

*Plot reference is Parcel, made in Book 9, pages 85, 86, 87
Also condominium Book 3, Page 1*

106-1059

DECLARATION OF UNIT OWNERSHIP
UNDER CHAPTER 47A
NORTH CAROLINA GENERAL STATUTES
FOR
SKYLEAF CONDOMINIUM COMMUNITY
a CONDOMINIUM

THIS DECLARATION OF UNIT OWNERSHIP, made this the 9th day
of January, 1978, by the FIRST UNION NATIONAL BANK OF NORTH
CAROLINA, a national banking association organized and existing under
and by virtue of the laws of the United States of America maintaining
its registered office in Mecklenburg County, North Carolina (hereinafter
referred to as "DECLARANT"), pursuant to the provisions of Chapter 47A
of the North Carolina General Statutes, as amended, (sometimes hereinafter
referred to as the "Unit Ownership Act"):

W I T N E S S E T H: THAT

WHEREAS, DECLARANT is the owner of certain real estate located
in Avery County, North Carolina (herein as Skyleaf Development Area),
said real estate being more fully and particularly described on Schedule
"A" annexed and attached hereto, made a part hereof and incorporated
herein by reference as fully and to the same extent as if said description
or descriptions were set forth herein verbatim in words and figures;
and

WHEREAS, DECLARANT has constructed or is constructing on a
portion of the Skyleaf Development Area a development consisting of
dwelling units and attendant facilities (herein as the "Project") and
the Project, when completed, will comprise living units (hereinafter
referred to as "Dwelling Units" or "Units"); and

WHEREAS, it is the desire of DECLARANT to submit the Project
property, described and referred to in Paragraph 2 below, together with
the improvements thereon constructed or to be constructed, to the provisions
of the Unit Ownership Act to provide for the condominium form of
ownership; and

WHEREAS, DECLARANT has constructed certain streets and roadways on a portion of the Skyleaf Development area and property contiguous thereto referred to as Retained Property; and

WHEREAS, DECLARANT has conveyed a portion of the streets and roadways to the Skyleaf Association subject to a Declaration of Easement which provides for pedestrian and vehicular access to and from the Skyleaf Development Area and the Retained Property; and

WHEREAS, DECLARANT has executed a Declaration of Easement which provides for pedestrian and vehicular access to and from the Skyleaf Condominium Community Property; and

WHEREAS, DECLARANT has executed a Declaration of Easement which provides for pedestrian and vehicular access to and from the Skyleaf Condominium Community Property, and the Skyleaf Development area; and

WHEREAS, the Skyleaf Association may own certain other facilities and engage in certain other activities, all as described in and controlled by its Articles of Incorporation, Bylaws and the acts of its Board of Directors and members from time to time; and

WHEREAS, DECLARANT also desires herein to provide and allow for the submission of additional Phases to the Project as said Phases are developed and completed, and to provide for equality of rights, privileges and obligations of all condominium unit owners in all Phases of the Skyleaf Condominium Community Project by amending this Declaration of Unit Ownership as said Phases, if any, are developed and completed; and

WHEREAS, DECLARANT hereby establishes by this Declaration of Unit Ownership a plan for the individual ownership of the real property estates consisting of the Dwelling Units and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining Project real property, which are the Common Areas and Facilities of the Project (hereinafter referred to as "COMMON ELEMENTS").

WHEREAS, DECLARANT desires to convey the property pursuant and subject to certain protective covenants, conditions, restrictions.

NOW, THEREFORE, DECLARANT hereby declares:

6-1061

1. Legal Description of the Skyleaf Development Area.

The Skyleaf Development Area (herein as "Development Area") referred to hereinabove is situated in Avery County, State of North Carolina and is described on Schedule "A" annexed and attached hereto, made a part hereof and incorporated herein by reference as fully and to the same extent as if said description or descriptions were set forth herein verbatim in words and figures.

2. Legal Description of SKYLEAF CONDOMINIUM COMMUNITY, A Condominium.

The Phase of the Development Area, that is SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, (the Project) which is herewith and hereby dedicated to the condominium or unit form of ownership is situated in Avery County, State of North Carolina, and described on Schedule "B" annexed and attached hereto, made a part hereof, and incorporated herein by reference as fully and to the same extent as if said description were set forth herein verbatim in words and figures (herein as the "Condominium Property").

The Property described and referred to in this Paragraph is submitted to the provisions of the North Carolina Unit Ownership Act, as amended.

