buildings.

1.24 “Unit” or “Condominium Unit” shall mean and refer to any one of those

subdivisions of enclosed space within the Structures, together with any additional areas or spaces accompanying the same as defined hereinbelow, and which are intended to or will be sold as commercial or residential units for separate ownership pursuant to the Act and this Declaration. The deed for any particular Unit shall convey such Unit by its Unit identifying number or letter and the same shall be deemed to include all that is defined as a part of that Unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such Unit and subject to the covenants, conditions, restrictions and obligations applicable to Unit Owners as all are more generally stated and described throughout this Declaration.

All Units, as well as the additional areas defined as part of each Unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the Units' perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings, and floors of the additional areas conveyed as part of each Unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the Structure(s) whether the same now exist or may be caused or created by existing construction, settlement, or movement of the buildings, or by permissible repairs, construction, or alteration.

Each Unit is hereby defined also to include:

- (i) All non-load bearing partition walls located entirely within the Unit;
- (ii) With regards to two-story Units, the horizontal partition constituting the ceiling of the first floor and the floor of the second floor which is located entirely within the Unit;
- (ii) All materials, including, but not limited to, lath, furring, wallboard, sheetrock, plaster, paneling, tiles, wallpaper, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the Unit; and all window panes, frames, panes and exterior doors;
- (iii) All air handling and condensing units for heating and cooling located within or outside the horizontal and vertical boundaries referred to above, ducts and components, and all water, power, telephone, internet, cable television, electricity, plumbing and sewage lines, located within the Unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be Common Elements and facilities as defined hereinabove.

Except as set forth above, each Unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services to the Units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for perimeter walls, ceilings and floors of the Units. All such pipes, ducts, wires, conduits, and other such facilities are defined as a part of the Unit at and from their point of entry into the Unit.

The definition stated hereinabove for "Unit" is complete, and all other aspects of the condominium not hereinabove defined as a part of the Units is defined hereby as a part of the Common Elements and facilities of the Condominium.

1.25 "Unit Owner" shall mean and refer to a person, corporation, partnership, association, trust, or other legal entity including the Declarant, or any combination thereof, in whose name or names the title to or an interest in the title to any Unit is vested, excluding those who own or hold such title or interest under the terms of any mortgage or deed of trust or other similar instrument for the purposes of securing the payment of an indebtedness or the performance of an obligation. Unit Owners are from time to time referred to herein as "owners". When more than one person holds such interests or interests in any Unit all such persons shall be members, and the single vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Unit with the person entitled to cast such vote being designated by certificate as provided below.

If a Unit is owned by one person the owner's right to vote shall be established by the record title to the Unit. If a Unit is owned by more than one person, the person entitled to cast the vote for said property shall be designated by a certificate signed by all of the record owners of said property and filed with the secretary of the Association. If a Unit is owned by a corporation or other entity, the person entitled to cast the vote for said property shall be designated by a certificate of appointment signed by an officer of a corporation, or Manager or other officer of a limited liability company, partner of a partnership, or Trustee of a trust, as the case may be, and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit. The Association shall be entitled to rely on such certificates as provided to it without independent investigation of its authenticity.

## ARTICLE II Submission of Property

Pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, the Declarant does hereby submit all of the Property described in Exhibit "A" attached hereto together with all improvements thereon and described herein, to the provisions of the "North Carolina Condominium Act" of the State of North Carolina, which is codified as Chapter 47C of the General Statutes of the State of North Carolina. The Condominium created hereunder shall be known as VILLAGE WEST CONDOS AT EMERALD ISLE, A CONDOMINIUM.

Declarant has filed with the Carteret County Register of Deeds the plat and plans to VILLAGE WEST CONDOS AT EMERALD ISLE, A CONDOMINIUM, which shall be considered a part of this Declaration. Said plats and plans are recorded in Condominium Map Book \_\_\_, Page \_\_\_, in the Carteret County Register of Deeds Office (the "Condominium Plat").

## ARTICLE III Future Development Rights

3.1 Combining Units. By this Declaration, Declarant submits only the Property together with improvements thereon and the same shall be known as Village West Condos at Emerald Isle, a Condominium. Declarant hereby reserves the right and option to combine Units owned by Declarant to decrease the total number of Units. In the event of any such combination, the percentage of undivided ownership of common areas shall be the aggregate percentage associated with the combined Units, and all assessments will be determined based upon the total combined undivided interest, insurance risk and/or utility consumption as the case may be.

3.2 Amendments for Reduction. Such reduction shall occur, if at all, by the recordation of one or more supplements or amendments to this Declaration and/or the Condominium Plat, which supplements or amendment(s) shall be executed by the Declarant or by its successors and assigns. The recordation of any such supplement or amendment shall not require consent or ratification of any Unit Owner.

3.3 Term of Right. The right and option described in subparagraphs 3.1 and 3.2 above shall terminate on that date which is the tenth anniversary of the recording of these Covenants, and shall be subject to the conditions, restrictions and limitations set forth in subparagraphs 3.4, 3.5, and 3.6 of this Article III. The Declarant covenants and agrees that no more than a total of twenty-two (22) Units will be created upon the property subject to this Declaration.

3.4 Change in Undivided Interest. The undivided interest of the Units presently subjected to this Declaration are set forth in Article IV. If any Units are added to and made subject to the Declaration by the addition of Units contemplated by this Article III, or if Units are combined and the total number of Units reduced, then the undivided interest in the Common Elements, the liability for common expenses not specially assessed, and the interest in any common surplus will thereafter be adjusted.

If any or all of the Units contemplated in the proposed expansion or combination are added to or made subject to this Declaration or the number of Units is reduced, the percentage of undivided interest in the Common Elements of all Units shall be determined by allocating to each existing Unit an equal and proportional interest in the total then existing Common Elements.

3.5 Change in Layout. Nothing herein shall be deemed to limit or alter the Declarant's right, hereby reserved, to vary the internal layout of, or to further combine, any Unit(s) owned by Declarant so long as Declarant substantially conforms with the provisions of this Article III.

3.6 Agreement to Changes. Every Unit Owner in Village West at Emerald Isle, A Condominium, by accepting a Deed to a Unit therein thereby agrees for himself and his heirs, successors and assigns, to any decrease in the Units subject to this Declaration in accordance with the provisions of this Article III.

#### ARTICLE IV

##### The Nature and Incidents of Unit Ownership

4.1 Allocation of Common Areas. Each Unit shall be conveyed and treated as an

individual real property capable of independent use and fee simple ownership, and the owner of each Unit shall also own, as an appurtenance to the ownership of each said Unit, an undivided interest in the Common Elements of VILLAGE WEST CONDOS AT EMERALD ISLE, A CONDOMINIUM. The undivided interest in the Common Elements appurtenant to each of the initial Units of the Condominium, is as follows:

| <u>Unit Number</u> |   | <u>Percentage of Undivided Interest</u> |
|--------------------|---|---|
| Unit 1             | - | 2.74158%                                |
| Unit 2             | - | 2.74158%                                |
| Unit 3             | - | 2.63032%                                |
| Unit 4             | - | 2.63032%                                |
| Unit 5             | - | 2.74158%                                |
| Unit 6             | - | 4.96662%                                |
| Unit 7             | - | 4.72823%                                |
| Unit 8             | - | 2.74158%                                |
| Unit 9             | - | 2.63032%                                |
| Unit 10            | - | 2.63032%                                |
| Unit 11            | - | 2.74158%                                |
| Unit A             | - | 5.25668%                                |
| Unit B             | - | 5.25668%                                |
| Unit C             | - | 5.25668%                                |
| Unit D             | - | 5.25668%                                |
| Unit E             | - | 5.25668%                                |
| Unit F             | - | 9.861730%                               |
| Unit G             | - | 8.90416%                                |
| Unit H             | - | 5.25668%                                |
| Unit I             | - | 5.25668%                                |
| Unit J             | - | 5.25668%                                |
| Unit K             | - | 5.25668%                                |

Said proportional interest in the common areas and facilities that is appurtenant to each Unit has been determined in a manner consistent with the Act.

4.2 Interest in Common Areas. No Unit may be divided or subdivided into a smaller unit or units than as shown on the Condominium Plat. The undivided interest in the common areas and facilities declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said Unit, and the undivided interest in common areas and facilities appurtenant to each Unit shall be deemed conveyed, devised, encumbered, or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Unit. Any conveyance, mortgage, or other instrument which purports to grant any right, interest, or lien in, to or upon a Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its appurtenant undivided interest in common areas and facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any Unit, which described



said Unit by the identifying number assigned thereto in the Condominium Plat without limitation or exception, shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety; provided, however, no Unit shall be sold, or transferred under a time-share or interval ownership concept, as those terms are commonly used in the real estate industry.

4.3 Easement in Common Elements. The Common Elements shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners of Units in the Condominium for their use and the use of their immediate families, guests, tenants or invitees, for all proper and normal purposes for which such Common Elements were reasonably intended, and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said owners of Units. Notwithstanding anything to the contrary in foregoing, (i) the easement for Limited Common Elements shall be exclusive to the Unit Owners of the Unit(s) to which the subject Limited Common Element is assigned; (ii) such easement shall not include the right of Unit Owners to affix or attach equipment or fixtures to Common Elements without the prior approval of Declarant or the Association; and (iii) such easement shall be subject to the rules and regulations for use of the Common Elements adopted by the Association as provided herein and under applicable law.

4.4 Marketable Title. The Condominium is not subject to any zoning, subdivision, building code or other real estate use law or ordinance imposing any requirement upon a Condominium which it would not impose upon a substantially similar development under a different form of ownership. This statement is made pursuant to N.C.G.S. 47C-1-106 for the purpose of helping provide marketable title to the Units in the Condominium.

#### ARTICLE V. Use and Transfer Restrictions

5.1 Commercial and Residential. Each of Units 1-11 (the "Commercial Units") is hereby restricted to commercial use by the Owner thereof, and the Unit Owner's guests, invitees and lessees (it being expressly understood that use by any lessee must be consistent with the uses permitted herein). None of such Commercial Units may be used for residential purposes. Each of Units A-K (the "Residential Units") is hereby restricted to residential use by the Owner thereof, and the Unit Owner's guests, invitees and lessees (it being understood that use by any lessee must be consistent with the uses permitted herein). None of such Residential Units may be used for commercial purposes other than limited home office use as more particularly described in Section 5.5 hereinbelow. Further use restrictions are provided hereinbelow.

5.2 Nuisance, Legal Compliance. No immoral, improper, offensive or unlawful use shall be made of any Unit or of the common areas and facilities, nor any part thereof; and all laws, zoning and development ordinances and regulations of all governmental authorities having jurisdiction of the Unit shall be observed. No owner of any Unit shall permit or suffer anything to be done or kept in his Unit, or on the common areas and facilities, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other owners of the other Units

or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a Unit, or which interferes with the peaceful possession and proper use of any other Unit or the common areas and facilities.

5.3 Use of Common Elements. The use of Common Elements, by the owner or owners of all Units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association, subject to Declarant's rights herein. Further, although additional rules and restrictions on use may apply, it is hereby provided that, with respect to Commercial Units, only up to two Owner(s), or if the Owner is an entity, two persons designated by the Owner, the names of which persons shall be registered with the Association, shall be permitted use of any swimming pool provided as a Common Element. The Association shall also have the right to make rules which may restrict the number of Occupants, other than record Owner(s) of a Unit, which may have access to any swimming pool provided as a Common Element.

5.4 Certain Modifications. No owner of a Unit shall permit any structural modification or alteration to be made to such Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. Notwithstanding anything to the contrary in the foregoing, owners, after acquiring an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition is a Common Element, if those acts are performed by a contractor approved in advance by the Declarant during the Declarant Control Period or by the Association thereafter, and if they do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium; such limited acts shall not constitute alteration of the boundaries of the Units and the Units shall remain separate Units under the Declaration. No owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennas or any other objects, machines or air conditioning units which may protrude through the walls or roof of the condominium) or in any manner alter the appearance of the exterior portion of the Structure without the written consent of the Association and the Master Association being first obtained. No Unit Owner shall cause any object or sign to be fixed to the Common Elements (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Elements or Limited Common Elements without the written consent of the Association and the Master Association being first obtained. Any consent required herein may be withheld in the discretion of a majority of the Board of Directors of the Association, and/or Master Association, as the case may be.

5.5 Residential Use Restrictions. In the Residential Units, subject to applicable zoning ordinances, a home office is permitted, but not an office or any other use of a Unit or portion thereof, (i) in which, other than the Owners or residential tenants of Owners in the Unit, there are present any employees or manager(s), whether full or part-time, day or night, for pay, other recompense or not; (ii) in which inventory is stored; (iii) where patients, wards or recipients of

care or services come to the Unit to receive such care or services; or, (iv) where sales of good or services take place other than telephonically or electronically.

5.6 Rental of Units. Commercial Units shall not be rented or leased for periods of less than one month, or month-to-month. There shall be no restriction on length of rentals by Owners of Residential Units, subject to applicable zoning ordinances. No Units may be subjected to interval or timeshare ownership and any rentals must be of the entire Unit and not portions thereof. Each lease or rental agreement for a Unit shall provide that the tenant(s) under the lease shall be subject to and shall comply with the provisions of these Covenants and the Master Covenants, and the Bylaws and Rules and Regulations of the Association and the Master Association, as same may be amended from time to time.

5.7 Commercial Use Restrictions. The use of a Commercial Unit shall not be substantially duplicative of, or in direct competition with, the existing use of any other Commercial Unit in the Condominium, without a prior written variance from the Association. The use of the Commercial Units may be further restricted under rules and regulations adopted by the Declarant during the period of Declarant control, and thereafter by the Association, for the purpose of assuring a variety of compatible uses within the Condominium. Such restrictions may include, but will not be limited to, restrictions that clarify limits on competing or duplicative uses based on existing uses, as well as uses which would be deemed materially conflicting with the proximity to residential uses. Any such restrictions and any variances therefrom shall be subject to any specific voting requirements provided in the Bylaws of the Association, and once adopted shall be kept on file with the principal corporate records of the Association. Further, Declarant may put more specific use and exclusivity restrictions on uses of Commercial Units upon conveyance of such Units to third parties in order to further assure a variety of compatible commercial uses in the Condominium.

5.8 Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction), to or in his Unit or the Common Elements.

5.9 Flags, Signs and Political Signs. No Unit Owner or Occupant may display any flags or signs, including, without limitation, political signs, on Common Elements nor may any such flags, signs or political signs be displayed in the windows or exterior doors of a Unit, whether on the inside or outside of the window or door, in a manner so as to be visible from the exterior of the Unit. This prohibition shall include for sale signs posted by Owners other than Declarant unless such prohibition is a violation of applicable law in which case one for sale sign per Unit under guidelines established by the Association may be posted in the manner prescribed by such guidelines only during the period that such Unit is actively marketed for sale. Notwithstanding anything to the contrary in the foregoing, a sign indicating the name of the business(es) located therein may be posted for each Commercial Unit subject to applicable governmental ordinances and regulations, and subject to prior approval by the Association as to its appearance, size and location (whether on

Common Areas or in a window and visible from the exterior), and to rules adopted by the Association with respect thereto. The Association shall further have the right to establish rules and regulations regarding signs on vehicles in the parking lots which are part of the Common Elements or leased by the Association.

5.10 Pets. The Board shall have specific authority to regulate, or prohibit, the keeping of pets or animals of any kind (mammal, amphibian, reptile or otherwise) within Units or on Common Elements and Limited Common Elements. All Occupants must follow the rules and regulations promulgated from time to time by the Board regarding pets or animals. Notwithstanding anything to the contrary in the foregoing, the Board may not prohibit a record Owner (as opposed to other Occupants) from maintaining a total of two cats or dogs (or one of each) per Unit when in residence in such Owner's own Unit, provided that the Board may reasonably and in good faith prohibit such a pet that presents a health or safety hazard to others due to illness or vicious propensities.

5.11 Antennae, Mail Boxes. No antennae, aerial, or satellite dish shall be installed on Common Elements, including without limitation the exterior of a Unit, unless installed by the Association. The Association may establish guidelines for size and placement of satellite dishes and antennae or other over the air reception devices provided that such guidelines are in compliance with the Federal Telecommunications Act of 1996 or other applicable law or regulation. The Board on behalf of the Association is specifically authorized to regulate or prohibit mailboxes, newspaper boxes or other such features. The Board is authorized to require that mail be collected at a post office box, or, if the Board so determines, that mail be collected in uniformly approved or joint use mail collection locations and facilities.

5.12 Nuisance. 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.

5.13 Right of First Refusal. All Commercial Units shall be conveyed by Declarant with a reservation of a right of first refusal in favor of Declarant. Such rights of first refusal to Declarant shall provide that they shall terminate on that date which is ten (10) years after the date of recordation of this Declaration. Such right of first refusal shall provide that in the event that an Owner enters into a bona fide contract of sale (which contract must be subject to Declarant's right of first refusal) for the Owner's Commercial Unit(s) with a third party, said Owner shall provide written notice to Declarant of such contract and its terms and conditions within ten (10) days of execution of same. The Declarant shall then have thirty (30) days to exercise its right of first refusal (by written notice to the Owner within such thirty day period) with regard to said Unit(s) upon the same terms and conditions as provided in said contract. If Declarant fails to exercise said right, then and only then may said Owner sell said Unit(s) to the third party pursuant to the contract. This right of first refusal shall not apply to any transfers to a lender having a security interest in a Unit or to a purchase in a transfer pursuant to a foreclosure or by deed in lieu of foreclosure.