2A. Legal Description of Streets and Roadways

The Streets and Roadways referred to above are situated in Banner Elk Township, Avery County, North Carolina and are more particularly described by reference to Schedule A annexed and attached hereto and by particular reference to the surveys recorded in Plat Book 9, pages 85, 86 and 87, Avery County Registry. Schedule B annexed and attached hereto includes in its legal description a portion of the Streets and Roadways which have been conveyed to the SKYLEAF ASSOCIATION for the use and benefit of the members of the Association, subject to a Reservation of Easement by Declarant, and is submitted to the condominium form of ownership and is a part of the Condominium Property.

2B. Legal Description of Streets and Roadways Subject to Easement.

The Streets and Roadways subject to a Declaration of Easement providing for pedestrian and vehicular access to and from the SKYLEAF CONDOMINIUM COMMUNITY PROPERTY are described in Schedule "B-1".

2B. Legal Description of Proposed Future Phases of the Project;
Retained Lands.

DECLARANT, for itself, its successors and assigns, reserves the right herein, but shall not be obligated, to submit additional property in one (1) or more separate phases to the provisions of the Unit Ownership Act and to the provisions of this Declaration of Unit Ownership on or before the expiration of seven (7) years from and after the date this Declaration is filed for record, by filing Amendments to this Declaration in the Register of Deeds' Office of Avery County, North Carolina as provided in Paragraphs 17 and 18 of this Declaration of Unit Ownership. The property, or a portion thereof, which may be made subject to this Declaration and the Unit Ownership Act by such an Amendment or Amendments is described on Schedule "B-2" hereof. Said property consists of approximately 3.576 acres and the additions, if any, to SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, shall be made on a portion or portions of said property to be selected by DECLARANT, it being understood that any or all of said property not utilized by DECLARANT for the purpose of construction of additional condominium units for addition to SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, as provided in this Declaration, may be, from time to time, otherwise developed by DECLARANT, its successors and assigns, for residential purposes, either condominium, fee simple attached housing for sale, apartments for rent or single family detached housing, and/or for such other development as DECLARANT may in its sole discretion determine, subject to applicable governmental regulation and control, if any.

The total number of additional Dwelling Units which DECLARANT may submit to this Declaration pursuant to the provisions of this paragraph shall not exceed forty-four (44) condominium dwelling units and the same shall be built and added to the Condominium Property on a density basis of not more than one (1) building per acre. It is further understood and agreed that buildings containing any of the additional forty-four (44) condominium units shall not exceed three (3) stories in height.

The right herein reserved to submit such additional property shall permit the addition by DECLARANT of any number of additional dwelling units up to and including forty-four (44) such additional units; however, the submission of one or more additional dwelling units as herein provided shall not obligate DECLARANT to submit further additional units to the provisions of the Unit Ownership Act or to the provisions of this Declaration. PROVIDED, FURTHER, that DECLARANT may cause other development to occur on the property described on Schedule "B-2" hereof, from time to time, irrespective of whether or not it has developed, or plans to develop, any of the forty-four (44) additional units on said property.

At such time, and from time to time, as any additional Phase is subjected to this Declaration the Condominium Property will consist of the property described on Schedule "B" and ^{and all or a portion of the property} described on Schedule "B-2" hereof, described on such property as may have been previously added thereto by amendment as provided in Paragraphs 17 and 18 hereof, together with such additional property as may then be added by Amendment to this Declaration as provided in Paragraphs 17 and 18 hereof.

PORTIONS OF THE PROPERTY OWNED BY DECLARANT ARE NOT A PART OF THIS DECLARATION OF UNIT OWNERSHIP AND ARE THEREFORE REFERRED TO EITHER AS DEVELOPMENT AREA (SEE SCHEDULE A HEREOF) OR AS RETAINED LANDS (SEE PARAGRAPH 20 (L) AND SCHEDULE F HEREOF).

3. Definitions

The terms defined in this Paragraph 3 (except as herein otherwise expressly provided or unless the context hereof otherwise requires) for all purposes of this Declaration of Unit Ownership and of any amendments hereto shall have the respective meanings specified in this Paragraph.

(A) The term "Unit Owner's Association" shall mean and refer to THE SKYLEAF ASSOCIATION (herein as "UNIT OWNER'S ASSOCIATION") which is an unincorporated unit owners' association as defined in the Unit Ownership Act.

(B) The term "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Unit Owner's Association as the

(C) The term "Bylaws" shall mean and refer to the Bylaws of the UNIT OWNER'S ASSOCIATION, annexed and attached hereto as Schedule "C" and made a part hereof.