ARTICLE VI  
Easements

In addition to easements and rights established and/or reserved elsewhere in this Declaration, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

6.1 Right of Entry. In case of any emergency, as determined by the Board or its agent, originating in or threatening any Unit, regardless of whether the owner is present at the time of such emergency, the Board, or any other person authorized by it, or the managing agent, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

6.2 Easements for Common Facilities, Repairs. Each Unit Owner shall have an easement in common with the other owners of all Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other Units and located in such Unit. The Board of Directors of the Association or their designee shall have the right of access to each Unit to inspect the same, to remove or correct violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

6.3 Utility Easements. The initial and subsequent Boards may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, gas mains, communications, internet and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the Units and/or Common Elements; and, each Unit Owner hereby grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each Unit Owner such instruments as may be necessary to effectuate the foregoing.

6.4 Pedestrian and Vehicular Easements and Parking. Ingress and egress is reserved for pedestrian traffic over, through and across any sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Elements and for vehicular traffic over, through and across the portions of the Common Elements as may be paved for such purposes. At the present time, only the Common Elements as described in the Master Declaration involve such Vehicular Easements, and parking spaces on such Common Elements in the Village West planned community will be allocated as provided in the Master Declaration and rules and regulations adopted thereunder.

6.5 Easements for Encroachment. In the event that any Unit shall encroach upon any of the Common Elements, or any other Unit or Units, for any reason not caused by the purposeful or negligent act of the Unit Owner, or agents of such owner, then an easement appurtenant to such Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Unit, then an easement shall exist for the continuance

of such encroachment of the Common Elements upon any Unit for so long as such encroachment shall naturally exist. If any Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings and if upon reconstruction of such Unit and/or Common Elements in accordance with this Declaration, there exist encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

6.6 Easements to Declarant. The Declarant has such easements to the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special Declarant rights whether arising under the Act or reserved in this Declaration.

## ARTICLE VII The Owners' Association

7.1 Organization of Association: To efficiently and effectively provide for the administration and maintenance of the Condominium by the Unit Owners, a non-profit corporation incorporated pursuant to N.C.G.S. Chapter 55A known and designated as VILLAGE WEST AT EMERALD ISLE CONDO OWNERS' ASSOCIATION, INC. (hereinafter the "Association"), has been organized pursuant to N.C.G.S. 47C-3-101 et seq. The Association shall administer the operation and management of the Condominium and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its duly adopted By-Laws. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Except as may be limited by the terms of this Declaration, each Unit shall be allocated one vote in the Association to be used by the Unit Owner or Unit Owners of each respective Unit.

7.2 Powers: The Association shall have the power to: adopt and amend By-Laws and rules and regulations; adopt and amend budgets for revenues, expenditures and reserves and establish and collect regular and special assessments for Common Expenses from Unit Owners; hire and terminate managing agents and other employees, agents and independent contractors; institute, defend or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium; make contracts and incur liabilities; regulate the use, maintenance, repair, replacement and modification of Common Elements; cause additional improvements to be made as a part of the Common Elements; acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112; grant easements, leases, license and concessions through and over the Common Elements; impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided Unit Owners; impose charges for late payment of assessments, and after notice and an opportunity to be heard, levy reasonable fines not to exceed the maximum allowed by law per violation for violation of the Declaration, By-Laws and rules and regulations of the Association; impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates or statements of unpaid assessments; provide for the indemnification of and maintain liability insurance for the officers, the Board, its employees and agents; exercise all other powers that may

be exercised in North Carolina by legal entities of the same type as an Association; and exercise any other powers necessary and proper for the governing and operation of the Association.

7.3 Declarant Control: Subject to Section 7.4 below, the Declarant may appoint and remove the officers and members of the Board of Directors of the Association during the period that shall terminate no later than the earlier of (i) 120 days after conveyance of 75% of the Units, including Units which may be created pursuant to special Declarant rights, to Unit Owners other than Declarant; (ii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) two years after any development right to decrease number of Units was last exercised hereinafter referred to as the "period of Declarant control". The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the period of Declarant control, but in that event Declarant shall have the right for the duration of the period of Declarant control to specify that any or all of the following actions of the Association or Board be approved by the Declarant before they become effective:

1. Amend the Declaration or By-Laws;
2. Terminate the Condominium;
3. Prepare a budget for the Owners' Association.

During the period of Declarant control, and at all times thereafter, the Board of Directors shall manage and operate the Association in a manner consistent with the terms and conditions of this Declaration, any and all supplements or amendments hereto, the Association's By-Laws and the North Carolina General Statutes. Upon the Declarant's written notification to each Unit Owner prior to the termination of the period of Declarant control, said notice manifesting the Declarant's intention to surrender his right to appoint and remove the officers and members of the Board, the Association shall call a meeting of the membership for the purpose of electing a new Board of Directors for the Association from the membership of the Association. From that point on, the new Board shall then become responsible for the operation and management of the Association and the Declarant's responsibility for same terminates.

7.4 Election of Directors. Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units, including Units which may be created pursuant to special Declarant rights, to Unit Owners other than the Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than the Declarant, not less than thirty-three percent (33%) of the members of the Board shall be elected by Unit Owners other than the Declarant. Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

7.5 Authority of Directors. The Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate the Condominium or elect members of the

Executive Board or determine the qualifications, powers and duties, or terms of office of Board members except upon the approval of Unit Owners holding at least those percentages of ownership referred to in the North Carolina General Statutes, Chapter 47C. The Board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any other provision of this Declaration or the By-Laws attached hereto to the contrary, the Unit Owners, by at least a sixty-seven percent (67%) vote 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 Board with or without cause, other than members appointed by the Declarant.

7.6 Adoption of Budget. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) days nor more than thirty (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 two-thirds (2/3) of all of the Unit Owners reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

7.7 Common Expenses: The Common Expenses of the Association, other than utilities and insurance as described below, shall be shared by the Unit Owners in the same proportions that the undivided interest in the Common Elements appurtenant to each Owner's Unit bears to the total of all undivided interests in the Common Elements appurtenant to all Units, such assessment against the Unit Owners and their Units being as provided for below. Limited Common Expenses shall be allocated to the Owners of Units to which the subject Limited Common Element is allocated. The initial annual regular assessment to be paid by each Unit Owner shall be as provided on Exhibit C, commencing and payable on such due dates and schedules as shall be established by the Board from time to time, but initially payable in semi-annual installments. Such regular assessments may be increased by the Board by five percent (5%) per year without membership approval. Increases of greater than five percent (5%) per year must be approved by the membership. Each Unit shall also be required to pay an amount equal to a two month pro rata share of the then annual regular assessment at the time of closing on the initial purchase of such Unit, which payment shall be for contribution to the capital improvement reserve, and shall be in addition to the payment of any other assessments otherwise due hereunder. Special assessments to cover necessary expenses not covered by regular assessments may be made by the Board upon sixty (60) days written notice to each member of the amount of such assessment established by the Board. Utilities and insurance may be assessed according to the Act to the extent that usage or risk are determinable and are found to be allocated differently than the percentages for regular assessments.

7.7.1 Additional Charges Fees: The Association shall also have the authority under N.C.G.S. 47C-3-102 to impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, and for services provided to Unit Owners and/or Occupants, in addition to assessments.

7.8 Management and Maintenance: The Association, as a common expense, shall be responsible for the maintenance, repair and replacement as necessary of all of the Common



Elements, including those portions thereof which contribute to the support of the Structure(s). All pipes, conduits, ducts, plumbing, wiring, meter bases, and other facilities located in the Common Elements and facilities for the furnishing of utility and other services to the Units and said Common Elements and facilities are to be maintained, repaired and replaced as necessary, and should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any Common Elements and facilities, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair, and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Unit Owner, its/his guests, tenants or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association (or by the Master Association), used for the purpose of making such maintenance, repair, or replacement, then the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his patients, clients, guests, tenants or invitees) shall be required to pay such portion of the cost of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. If insurance proceeds are not available then the Unit Owner responsible for the loss or damage (whether done by the owner or the owner's patients, clients, guests, tenants or invitees) shall be solely responsible for the costs of repair.

7.9 Unit Owners Maintenance: Every owner shall perform promptly all maintenance and repair work within his Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other owners; every owner being expressly responsible for the damages and liability which has failure to do so may engender. The owner of each Unit shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, internet, cable television, sewage and sanitary service to his Unit. Such owner shall further be responsible and liable for the maintenance, repair, and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of his Unit, including painting, decorating, and furnishings, and all other accessories which such owner may desire to place or maintain in his Unit. Whenever the maintenance, repair, and replacement of any items for which the owner of a Unit is responsible is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association (or the Master Association), the proceeds of the insurance received by the Association (or the Master Association) shall be used for the purpose of making such maintenance, repair, or replacement except that the owner of such Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. All glass doors, window frames, and panes are a part of the respective Units and shall be maintained by the respective Unit Owners.