(D) The term "Buildings" shall mean and refer to the buildings located on the Condominium Property; PROVIDED; HOWEVER, that when buildings located on other portions of the Development Area have been added to the Condominium Property pursuant to the provisions of Paragraphs 17 and 18 hereof, the term buildings shall also include said buildings.

(E) The term "Unit Ownership Act" shall mean and refer to Chapter 47A of the General Statutes of the State of North Carolina, as amended.

(F) The term "Condominium" means the ownership of single units in a multi-unit structure or project with common areas and facilities.

(G) The term "Majority" or "Majority of Unit Owners" means the owners of more than fifty percent (50%) of the aggregate interest in the common areas and facilities (COMMON ELEMENTS) as established by the Declaration and its amendments if amended assembled at a duly called meeting of the unit owners.

(H) The term "Common Areas and Facilities" (herein as "COMMON ELEMENTS") shall mean and refer to all parts of the Condominium Property except the Units, including, without limitation, all foundations, exterior and supporting walls and roofs of the Buildings, all structural and component parts of all interior walls, all storage rooms and laundry rooms (if any), all patios, courtyards, walkways, driveways and parking spaces and all lawns, landscaping and gardens now or hereafter situated on the Condominium Property and all facilities and equipment related and attendant thereto, including any repairs and replacements thereof.

(I) The term "Common Expenses" shall mean and refer to those expenses designated as Common Expenses in the Unit Ownership Act, this Declaration of Unit Ownership or the Bylaws, including, without limitation, the following:

(i) all sums lawfully assessed against the Unit Owners by the UNIT OWNER'S ASSOCIATION; and

(ii) expenses of the UNIT OWNER'S ASSOCIATION incurred in the administration, maintenance, repair and replacement of the COMMON ELEMENTS; and

(iii) expenses determined from time to time to be Common Expenses by the UNIT OWNER'S ASSOCIATION.

(J) The term "Condominium Property" shall mean and refer to the real estate described and referred to in Paragraph 2 above, together with the buildings and all other improvements thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the Unit Owners; PROVIDED, HOWEVER, when portions of the Skyleaf Development Area have been added to the Condominium Property pursuant to the provisions of Paragraphs 17 and 18 hereof, the term "Condominium Property" shall also include such portions of the Skyleaf Development Area, together with the buildings and all improvements thereon, all easements, rights, and appurtenances belonging thereto, and all Articles of personal property existing thereon for the common use of the Unit Owners.

(K) The term "Declaration of Unit Ownership" or "Declaration" shall mean and refer to this instrument and all of the Schedules and Exhibits hereto, as originally executed, or if amended as herein provided, as so amended.

(L) The term "Drawings" shall mean and refer to the Drawings prepared and certified by James William Ritter, Registered Architect in accordance with the Unit Ownership Act relating to the Condominium Property, which Drawings are identified as Schedule "D" hereto and by this reference made a part of this Declaration.

(M) The term "Limited Common Areas and Facilities" (herein as "LIMITED COMMON ELEMENTS") shall mean and refer to those parts of the COMMON ELEMENTS reserved for the use of a certain Unit or Units to the exclusion of all other Units and more specifically described in Paragraph 7, Sub-paragraph (H) hereof.

(N) The term "Occupant" shall mean and refer to the person or persons, natural or artificial, in possession of a Unit.

(O) The term "Ownership Interest" shall mean and refer to the fee simple title interest in a Unit and the undivided percentage interest in the COMMON ELEMENTS appertaining thereto.

(P) The term "Rules" shall mean and refer to such rules and regulations governing the operation and use of the Condominium Property, or any portion thereof, as may be adopted by the UNIT OWNER'S ASSOCIATION or the Board of Directors thereof from time to time.

(Q) The term "Dwelling Unit" or "Unit" shall mean and refer to that part of the Condominium Property described in Paragraph 6 hereof.

(R) The term "Unit Owner" shall mean and refer to any person or persons, natural or artificial, owning the fee simple estate in a Unit and an undivided percentage interest in the COMMON ELEMENTS.

(S) The term "DECLARANT" shall mean and refer to the FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association organized and existing under and by virtue of the laws of the United States of America, its successors and assigns if such successors and/or assigns should acquire Skyleaf Development Area property from DECLARANT for the purpose of development.

(T) The term "Retained Property" shall mean and refer to certain other properties (Schedule "F" hereof) adjoining or nearby the Skyleaf Development Area (Schedule "A" hereof), which properties are owned by FIRST UNION NATIONAL BANK OF NORTH CAROLINA, and which properties exclude the Skyleaf Development Area. See Paragraph 20, Sub-Paragraph (L) for a discussion of said Retained Lands.

(U) "Institutional mortgage", sometimes referred to as "first mortgage" herein, shall be defined as a first mortgage or deed of trust originally executed and delivered to or held through assignment or assignments by a bank (including DECLARANT) or a savings and loan association, or an insurance company, or a title insurance company, or a pension trust, or a real estate investment trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing, or a designee of any of the foregoing, or the DECLARANT or any of its subsidiaries.

(V) "Institutional lender", shall be defined as a bank (including DECLARANT) or savings and loan association or an insurance company or a title insurance company or a pension trust or real estate investment

trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing or a designee of any of the foregoing, owning an institutional mortgage on one or more units, or any of the foregoing which acquires an institutional mortgage as herein defined, by assignment or through mesne assignments from a non-institutional lender.

(W) The use of the plural shall include the singular; the singular the plural; and the use of any gender shall be deemed to include all genders.

4. Name of the Condominium Property.

The Condominium Property shall be known as "SKYLEAF CONDOMINIUM COMMUNITY", a Condominium."

5. General Description of the Condominium Project.

The Skyleaf condominiums were constructed for convenience and comfort, and were so designed that each unit affords a spectacular view of the Blue Ridge. The floors between units make use of a special system, providing a full nineteen inches of dead sounding materials, thus insuring maximum soundproofing. The tile roofing is both beautiful and extremely durable. Outside walls are stucco and Western cedar paneling, and lend a natural texture to the surroundings. Anderson Welded Glass windows have been utilized for the best in heat retention and protection, and each deck, step, and walkway has been constructed of specially treated lumber. For convenience, there is a utility building located on each site for laundry.

Each unit combines the natural beauty of cedar paneling with sheetrock walls, thus affording a most pleasing contrast. Each bedroom has its own bath, equipped with oak vanity and vinyl flooring. Kitchens have oak cabinets and easy-care vinyl floors. General Electric appliances are used, and include a dishwasher and a trash compactor (with the exception of one bedroom units). The living area has large windows with window seats that also provide extra storage space. The large fireplace is faced with slate, mantles are optional. The bedrooms are spacious with ample closet space and storage.

All units have a fifty-two gallon quick-recovery water heater, and are heated with baseboard and wall-mounted heaters. Cable TV and telephone hookups are provided. The owner may have a choice of carpet colors in most units.

Reference is made to the drawings (Schedule "D" hereof) for a detailed description of the buildings and Dwelling Units and the Common Elements.

Further phases of the Condominium Project, if any, may contain none, some or all of the units and building types described above, as well as other unit and/or building types.

5A. General Description of Proposed Future Phases.

At such time, and from time to time, as the DECLARANT subjects a portion or portions of the parcel of land designated on the Site Plan (included among the Drawings, Schedule "D" hereof) as "Possible Future Additions to SKYLEAF CONDOMINIUM COMMUNITY, a Condominium" (See Schedule B-2 hereof for legal description) to the Unit Ownership Act by filing an amendment or amendments to this Declaration as specified herein, the improvements thereon will have been constructed of materials of substantially equal quality as those used in the first phase of the Project. Future phases, if any, of SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, will contain not more than forty-four (44) additional dwelling units and will also include such landscaping and automobile parking areas as will be appropriate to any such addition or additions.

6. Description of Units.

Each Unit shall constitute a single freehold estate and means an enclosed space consisting of one or more rooms occupying all or part of one or more floors in buildings of one or more floors or stories provided, always, that any such Unit has direct exit to a thoroughfare or to a COMMON ELEMENT leading to a thoroughfare. The lower vertical boundary of any such condominium unit is a horizontal plane (or planes) the elevation of which coincides with the upper surface of the unfinished concrete slab or the unfinished subfloors thereof and the upper vertical boundary is a horizontal plane (or planes) the elevation of which coincides with the elevation of the exterior surface of the interior ceilings thereof, to include the drywall. The lateral or perimetrical boundaries of any such condominium unit are the exterior surfaces of the interior perimeter or main walls, to include the drywall, windows and doors thereof, and vertical planes coincidental with the exterior surfaces of the interior perimeter or main walls thereof and to intersect the other lateral or perimetrical boundaries of the condominium unit. Usual home-

owner equipment and appurtenances located within any unit and serving only that unit, such as kitchen appliances, light fixtures and plumbing fixtures and appliances and the like, shall be considered a part of the condominium unit. The general description and number of each condominium unit, including its location, layout and dimensions and such other data as may be necessary or appropriate for its identification, are set forth on the Drawings (Schedule "D" hereof), which Drawings are incorporated herein and by this reference made a part hereof.