7.10 Damage to Units. Except as expressly provided herein or in the By-Laws of the Association, N.C.G.S. 47C-3-107 shall govern the procedure to be followed by the Association in the event of damage to a Unit or to any Common or Limited Common Elements.

7.11 Insurance Acquisition: Commencing not later than at the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain or shall cause the Master Association to maintain for the benefit of the Association and the Owners, to the extent available: (i) property insurance on the Common Elements insuring against all risk of direct physical loss, commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductible shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundation and other items normally excluded from property policies; and (ii) liability insurance in reasonable amounts, covering all occurrences commonly insured against including death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. In the case of the Structure(s), the insurance under subparagraph (i), to the extent reasonably available shall include the Units, but need not include improvements installed by Unit Owners. Further, the policies purchased hereunder shall provide that no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy and if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's (or Master Association's) policy provides primary insurance. Such insurance shall also comply with the applicable requirements of the Act.

7.11.1 Association as Trustee. Insurance policies upon the Condominium (other than title insurance) shall initially be purchased by the Master Association in the name of its Board, as Trustee for all of the Unit Owners and their respective mortgagees as their interest may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Units or any of them. In the event that it should at any time be more cost efficient or better for ease of administration in the discretion of the Association, or should the Master Association no longer be able to obtain coverage for the entire community including the Condominium for any reason, then the Association will purchase the insurance in the name of the Board, and in that event the references herein to the Master Association being the Trustee and the purchaser of the insurance shall be deemed to be references to the Association for purposes of these insurance provisions. The policies shall provide that:

- (1) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- (2) The insurer waives its right to subrogation under the policy against any Unit Owner;
- (3) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and
- (4) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's or Master Association's policy provides primary insurance.

Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his Unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

7.11.2 Notice of Non-Coverage: If the insurance described in Section 7.11 above is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

7.11.3 Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and each and every Unit Owner and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The Board of the Association is hereby irrevocably appointed agent for each Unit Owner and his mortgagee as their interests may appear for the purpose of adjusting, compromising and settling claims arising under insurance policies purchased by the Board for the benefit of the Association and the Unit Owners. Said Board or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board's duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purposes elsewhere stated herein or in the By-Laws, for the benefit of the Association and the Unit Owners, their mortgagees and lienholders, as their interests may appear.

7.11.4 Distribution of Insurance Proceeds: The insurance proceeds payable under any policy purchased hereunder shall be payable to the Master Association as Trustee, or its designee. The Master Association as Trustee, or its designee, shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions set forth hereinafter, the proceeds shall be disbursed first for the repair or restoration of the damaged property and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.

7.11.5 Insurance Policies: An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Master Association and, upon their request, to any Unit Owner, mortgagee or beneficiary under a Deed of Trust. The insurer issuing the policy may not cancel or refuse to renew a policy until thirty (30) days after notice of the proposed cancellation or renewal has been mailed to the Master Association, each Unit Owner and each mortgagee or beneficiary under a Deed of Trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

7.11.6 Damage, Reconstruction or Repair: Any portion of the Condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of Units not to be rebuilt or owners assigned to any Limited Common

Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and any Limited Common Elements which are not rebuilt shall be distributed to the owners of those Units and the owners of the Units to which those Limited Common Elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interest may appear, in proportion to their Common Element Interest. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under G.S. 47C-1-107(a), and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, G.S. 47C-2-118 governs the distribution of insurance proceeds if the Condominium is terminated.

7.12 Register of Owners and Mortgagees: The Association shall at all times maintain a Register setting forth the names of the owners of all of the Units and their addresses. In the event of the sale or transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Unit together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. Further, the owner of each Unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify such mortgagee(s). The holder of any mortgage or mortgages upon any Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

7.13 Assessments: Liability, Lien and Enforcement: The Association has been given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the owners of all Units. To properly administer the operation and management of the condominium, the Association will incur for the mutual benefit of all of the owners of Units, costs and expenses which are sometimes herein referred to as "common expense". To provide the funds necessary for such proper operation, management, and capital improvement, the Association has been granted the right to make, levy and collect assessments against the Unit Owners and their Units.

(a) Any assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit when a lien is filed of record in the office of the Clerk of Superior Court of the county in which the Unit is located in the manner provided in G.S. 47C-3-116. The Association's lien may be foreclosed as provided in said Statute and its subsections. Fees, charges, late charges, fines and interest charged pursuant to the Act and the Declaration are enforceable as assessments under this section.

(b) The lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or

deed of trust on the Unit) recorded before the docketing of the lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit.

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

(d) The provisions herein do not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

(e) A judgment, decree or order in any action brought under this article shall include costs and reasonable attorneys' fees for the prevailing party.

7.14. Membership in Master Association. In addition to the covenants, restrictions and easements contained in this Declaration, the Property (including each Unit) and Unit Owners shall be subject to those covenants, restrictions and easements contained in the Master Covenants, as amended from time to time. Under the Master Covenants, the Master Association of which every Unit Owner shall be a member (along with others as defined in said Master Covenants) is authorized and directed to maintain and manage certain additional common elements which are to be shared with other properties. The Master Association shall have the right to assess the Units and Unit Owners and its other members as defined in the Master Covenants. The restrictions, covenants, obligations and voting rights of members of the Master Association shall be as set forth in the Master Covenants.

#### ARTICLE VIII Termination

The Condominium shall be terminated, if at all, by the agreement of owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and in accordance with G.S. 47C-2-118.

#### ARTICLE IX Amendment of Declaration of Condominium

Except in cases of amendments that may be executed by the Declarant under G.S. 47C-2-109(d) or 47C-2-110 and hereunder, or by the Association under G.S. 47C-1-107, this Declaration and the Condominium Plat shall only be amended in accordance with the provisions of G.S. 47C-2-117, and shall require the written agreement of the owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated, or any greater amount required by law.

#### ARTICLE X Remedies in Event of Default

Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the By-Laws of the Association, or which may be adopted pursuant thereto,

shall be grounds for relief including, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, arbitration or any combination thereof, as well as the right to recover reasonable attorneys' fees incurred in such enforcement. Such relief may be sought by the Declarant, the Association or, if appropriate, by an aggrieved Unit Owner. Failure by the Declarant, the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XI  
Rights Reserved Unto Institutional Lenders

"Institutional Lender" or Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, or other reputable mortgage lenders which have complied with the provisions below regarding requesting the applicability of these provisions. So long as any Institutional Lender(s) shall hold any deed of trust or mortgage upon any Unit or Units, or shall be the owner of any Unit or Units, such Institutional Lender shall have the following rights:

A. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant, the cost of preparation of said financial statement to be borne by the Unit Owner whose mortgagee or lender requires same.

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment, to this Declaration, or the By-Laws of the Association, which notice shall state the nature of the amendment being proposed.

C. To be given notice of default by any owner owning a Unit encumbered by a deed of trust or mortgage held by the institutional lender or institutional lenders, such notice to be given in writing and to be sent to the principal office of such institutional lender or institutional lenders, or to the place which it or they may designate in writing.

Whenever any Institutional Lender desires the provisions of this Article to be applicable to it, and in order for such provisions to be applicable to such Institutional Lender, it shall serve or cause to be served written notice of such fact upon the Association and sent to its address stated herein, identifying the Unit or Units upon which any such Institutional Lender holds any deed of trust or mortgage, or identifying any Units owned by them, or any of them, together with sufficient pertinent facts to identify any deed of trust or mortgage which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XII  
Severability

In the event that any of the terms, provisions, or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not

affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

ARTICLE XIII  
Liberal Construction

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

ARTICLE XIV  
Declaration of Condominium Binding  
on Assigns and Subsequent Owners

The restrictions, covenants, and burdens imposed by the Articles of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common Elements; this Declaration shall be binding upon the Declarant, its successors and assigns, and upon all parties who may subsequently become owners of Units in the Condominium, and their respective heirs, devisees, legal representatives, successors and assigns. This Declaration and the exhibits attached hereto and amendments hereof shall be construed and controlled by and under the laws of the State of North Carolina.

ARTICLE XV  
Eminent Domain

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of a Unit or the Common Elements, then G.S. 47C-1-107 shall govern.

ARTICLE XVI  
Warranties and Representations

The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the condominium, and expressly disclaims any implied warranty which may arise by law, except as specifically set forth herein, and no person shall rely upon any warranty or representation not so specifically made therein.

Proposed 8.14.20

IN WITNESS WHEREOF, the Declaration has executed this document, by and through its undersigned officers, the day and year first above written.

A-TEAM VILLAGE WEST, LLC

BY: \_\_\_\_\_  
\_\_\_\_\_ (SEAL)

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is a Manager of A-Team Village West, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him as its Manager.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



STATE OF NORTH CAROLINA

COUNTY OF CARTERET

CONSENT TO DECLARATION

First National Bank of Pennsylvania, a national association, herein "Beneficiary", and PBRE, Inc., Trustee, as designated in that certain Deed of Trust executed by A-Team Village West, LLC, as recorded in Deed Book \_\_\_\_, Page \_\_\_\_, Carteret County Registry, has executed this Exhibit to the Declaration of Condominium for Village West Condos at Emerald Isle – A Condominium, for the purpose of subordinating said Deed of Trust recorded aforesaid to this Declaration of Condominium, so that said real property currently subject of the Deed of Trust to Beneficiary may be hereafter acquired, conveyed, mortgaged, occupied and used in accordance with said Declaration of Condominium.

IN WITNESS WHEREOF, Beneficiary and Trustee have executed this Consent to Declaration on the \_\_\_\_ day of \_\_\_\_\_, 2021.

FIRST NATIONAL BANK OF PENNSYLVANIA

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

PBRE, Inc.

BY: \_\_\_\_\_ (SEAL)  
TITLE: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is \_\_\_\_\_ of First National Bank of Pennsylvania and acknowledged, on behalf of First National Bank of Pennsylvania, the due execution of the foregoing instrument.

Witness my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2021.

(Official Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_, Notary Public  
*Notary's typed or printed name*  
My Commission Expires: \_\_\_\_\_

Proposed 8.14.20

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is \_\_\_\_\_ of PBRE, Inc. and acknowledged, on behalf of PBRE, Inc., the due execution of the foregoing instrument.

Witness my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_, Notary Public

*Notary's typed or printed name*

My Commission Expires:

\_\_\_\_\_

Proposed 8.14.20

EXHIBIT A  
PROPERTY DESCRIPTION

All of that certain tract or parcel of land as shown on that certain map entitled Village West Condos at Emerald Isle, a Condominium, Emerald Isle, North Carolina, recorded at Map Book \_\_\_\_, Page \_\_\_\_, Carteret County, North Carolina Registry.

EXHIBIT B  
LIMITED COMMON AREAS

Initial Limited Common Areas shall be the balcony(ies) associated with each Residential Unit which shall be Limited Common Area for the Unit with which associated, and any Limited Common Areas designated on the plats and plans of the Condominium.

EXHIBIT C  
INITIAL SEMI-ANNUAL REGULAR ASSESSMENT

The initial semi-annual dues for each of Units 1, 2, 5, 8 and 11 are \$341.34. The initial semi-annual dues for each of Units 3, 4, 9 and 10 are \$327.48. The initial semi-annual dues for Unit 6 are \$618.36; and for Unit 7 are \$588.66. The initial semi-annual dues for Units A-E and H-K are \$654.48 per Unit. The initial semi-annual dues for Unit F are \$1,227.78; and for Unit G are \$1,108.56. In addition, it is anticipated that all Commercial Units will have an initial monthly assessment of \$55.00 for retail boardwalk maintenance and lease of picnic area, and all Residential Units will have an initial monthly assessment of \$55.00 for cable television. Dues and assessments are subject to change by the Association as per the Declaration and Bylaws.

BYLAWS  
OF  
VILLAGE WEST AT EMERALD ISLE  
CONDO OWNERS' ASSOCIATION, INC.

ARTICLE I  
NAME AND PURPOSE OF THE CORPORATION

Section 1. Name:

This corporation shall be known as:

VILLAGE WEST AT EMERALD ISLE CONDO OWNERS' ASSOCIATION, INC.

Section 2. Purposes:

The corporation has been organized for the following purposes:

- A. To promote, by serving as the owner's association therefor (the "Association"), the health, safety and welfare of the owners of the Units at Village West Condos at Emerald Isle, A Condominium, Emerald Isle, North Carolina;
- B. To provide for the preservation of the values and amenities of the Condominium;
- C. To operate and maintain Common Elements and facilities on the Property for the benefit of the Owners of the Units;
- D. To operate the Condominium as a mixed use commercial and residential condominium;
- E. To provide a forum for the expression of ideas and plans with regard to the improvement of commercial opportunity for commercial Units, protection of interests of members, and general conditions in the Condominium and to take steps toward the fulfillment of said ideas and plans;
- G. To carry out the obligations of, and exercise the rights and powers of, the Association under the Declaration and the Act;
- H. To exercise all powers and authority granted to the Association under the Act and the nonprofit corporation act in North Carolina.

ARTICLE II  
DEFINITIONS

Section 1. "Act" shall mean Chapter 47C of the North Carolina General Statutes as amended from time to time.

Section 2. "Declaration" shall mean the Declaration of Condominium for Village West Condos at Emerald Isle – A Condominium, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Carteret County Registry.

Section 3. "Common Elements" shall mean all portions of the Condominium except the Units. Limited Common Elements are Common Elements.

Section 4. "Master Association" shall mean the Village West at Emerald Isle Owners' Association, Inc., a North Carolina nonprofit corporation.

Section 5. "Master Covenants" shall mean the Declaration of Covenants, Restrictions and Easements recorded at Deed Book \_\_\_\_, Page \_\_\_\_, Carteret County Registry for Village West at Emerald Isle.

Section 6. "Member" shall mean and refer to all those owners who are members of the Association as provided in Article IV, Section 1, hereof.

Section 7. All defined terms in the Declaration are incorporated herein.

### ARTICLE III LOCATION

The principal office of the Association shall be located at 125 Horton Drive, Morehead City, North Carolina, or at such other places as determined by the Board of Directors.

### ARTICLE IV MEMBERSHIP

Section 1. Every person or entity who is an Owner of a fee or undivided fee interest in any Unit which is subject to the Declaration shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Each Owner shall also be a Member of the Master Association, and the Condominium is also subject to the provisions of the Master Declaration, however, these Bylaws apply only to the Association. The Master Association is a separate nonprofit corporation with its own Bylaws.

Section 2. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of said assessments is imposed against each Owner of and becomes a lien upon the property against which such assessments are made as provided by the Act and the Declaration or any Supplemental Declaration to which the Properties are subject. Assessments of the Master Association are subject to the Master Declaration and the Bylaws of the Master Association and are not deemed a part of the Condominium assessments for

purposes of these Bylaws.

Section 3. The rights and privileges of any person to use the Common Elements of the Association, which person's interest in the Units and Common Elements is subject to assessments under the Declaration whether or not he be personally obligated to pay such assessments, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the Common Elements and facilities and the personal conduct of any person thereon, as provided in the Declaration, these Bylaws or the Act, they may, in their discretion, suspend the rights and privileges of any such person to use the Common Elements for violation of such rules and regulations for a period not to exceed thirty (30) days.

## ARTICLE V VOTING RIGHTS

Section 1. The Association shall have one class of voting membership. Members shall have one vote for each Unit in which they hold the interests required for membership. When more than one person holds such interests or interests in any Unit all such persons shall be Members, and the vote for such Unit shall be exercised as they among themselves determine but in no event shall more than one vote be cast with respect to any such Unit.

Section 2. Designation of Voting Representatives.

If a Unit is owned by one person his right to vote shall be established by the record title to this property. If a Unit is owned by more than one person, the person entitled to cast the vote for said property shall be designated by a certificate signed by all of the record owners of said property and filed with the secretary of the Association. If a Unit is owned by a corporation or other entity, the person entitled to cast the vote for said property shall be designated by a certificate of appointment signed by an officer of a corporation, or Manager or other officer of a limited liability company, partner of a partnership, or Trustee of a trust, as the case may be, and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit. The Association shall be entitled to rely on such certificates as provided to it without independent investigation of its authenticity.

Section 3. Declarant Control Period.

Subject to the remainder of this paragraph, the Declarant may appoint and remove the officers and members of the Board of the Association during the period that shall terminate no later than the earlier of (i) 120 days after conveyance of 75% of the Units, including Units which may be created pursuant to special Declarant rights, to Unit Owners other than a Declarant; (ii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) two years after any development right to add new Units was last exercised hereinafter referred to as the "Declarant Control Period". The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant Control Period, but in that event Declarant shall have the right for the duration of the Declarant Control Period to specify



that any or all of the following actions of the Association or Board be approved by the Declarant before they become effective:

1. Amend the Declaration or Bylaws;
2. Terminate the Condominium;
3. Prepare a budget for the Association.

During the Declarant Control Period, and at all times thereafter, the Board shall manage and operate the Association in a manner consistent with the terms and conditions of this Declaration, any and all supplements or amendments hereto, the Association's Bylaws and the North Carolina General Statutes. Upon the Declarant's written notification to each Unit Owner prior to the termination of the Declarant Control Period, said notice manifesting the Declarant's intention to surrender his right to appoint and remove the officers and members of the Board, the Association shall call a meeting of the membership for the purpose of electing a new Board for the Association from the membership of the Association. From that point on, the new Board shall then become responsible for the operation and management of the Association and the Declarant's responsibility for same terminates.

Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units, including Units which may be created pursuant to special Declarant rights, to Unit Owners other than the Declarant, at least one Member and not less than twenty-five percent (25%) of the Members of the Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than the Declarant, not less than thirty-three percent (33%) of the Members of the Board shall be elected by Unit Owners other than the Declarant. Not later than the termination of the Declarant Control Period, the Unit Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners. The Board shall elect the officers. The Board members and officers shall take office upon election.

#### ARTICLE VI PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT OF COMMON PROPERTY

Section 1. Each Member shall be entitled to the use and enjoyment of the Common Elements subject to the rules and regulations of the Association and the rights of the Association under Section 47C-3-102 of the Act and the Declaration, and the development rights of Declarant under the Declaration.

Section 2. Any Member may delegate his rights of enjoyment in the Common Elements to the tenants, guests, invitees or employees in the Member's Unit, as the case may be. The rights and privileges of such person(s) are subject to suspension under Article IV, Section 3, to the same extent as those of the Member.

Section 3. Each occupant of a Unit as a tenant or owner, or employees of same, or other guest

or invitee, shall be entitled to the use and enjoyment of the Common Elements and facilities subject to the rules and regulations of the Association, and to the right of the Association to assess user fees or other charges as provided in the Declaration and the Act, and to the development rights of the Declarant under the Declaration.

## ARTICLE VII POWERS OF THE ASSOCIATION

### Section 1. Mergers and Consolidations.

Subject to the provisions of the Declaration and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all Members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

### Section 2. Mortgages; Other Indebtedness.

The Association shall have power to mortgage the Common Elements only to the extent authorized under the Declaration and with such voting requirements as shall be required by the Act.

The total debts of the corporation, including the principal amount of any mortgages, outstanding at any time, shall not exceed the total of five years assessments current at that time, provided, that authority to exceed said maximum in any particular case may be given by an affirmative vote in person or by proxy of the owners of Units to which two-thirds (2/3) of the votes are allocated, at a meeting duly called for this purpose, written notice of which shall be mailed to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

### Section 3. Dedication.

The Association shall have the power to dispose of Common Elements only as authorized under the Declaration and with such voting requirements as shall be required by the Act.

## ARTICLE VIII BOARD OF DIRECTORS

### Section 1. Generally.

The affairs of the Association shall be managed by a board of three (3) directors. The initial Board of Directors shall consist of three (3) directors who shall hold office until the first meeting of the Members of the Association or until their successors are elected and qualified. At the first membership meeting the Members shall elect two (2) directors for two year terms and one (1) director for a one year term. At the end of these terms, each director shall be elected for two (2) year terms. The election and removal of Directors shall be subject to the provisions of Article V, Section 3 hereof with regards to the Declarant Control Period.

Section 2. Vacancies.

Vacancies on the Board of Directors shall be filled by majority vote of the remaining directors, and any such appointed directors shall hold office during the unexpired term of their predecessors.

Section 3. Removal.

Any director may be removed from the Board, with or without cause, by a vote of the Members of the Association owning Units to which at least 67% of the votes in the Association are allocated.

Section 4. Compensation.

No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without A Meeting.

The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE IX  
ELECTION OF DIRECTORS; NOMINATING COMMITTEE;  
ELECTION COMMITTEE

The following provisions address election of Directors other than those appointed by Declarant during the Declarant Control Period:

Section 1. Election of the Board of Directors shall be by written ballot as hereinafter provided. At such election the Members or their proxies may cast, in respect of each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The candidates receiving the largest number of votes shall be elected. Votes may not be cast cumulatively.

Section 2. Nominations for election to the Board of Directors may be made by owners of Units.

Section 3. Nominations may be submitted by Members to the Board of Directors at least thirty (30) days prior to each annual meeting of the Members.

Section 4. The Board of Directors may also submit nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members, as the committee in its discretion shall determine. Additional nominations by Members from the floor may be made at the time of the election.

Section 5. All elections to the Board of Directors at and after the first annual meeting shall be

made on written ballot which shall clearly list the names of the persons for whom the vote is being cast and the terms of office if necessary. The Chairman of the meeting shall appoint one or more persons to count the ballots and report the results.

ARTICLE X  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. The Board of Directors shall have power:

A. To call special meetings of the Members whenever it deems necessary, and it shall call a meeting at any time upon written request of the members owning at least two of the Units in the Condominium (whether the two Units have different owners or the same owners);

B. To generally govern the Association in accord with the Declaration and the Articles of Incorporation and Bylaws of this Association, and with the Act and the laws related to nonprofit corporations in North Carolina, including, without limitation, to appoint and remove at its pleasure all officers, agents and employees of the corporation, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, officer or director of the Association in any capacity whatsoever;

C. To ensure that the Condominium operations are in compliance with the Town of Emerald Isle zoning ordinance. To accomplish zoning compliance, the Board shall have, without limitation, the following power and authority:

a. To establish the terms, conditions, rules and regulations of the Common Element operations which are binding on the Units and Unit Owners;

b. To employ or contract with staff to carry out the purposes of the Association and any reasonable and necessary requirements of a condominium operation.

D. To establish, levy and assess, and collect the assessments, charges, fees, fines, late fees, administrative fees, transfer fees or charges referred to in the Declaration and permitted by the Act;

E. To adopt and publish rules and regulations governing the use of the Common Elements and the conduct of the Members, their employees, owners, tenants, guests, and invitees of Units while on the Condominium, with the exception of certain rules and restrictions regarding Commercial Units as provided in Section 5.7 of the Declaration;

F. To exercise for the Association all powers, duties and authority vested in or delegated to this corporation, except those reserved to the Members in the Declaration;

G. In the event that any member of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent

director to be vacant.

H. To prepare and enforce, directly or indirectly, the rules and regulations governing activities within the boundaries of the Condominium.

Section 2. It shall be the duty of the Board of Directors:

A. To cause to be kept a complete record of all its acts and corporate affairs and to make such records available as required by the Act.

B. To supervise all officers, agents and employees of this organization, and to see that their duties are properly performed.

C. To employ and discharge such management as the Directors may deem necessary.

D. To adopt a budget and authorize expenditures.

E. As more fully provided in the Declaration applicable to the Property and herein:

1. To fix the amount of the assessment against each Unit for each assessment period at least thirty (30) days in advance of such date or period and, at the same time;

2. To prepare a roster of the Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member and, at the same time;

3. To send written notice of each assessment to every Owner subject thereto.

F. To issue, or to cause an appropriate officer to issue, upon demand by any Owner with respect to their Unit, or any Security Holder with respect to the Unit on which they hold a lien, or to a purchaser of a Unit under a written contract of purchase, or the attorney or agent for any of such persons or entities, a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. The Association may charge an appropriate fee for the issuance of such certificate.

## ARTICLE XI DIRECTOR'S MEETINGS

Section 1. A regular meeting of the Board of Directors shall be held as scheduled by the Board.

Section 2. Notice of such regular meeting shall be given to each director, personally or by mail, telephone, telefax or email (with confirmation of receipt), at least seventy-two (72) hours prior to the meeting.

Section 3. Special meetings of the Board of Directors shall be held when called by any officer of the corporation or by any two directors after not less than three (3) days' notice to each director.

Section 4. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and, if either before or after the meeting each of the directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting. Meetings may be conducted in person, or by telephone or video conference provided that all participating Directors may all hear one another simultaneously.

Section 5. The majority of the Board of Directors shall constitute a quorum thereof. Board meetings may be conducted by conference call or video conference or any manner in which all Directors may be heard at the same time.

## ARTICLE XII OFFICERS

Section 1. Generally.

The officers of this Association shall be a President, Vice President, Secretary and a Treasurer, and if the Board so elects, an assistant Secretary and/or assistant Treasurer.

Section 2. Election of Officers.

The Officers of the Association, subject to the provisions applicable during the period of Declarant Control, shall be elected by the Board. The election shall be held annually at the first meeting of the Board held after the annual meeting of members, except that the first Board shall elect officers as soon as practicable after the filing of the Declaration.

Section 3. Term.

Each officer shall serve until his successor has been duly elected and has qualified.

Section 4. Removal.

Any officer may be removed, with or without cause, and without notice, by the Board.

Section 5. Vacancy.

Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

Section 6. President.

The President shall be the chief executive officer of the Association, shall be deemed to be the Chairman of the Board, shall have all of the powers and duties incident to the office of a President

of a corporation, and shall preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolution of the Board are carried into effect.

Section 7. Vice-President

In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President.

Section 8. Secretary.

The Secretary shall be the ex-officio secretary of the Board of Directors and shall record the votes and keep the minutes of all proceedings in a book to be kept for that purpose. He shall keep the records of the corporation. He shall record in a book kept for that purpose the names of all Members of the Association together with their addresses as registered by such Members.

Section 9. Treasurer.

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the corporation and shall disburse such funds as directed by resolution of the Board of Directors, provided however, that a resolution of the Board of Directors shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board.