7. Common Areas and Facilities (COMMON ELEMENTS).

(A) Description. Except as may otherwise be set forth on the Drawings, the general COMMON ELEMENTS shall mean and include at least the following:

(i) the real estate and easements appurtenant thereto, except the units, described on Schedule "B" annexed and attached hereto and made a part hereof; and

(ii) the foundations, bearing walls, perimeter walls, main walls, roofs, halls, columns, girders, beams, supports, fire escapes, lobbies, parking areas or structures not designated as LIMITED COMMON ELEMENTS, stairways, and entrance and exit or communication ways; and

(iii) the roofs, yards and streets not designated as LIMITED COMMON ELEMENTS, and gardens, except as otherwise provided; and

(iv) the compartments or installations for central services (to service more than one unit) such as power, light, gas, hot and cold water, water storage tanks, pumps and the like, including, but not limited to, all pipes, ducts, flues, chutes, conduits, cables and wire outlets and other utility lines; and

(v) in general all devices or installations existing for common use on the Condominium Property; and

(vi) the premises designated on the Drawings for the lodging of custodial or managerial personnel, if any; and

(vii) all other elements of the condominium project rationally of common use or necessary to its existence, upkeep and safety.

The LIMITED COMMON ELEMENTS include those designated as such on the Drawings and such others as are agreed upon by all of the co-owners to be reserved for the exclusive use of a certain number of condominium units. All areas designated on the Drawings as a terrace, patio, balcony, fenced area, storage lockers, mechanical equipment room, or the like, or which are designated thereon as LIMITED COMMON ELEMENTS, are reserved for the exclusive use of the owners of the condominium unit or units to which they are adjacent or to which they are declared to be appurtenant by appropriate designations on the Drawings.

(B) Ownership of COMMON ELEMENTS. The COMMON ELEMENTS comprise, in the aggregate, a single freehold estate and shall be owned by the Unit Owners, as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the COMMON ELEMENTS shall be maintainable, except as specifically provided in the Unit Ownership Act, nor may any Unit Owner otherwise waive or release any rights in the COMMON ELEMENTS; PROVIDED, HOWEVER, that if any Unit be owned by two or more co-owners as tenants-in-common or as tenants by the entirety, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of such unit's ownership as between such co-owners as by law provided.

(C) Undivided Interest in COMMON ELEMENTS. Each condominium (dwelling) unit shall have the same incidents of ownership as real property and the owner of any condominium (dwelling) unit shall hold the same in fee simple and shall have a common right to a share, with the other Unit Owners, of an undivided fee simple interest in the COMMON ELEMENTS equivalent to the percentage representing the approximate "fair market value" of his or her unit on the date of recordation of this Declaration of Unit Ownership divided by the then approximate "fair market value" of all the condominium (dwelling) units having an undivided interest in said COMMON ELEMENTS. The percentage appertaining to each condominium (dwelling) unit in the expenses of and rights in the COMMON ELEMENTS according to those basic values is, unless and until amended as provided in Paragraphs 17 and 18 hereof, as set forth on Schedule "E"

annexed and attached hereto and by this reference made a part hereof.

The percentage of undivided interest in the COMMON ELEMENTS herein established shall have a permanent character and shall not be altered without the consent of the Unit Owners evidenced by an appropriate amendment to this Declaration of Unit Ownership, as provided in Paragraphs 17 and 18 hereof, recorded among the Public Records of Avery County, North Carolina. The undivided interest in the COMMON ELEMENTS shall not be separated from the condominium (dwelling) unit to which it appertains and shall be deemed conveyed or encumbered along with the condominium unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(D) Fair Market Value. The approximate "fair market value" herein established for any Dwelling Unit shall not fix the market value of the Dwelling Unit and shall not prevent the owner of any Dwelling Unit, including the DECLARANT, from establishing a different circumstantial value for such Dwelling Unit.

(E) Encroachments. If any portion of the COMMON ELEMENTS now encroaches upon any Dwelling Unit, or if any Dwelling Unit now encroaches upon any other Dwelling Unit or upon any portion of the COMMON ELEMENTS, as a result of the construction or repair of the buildings, or if any such encroachment shall occur hereafter as a result of settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same so long as the building stands shall exist. In the event any building, any Dwelling Unit, any adjoining Dwelling Unit, or any adjoining 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 then reconstructed, encroachments of parts of the COMMON ELEMENTS upon any Dwelling Unit or of any Dwelling Unit upon any other Dwelling Unit or upon any portion of

the COMMON ELEMENTS, due to such reconstruction, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the building shall stand.

(F) Easements. Each dwelling unit shall be subject to an easement to the Unit Owners of all of the other Dwelling Units to and for the unobstructed and uninterrupted use of any and all pipes, ducts, flues, chutes, conduits, cables and wire outlets and utility lines of any kind and other COMMON ELEMENTS located within or accessible only from any particular Dwelling Unit and for support.

(G) Use of COMMON ELEMENTS. Each Unit Owner shall have the right to use the COMMON ELEMENTS in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his Unit, and such rights shall be appurtenant to and run with his Unit; provided, however, that no person shall use the COMMON ELEMENTS or any part thereof in such manner as to interfere with or restrict or impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration of Unit Ownership and the Bylaws of the Unit Owners Association.

(H) Use of LIMITED COMMON ELEMENTS. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the LIMITED COMMON ELEMENTS located within the bounds of his Unit or which serve only his Unit, the cost of maintenance and repair of such LIMITED COMMON ELEMENTS to be the responsibility of such Unit Owner. The LIMITED COMMON ELEMENTS with respect to each Unit shall consist of the following, in addition to those LIMITED COMMON ELEMENTS hereinabove described and referred to:

(i) all ducts and plumbing, electrical and other fixtures, equipment and appurtenances, including heating and air conditioning systems and control devices, (except those items considered part of the Unit pursuant to Paragraph 6 of this Declaration) located within the bounds of such Unit or which serve only such Unit and, exterior lighting fixtures controlled by or metered to a particular Dwelling Unit;

(ii) all gas, electric, water or other utility or service lines, pipes, wires and conduits located within the bounds of such Dwelling Unit and which serve only such Dwelling Unit;

(iii) patios, balconies, courtyards and appurtenant improvements, walkways, front and back stoops, and decks (if any) which serve only such Unit;

(iv) all other COMMON ELEMENTS as may be located within the bounds of such Unit and which serve only such Unit or which may be designated on the Drawings as a LIMITED COMMON ELEMENT.

7A. Common Areas and Facilities (COMMON ELEMENTS) if Further Phases Submitted to Unit Ownership Act.

(A) At such time, and from time to time, as additional Phases, if any, may hereinafter be subjected to this Declaration and the Unit Ownership Act by an amendment to this Declaration, the total combined property, consisting of such Phases as have then been subjected to this Declaration and the Unit Ownership Act, shall continue to be known as SKYLEAF CONDOMINIUM COMMUNITY, a Condominium. At such time as any additional Phase is submitted to this Declaration, it is hereby declared that the then owners of dwelling units in SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, and the owners of Dwelling Units in any such additional phase or phases shall have the rights and privileges in all of the COMMON ELEMENTS located in both Phases combined in the percentage of undivided interests as shown in tabular form in the Amendment to this Declaration filed in accordance with the provisions of Paragraphs 17 and 18 of this Declaration.

(B) The undivided interest of the COMMON ELEMENTS vested in the owners of Dwelling Units in Phase 1 (the first twenty-five (25) dwelling units) is hereby declared to be vested in said owners in fee simple determinable in the percentages of undivided interest set forth on Schedule "E" hereof for their respective unit or units, during and for so long as Phase 1 herein described is the only property subjected to the Unit Ownership Act and no longer. Upon the filing of an amended Declaration to subject an additional phase to this Declaration and the Unit Ownership Act pursuant to Paragraphs 17 and 18 hereof, the fee simple determinable estate in the undivided interest of the COMMON ELEMENTS shall immediately terminate and simultaneously the undivided interest of the COMMON ELEMENTS in Phase 1 and such additional phase combined is hereby declared by DECLARANT to be vested in the owners of the Dwelling Units in Phase 1 and the owners of Dwelling Units in such