The Treasurer shall keep proper books of account and cause an annual review of the corporation books to be made by a certified public accountant, or by audit committee appointed by the Board of Directors, at the completion of each fiscal year. He shall prepare an annual budget and an annual balance sheet statement, and the budget and balance sheet statement shall be presented to the membership at its regular annual meeting. He shall be responsible for the preparation of such tax returns as may be required.

The duties set forth herein may be delegated by the Board of Directors to any manager hired by the Association to manage the day to day activities of the Association. The Treasurer shall supervise the manager when performing the delegated activities.

Section 10. Special Appointments.

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 11. Multiple Offices.

The offices of the secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices.

ARTICLE XIII  
COMMITTEES AND SPECIAL VOTING REQUIREMENTS

Section 1. Committees.

The Board of Directors may appoint such committees as it deems desirable, which Committees may provide advice to the Board but which may not exercise the powers of the Board.

Section 2. Special Voting Regarding Commercial Units.

Notwithstanding anything to the contrary in these Bylaws or the Condominium documents, during the Declarant Control Period, any rules, regulations or restrictions with regards to the use of Commercial Units, and any variances with respect thereto, adopted pursuant to Section 5.7 of the Declaration, shall be made or granted by Declarant. After the Declarant Control Period, any modifications, amendments or additional rules and regulations or restrictions made with regards to the restrictions on use of the Commercial Units under Section 5.7 of the Declaration, after the rules and restrictions established for the Commercial Units during the Declarant Control Period, must be made by vote of the owners of the Commercial Units representing ninety percent (90%) of the votes entitled to be cast by Commercial Units. Such votes may be cast at a meeting held by the Members owning Commercial Units, or may be adopted by written consent resolution of Members owning Commercial Units, without a meeting, provided that such resolution is executed by Members owning Commercial Units representing the required vote.

ARTICLE XIV  
MEETINGS OF MEMBERS

Section 1. Meetings of the Members shall be held at the Condominium, or such other place as may be designated from time to time by the Board. The Members shall meet at least once each year as specified in the notice of such meeting. The Members shall elect the members of the Board of Directors and may transact any other business properly coming before them.

Section 2. Special meetings of the Members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by any two or more members of the Board of Directors or upon written request of the members owning at least two of the Units in the Condominium (whether the two Units have different owners or the same owners). Notwithstanding anything to the contrary in the foregoing, meetings of the Members owning Commercial Units, for the purposes of votes under Article XIII, Section 2 hereof, may be called by the Members owning at least two Commercial Units, whether such Commercial Units have different owners or the same owners.

Section 3. Notice of any meetings shall be given to the Members by the Secretary, or upon the failure or refusal of the Secretary to provide Notice then by the President. Notice may be given to the Member either personally, by delivery to the Member's Unit, or by sending a copy of the notice through the mail postage thereon fully prepaid, or electronically by e-mail, to the Member's physical or e-mail address, as the case may be, appearing on the books of the corporation. Each Member shall register his address, and e-mail address if any, with the Secretary and notices of



meeting regular or special shall be sent no more than thirty days (30) or less than fourteen (14) days in advance of the meeting and, except for the annual meeting, shall set forth in general the nature of the business to be transacted.

Section 4. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the votes of each class of membership shall constitute a quorum for any action of the Members governed by these Bylaws, other than meetings of the members owning only Commercial Units for purposes of Article XIII, Section 2 hereof; quorum for such meetings shall be Members holding at least 90% of the of votes entitled to be cast by Commercial Units. Any action governed by the Articles of Incorporation or by the Declaration shall require a quorum as therein provided.

Section 5. The President, or in his absence the Vice-President, shall preside at meetings of Members and the Secretary shall be responsible for recording minutes of the proceedings. For meetings of only Commercial Unit owners pursuant to Article XIII, Section 2, the Members present shall designate a Member to preside and a Member to keep minutes.

#### ARTICLE XV PROXIES

Section 1. At all corporate meetings of Members, whether of all Members or of the Commercial Unit Members only, each Member may vote in person or by proxy.

Section 2. All proxies shall be in writing and filed with the secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the Member of his Unit or other interest in the Property.

#### ARTICLE XVI BOOKS AND RECORDS

The books, records and papers of the corporation shall be subject to the inspection of Members pursuant to the provisions of the Act and the nonprofit corporation act in North Carolina.

#### ARTICLE XVII CORPORATE SEAL

The corporate seal of the Association shall consist of two concentric circles between which are the words VILLAGE WEST AT EMERALD ISLE CONDO OWNERS' ASSOCIATION, INC., and in the center of which is inscribed "SEAL".

#### ARTICLE XVIII AMENDMENTS

Section 1. These Bylaws may be amended at a regular or special meeting of the Members with notice as required by law, by a vote of two-thirds (2/3) of the votes cast, or a majority of the votes entitled to be cast on the amendment, whichever is less (with respect to all Members as class voting

is not required), provided that those provisions of these Bylaws which are governed by the Articles of Incorporation of this Association, or as to which the amendment thereof is restricted by applicable law, may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matter stated herein to be or which is in fact governed by the Declaration may not be amended except as provided in such Declaration.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XIX ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations for Assessments.

(a) Each Owner of a Unit, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in these Bylaws, the Declaration, and the Act. The assessments may be classified as (A) Regular for operation, maintenance, repair, replacement and improvement of Common Elements, and other purposes of the Association, and (B) Special for capital improvements to Common Elements, emergencies, for damages and expenses created by less than all Unit Owners and to pay expenses and liabilities not covered by Regular assessments. Assessments are to be fixed, established and collected from time to time as hereinafter provided and as provided in the Declaration.

(b) The Regular and Special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Unit, after filing of a claim of lien with the Clerk of Court of Carteret County pursuant to the Act, against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Unit at the time the assessment was made.

(c) Each Unit will be assessed in accordance with the allocation of percentage of Common Expenses allocated to such Unit in the Declaration, except for assessments in connection with the maintenance, repair or replacement of Limited Common Elements, as provided below.

Section 2. Preparation of Budget

(a) For each fiscal year, beginning in the year in which assessments will commence, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. The budget may be amended by the Board from time to time during the fiscal year as the Board determines necessary.

(b) Within thirty (30) days after adoption of any proposed budget for the Association, the Board shall provide a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) days nor more than thirty

(30) days after mailing of the summary. Notwithstanding any other provisions of the Declaration or the Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of the Declaration or the Bylaws, the proposed budget shall be deemed ratified unless at that meeting a majority of the Units with owners present and with votes entitled to be cast reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(c) The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the Owner's obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new Regular assessment is levied by the Board, each Owner shall continue to pay on the schedule last determined by the Board Regular assessments in the amount previously levied as the Regular assessment. Any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of Owners to pay such assessments.

### Section 3. Assessment.

(a) The Board shall assess the Units all sums necessary to meet the budget, and to meet all necessary and appropriate expenses and liabilities considered Special Assessments, and shall allocate the assessments as provided in the Declaration. The Board shall fix the date of commencement and the amount of the assessment against each Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner, at reasonable times and pursuant to applicable law. Assessments for insurance premiums may be billed separately from other Regular Assessments when such premiums come due, and will be billed in an amount sufficient to pay the premiums even if that amount is greater than was anticipated in the budget, provided that Owners shall have at least thirty days' notice of such assessments, and with the understanding that such assessments may be from the Master Association per the Declaration.

(b) The Board may assess Special Assessments for purposes of the Association as permitted by the Declaration, these Bylaws and the Act, at such times as the Board deems necessary and appropriate.

(c) Written notice of the assessment(s) shall be sent to every Owner subject thereto; however failure to provide written notice shall not invalidate the assessment.

(d) The Association shall upon request furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association or its designated manager, setting forth whether assessments against such Unit have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

### Section 4. Payment of Assessment.

Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the

times and in the amounts specified by the Board in the notice of assessment. Payment shall be made to the Association, or as the Board may from time to time otherwise direct.

Section 5. Common Expenses Associated With Limited Common Elements or Benefiting Less Than All Units.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expenses was incurred; however, the Board of Directors shall have the authority when fundamental fairness requires to declare such Common Expense a general Common Expense and not assess the same specifically against the Unit to which the Limited Common Element is appurtenant.

(b) That in the event damage to a Limited Common Element is covered by the Association's casualty insurance, and to the extent of such coverage, the costs of repairs or replacements will not be assessed to the appurtenant Unit Owner(s) unless damage is the intentional act of the Unit Owner(s).

(c) In addition, the Association may assess any item of Common Expense benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

Section 6. Assessment Roll; Certificate.

All assessments shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection, as to information on the Unit owned or mortgaged to the inspecting party, at all reasonable times by members and Security Holders, and their duly authorized representatives. Such rolls shall include, for each Unit, the names and addresses of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Unit. The certificate shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board.

Section 7. Default and Enforcement.