additional phase in fee simple determinable in the percentages of undivided interest set forth in the amendment to this Declaration providing for said circumstance, during and for so long as Phase 1 and such additional phase is the only property subjected to the Unit Ownership Act and no longer. Upon the filing of an amended Declaration to subject additional phases to this Declaration and the Unit Ownership Act, the fee simple determinable estate in the undivided interest of the COMMON ELEMENTS shall immediately terminate as set forth above and simultaneously the undivided interest of the COMMON ELEMENTS in all phases of SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, and such additional phase is hereby declared by DECLARANT to be vested in the owners of the Dwelling Units in SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, and such additional phase or phases in fee simple determinable in the percentages of undivided interest set forth in such amendment to this Declaration providing for said circumstance or circumstances, during and for so long as said phases are the only property subjected to the Unit Ownership Act and no longer. Upon the filing of the amended Declaration to subject to the Unit Ownership Act an additional phase which, with any additional phases previously submitted, would include all forty-four (44) additional Dwelling Units, the fee simple determinable estate in the undivided interest of the COMMON ELEMENTS shall immediately terminate and simultaneously the undivided interest of the COMMON ELEMENTS in all previous phases and the phase including the 44th additional Dwelling Unit is hereby declared by DECLARANT to be vested in the owners of the Dwelling Units in all previous phases and the additional phase including the 44th additional Dwelling Unit in fee simple absolute in the percentage of undivided interest set forth in the Amendment to this Declaration providing for such circumstance. Upon the failure of the DECLARANT to file amended Declarations subjecting additional land to the Unit Ownership Act on or before the expiration of seven (7) years from and after the date this Declaration is filed for record, as provided for herein, so that Phase 1 or Phase 1 and some number of additional Dwelling Units less than 44, are the only properties subject to the Unit Ownership Act, any fee simple determinable estate in the COMMON ELEMENTS outstanding on said date is automatically terminated and said COMMON ELEMENTS are further hereby declared by DECLARANT to be vested in the then owners of

all of said Dwelling Units in fee simple absolute in their then existing percentages of undivided interest in the COMMON ELEMENTS. In the event that ALL of the proposed Phases (consisting of a total of 44 additional dwelling units) herein referred to are subjected to this Declaration by an Amendment or Amendments hereto as in this Paragraph contemplated and as provided in Paragraph 18 of this Declaration, then and in such event the minimum percentage of ownership in the COMMON ELEMENTS of SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, for Unit Owners of units in Phase 1 (the first twenty-five (25) units) shall be not less than that described and set forth in column (b) of Schedule "E" annexed and attached hereto, made a part hereof and incorporated herein by reference as fully and to the same extent as if the same were set forth herein verbatim in words and figures.

(C) An Amendment to this Declaration to subject additional phases of the project to the Unit Ownership Act as herein provided may be made by duly authorized officers of the FIRST UNION NATIONAL BANK OF NORTH CAROLINA, its successors or assigns, executing said Amendment or Amendments and filing same in the Register of Deeds' Office of Avery County, North Carolina, in the manner and form as provided in Paragraph 18 hereof as and for the additions of phases to the Condominium Property when said phases are so submitted within the seven (7) year limited period as herein set forth, and no other approval or joinder shall be required by or of any Unit Owner or mortgagee, lienholder or judgment creditor of any Unit Owner of any Phase already subjected to this Declaration and the Unit Ownership Act.

(D) The COMMON ELEMENTS of future Phases, if any, of SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, shall consist of the following:

- (i) All the COMMON ELEMENTS of Phase 1; and
- (ii) the real property, except the units, subjected, from time to time, to this Declaration and the Unit Ownership Act; and
- (iii) the foundations, bearing walls, perimeter walls, main walls, roofs, halls, columns, girders, beams, supports, corridors, fire escapes, lobbies, parking areas or structures not designated as LIMITED COMMON ELEMENTS, stairways, and entrance and exit or communication ways; and

- (iv) the roofs, yards and streets not designated as LIMITED COMMON ELEMENTS, and gardens, except as otherwise provided; and
- (v) the compartments or installations for central services such as power, light, gas, hot and cold water, water storage tanks, pumps and the like, including, but not limited to, all pipes, ducts, flues, chutes, conduits, cables and wire outlets and other utility lines; and
- (vi) in general all devices or installations existing for common use on future Phases of the condominium project; and
- (vii) the premises designated on the Drawings of future Phases, if any, for the lodging of custodial or managerial personnel; and
- (viii) Streets and Roadways;
- and
- (ix) all other elements of future Phases of the condominium project rationally of common use or necessary to its existence, upkeep and safety.

8. Covenants of Unit Owners.

DECLARANT, its successors and assigns, by this Declaration of Unit Ownership, and all future owners of the Dwelling Units, by their acceptance of their respective deeds, covenant and agree as follows:

(A) That the Dwelling Units shall be occupied and used by the respective owners only as a private dwelling for the owner, his, her or their family, tenants and social guests and for no other purpose.

(B) That the owners of the respective Dwelling Units shall not be deemed to own the pipes, wires, conduits or other utility lines running through said respective Dwelling Unit which are utilized for, or serve, more than one Dwelling Unit, except as tenants in common with the other Unit Owners as heretofore provided in Paragraph 7. Said owner, however, shall be deemed to own the walls and partitions which are contained within said owner's respective Dwelling Unit.