If any assessment, or installment thereof, levied against a Unit remains unpaid for a period of thirty (30) days or longer, it shall constitute a lien against that Unit when filed of record in the office of the Clerk of Superior Court of Carteret County as provided by the Act. The Association's lien may be foreclosed and the Unit sold with the Association having the power of sale with respect thereto, or a money judgment obtained against the persons liable therefore, all as provided in NCGS 47C-3-116 as amended from time to time. Fees, charges, late charges, fines and interest charged pursuant to the Act may be charged and are enforceable as assessments. The Association shall further be entitled to recover its reasonable attorneys' fees incurred in collection of assessments, subject to any limitations in amount and notice requirements in the Act.

If any action is taken by the Association to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rent for the use of the Unit during the period of redemption from such foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment or installment thereof, together with interest, and the Member so sued and liable for such assessment shall pay all costs of collection, at the same rate as charged on the assessments being collected from the dates incurred until paid.

#### Section 8. Interest on Delinquent Assessments.

Assessments, or installments thereof, paid before they become delinquent shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

#### Section 9. Common Expenses.

Common expenses shall mean and include all sums declared common expenses by the Act, or by any specific provisions of these Bylaws or the Declaration, and shall include, without limitation, the following: cost of maintenance and repair; cost of replacement of improvements; cost of new improvements on the Property; the general operating expenses of the Association including, but not limited to utility charges; real estate taxes; and other governmental assessments or charges against the Property until the Units are separately assessed; premiums for any and all insurance maintained by the Association, including any and all deductible or co-insurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to any provision of the Declaration, these Bylaws, or the Act; deficits remaining from any prior assessment period; the cost, including fees and interest incurred in connection with any borrowing done by the Association; costs of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party, or to which the Common Elements or Property or any part of either thereof is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article XXIV hereof.

#### Section 10. Allocation of Common Surplus.

Any common surplus, including funds in reserve accounts, may be allocated to each Unit in accordance with its percentage of Common Expenses and, if allocated, may be paid to the Unit Owner or credited against such Unit's share of Common Expenses subsequently assessed in the discretion of the Board.

Section 11. Capital Improvement Reserve.

Upon the initial transfer of title from the Declarant to the purchaser of each Unit, the Association may collect from such purchaser an amount equal to a minimum of two month's Regular owner association dues as part of a capital improvement reserve for the use and benefit of the Association. The purpose of this fund is to provide the Association with available cash to meet expenditures for capital improvements deemed necessary or desirable by the Board of Directors. Amounts paid by purchasers into the capital improvement fund are not refundable and are not to be considered as advance payments of the assessments described in Article XIX hereof.

ARTICLE XX  
CORPORATE EARNINGS

No director, officer, employee, committee member or other person or entity associated with the Corporation shall receive at any time any of the earnings or pecuniary profit from the operations of the corporation, except as provided in Article 13, Chapter 55A of the North Carolina General Statutes, as amended from time to time.

ARTICLE XXI  
RELOCATION AND ALTERATION OF UNITS.

Section 1. Procedure.

If any Unit Owner desires to make any alterations requiring consent of the Association pursuant to Section 5.4 of the Declaration, the procedures set out in this Article shall be followed.

Section 2. Notice to and Consent of the Declarant or the Board.

Prior to doing any work of the kind set out in Section 5.4 of the Declaration, the Unit Owner shall give notice to the Declarant, if during the period of Declarant Control, or to the Board if after the period of Declarant control, of Unit Owner's intent to do such work and request and receive the written consent thereto of the Declarant or the Board as the case may be. With such notice shall be given: (i) a statement of the work to be done, (ii) a copy of the plans and specifications for the work, and (iii) such additional information relative to the proposed work as the Declarant or the Board may reasonably request. Upon receiving all such information and any fees and charges requested by the Declarant or the Board, the Declarant, or the Board, as applicable, shall set a date for a meeting on the proposed work which shall be within fifteen (15) days after such information and fees and charges are received. At the meeting the Declarant or the Board shall receive such testimony and evidence as it deems appropriate. The meeting may be conducted from time to time by the Board, or the Declarant, as applicable. At the meeting or at such later time, but in any event not later than thirty (30) days after such meeting, the Declarant, or the Board as applicable, shall decide whether or not to consent to such work. Written notice of such decision shall be given to such Unit Owner.

Section 3. Conditions.

The Declarant or the Board, as applicable, may impose conditions on any consent to such work, and may require that it approve the contractor(s) performing such work, to protect the Common Elements, Units and the Condominium, and to ensure that the provisions of the Act, Declaration, and these Bylaws are complied with, including, without limitation, the furnishing to the Association of payment and performance bonds, or other security acceptable to the Board, to ensure that the proposed work is timely completed pursuant to the plans and specifications therefor, and all costs there for paid.

Section 4. Controlling Procedure.

The procedure set out in this Article shall control over any contrary provision in the Act.

ARTICLE XXII  
COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES.

Section 1. Default and Remedies.

Default or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Unit Owner or occupant, shall be grounds for relief that may include, without intending to limit the same, or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, and injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Unit Owner, or by any person or class of persons adversely affected. Also if any Member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the Members' account, and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such other expenses and costs, may levy a special assessment against the Unit owned by such defaulting Member. The Association also shall be entitled to suspend the right of a defaulting Unit Owner to vote as a Member of the Association until the default is cured.

Section 2. Notice of Default and Failure to Cure.

In the event of any such default or failure, the Board shall serve upon or mail to the defaulting Member, and to each Institutional Lender of that Member's Unit when required under Article XI of the Declaration, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting Member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting Member, and to each such first mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the

hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting Member and each such first mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting Member, and to each first mortgagee which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member: (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so request a hearing, but fails to cure the default (to the extent not waived by the Board) hearing, then the Board shall serve upon or mail to the defaulting Member, and to each such first mortgagee which was entitled to notice of the default as above provided, a written notice of such Member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief. The hearings, fines or other actions taken shall be subject to any monetary limits, and due process requirements, in the Act.

### Section 3. Remedy of Abatement in Addition to Other Remedies.

In the event a Member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Article XXII, Section 2 hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the Member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the Member's Unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting Member's expense (and levy an assessment therefor as provided in Article XXII, Section 1 hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives, shall not thereby be deemed guilty of any manner of trespass.

### Section 4. Injunction.

Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction, or similar relief, without first using the procedure established by Article XXII, Section 2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

### Section 5. Recovery of Attorneys' Fees and Costs.

In any proceeding arising because of an alleged default by a Member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court.

### Section 6. Non-Waiver of Covenants.

The failure of the Association, or of any Member thereof, to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules



and regulations, or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a Member to enforce such term, provision, right, covenant, or condition in the future irrespective of the number of violations or breaches thereof that may have occurred.

Section 7. Assessment Lien.

Assessment liens shall be enforced pursuant to Article XIX hereof and not pursuant to this Article XXII.

ARTICLE XXIII  
GENERAL PROVISIONS.

Section 1. Rules and Regulations.

The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of Common Elements, so as to promote the common use and enjoyment thereof by Unit Owners and occupants, and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and occupants. For avoidance of doubt, the Board shall not have the authority to modify rules and restrictions regarding use of commercial Units as provided in Section 5.7 of the Declaration, and to grant variances from certain restrictions as further provided therein; such modifications and variances shall be as provided .

Section 2. Parliamentary Authority.

Robert's Rules of Order, newly revised, shall govern the conduct of Association proceedings only if adopted by the Board of Directors to be used for such proceedings, and when not in conflict with the Declaration, these Bylaws, the Act, and/or any statutes of the State of North Carolina applicable thereto. The Chairman of the meeting shall have the authority to appoint a parliamentarian.

Section 3. Compliance With The Act; Conflict; Severability.

These Bylaws are established in compliance with the Act, as amended. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

ARTICLE XXIV  
INDEMNIFICATION.

Any person who at any time serves or has served as a director or officer of the Association, or in such capacity at the request of the Association for any other corporation, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Association to the fullest extent permitted by law against (a) reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with any threatened or pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he may become liable in any such action, suit or proceeding.

The indemnification provided by this section shall not automatically apply if a director or officer is charged with fraud or embezzlement. If either of these offenses is alleged, the Board of Directors excluding any director charged with fraud or embezzlement shall determine whether to provide a defense. If fraud or embezzlement are not proven (excluding a plea of no contest), the Association shall reimburse all costs of the defense.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by these Bylaws, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and giving notice to, and obtaining approval of, the members of the Association.

Any person who at any time after the adoption of these Bylaws serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of these Bylaws.

The Association shall have authority to assess the members of the Association, in the manner of a special assessment, to collect monies necessary to carry out its obligations in accordance with the indemnity provisions of this Article. Such assessment may be made, however, without vote of the members as is required for other special assessments, as the payment of such obligation is an obligatory and not optional payment of the Association.

IN WITNESS WHEREOF, the undersigned Secretary of the Association certifies that these are the Bylaws adopted by the Board of Directors of the Association on \_\_\_\_\_, 2021.

\_\_\_\_\_(SEAL)  
\_\_\_\_\_, Secretary