(C) That the owner of a Dwelling Unit shall automatically, upon becoming the owner of a Dwelling Unit, be a member of THE SKYLEAF ASSOCIATION, herein referred to as the "UNIT OWNER'S ASSOCIATION," and shall remain a member of said UNIT OWNER'S ASSOCIATION until such time as his Dwelling Unit ownership ceases for any reason, at which time his membership in said UNIT OWNER'S ASSOCIATION shall automatically cease.

(D) That the owners of Dwelling Units covenant and agree that the administration of the condominium shall be in accordance with the provisions of this Declaration of Unit Ownership and the Bylaws of the UNIT OWNER'S ASSOCIATION which are annexed and attached hereto, made a part hereof, labelled Schedule "C" and incorporated herein by reference as fully and to the same extent as if the same were set forth herein verbatim in words and figures.

(E) That each owner, tenant or occupant of a Dwelling Unit shall comply with the provisions of this Declaration of Unit Ownership, the Bylaws, and decisions and resolutions of the UNIT OWNER'S ASSOCIATION or its representatives. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

(F) That this Declaration of Unit Ownership shall not be revoked or any of the provisions herein amended except as provided in the Unit Ownership Act and in Paragraphs 17 and 18 below.

(G) That no owner of a Dwelling Unit may exempt himself from liability for his contribution towards the common expenses of the UNIT OWNER'S ASSOCIATION by waiver of the use or enjoyment of any of the COMMON ELEMENTS or by the abandonment of his Dwelling Unit.

(H) Upon the recommendation of the Board, if deemed advisable by the association, provided the same is not prohibited by law, the Board shall have the power to cause the association to be incorporated and adopt a seal.

9. Covenant for Assessments.

(A) Creation of the Lien and Personal Obligation for Assessments.

The DECLARANT, for each Dwelling Unit owned within the Condominium Property, hereby covenants and agrees, and each Owner of any Dwelling Unit by acceptance of a deed therefor, whether or not expressed in such deed, is deemed to covenant and agree to pay the UNIT OWNER'S ASSOCIATION: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected

as hereinafter provided. All such annual and special assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof shall be a charge and lien upon the Dwelling Unit of the respective owners thereof, and the same shall be a continuing lien upon the Dwelling Unit against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the owner or owners of such Dwelling Unit at the time when the assessments became due. All sums assessed by the UNIT OWNER'S ASSOCIATION but unpaid for the share of the common expenses chargeable to any Dwelling Unit shall constitute a lien on such Dwelling Unit prior to all other liens except (i) ad valorem tax liens and liens for special assessments on the Dwelling Unit made by a lawful governmental authority, (ii) all sums unpaid on the first mortgage of record (institutional mortgage) on such Unit, if any, and (iii) other liens, if any, granted priority by statutory authority.

(B) Purpose of Assessments. The assessments levied by the UNIT OWNER'S ASSOCIATION shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and residents of the Dwelling Units and for the improvement and maintenance of the COMMON ELEMENTS, and easements appurtenant thereto. Assessments may be used in part to make contribution for the maintenance of roads leading to the condominium property.

(C) Maximum Annual Assessments. Until September 1, 1978 the monthly payment towards maximum annual assessment for each Dwelling Unit shall be as shown on Schedule "E-1" annexed and attached hereto, made a part hereof and incorporated herein by reference as fully and to the same extent as if the same were set forth herein verbatim in words and figures. Thereafter, the amount of annual assessments for the UNIT OWNER'S ASSOCIATION shall be established in accordance with the terms and provisions of this Declaration and the Bylaws of said Association, subject to the following limitations:

(i) From and after September 1, 1978 the annual assessment may be increased each year not more than five percent (5%) above the budgeted annual assessment for the previous year without a vote of the membership of the UNIT OWNER'S ASSOCIATION, as hereinbelow provided.

(ii) From and after September 1, 1978 the annual assessment may be increased more than five percent (5%) of the budgeted annual assessment for the previous year by a vote of two-thirds (2/3) of the voting power of the UNIT OWNER'S ASSOCIATION who are voting in person, or by proxy, at a meeting duly called for such purpose.

(iii) The Board of Directors may increase the annual assessment by an amount not exceeding five percent (5%) of the budgeted annual assessment for the previous year as herein provided.

(iv) Notwithstanding any provision contained in this Declaration, or the Bylaws of the UNIT OWNER'S ASSOCIATION, during the period of time beginning with the recording of this Declaration among the Public Records of Avery County, North Carolina and ending on September 1, 1978, the UNIT OWNER'S ASSOCIATION shall collect all assessments from Unit Owners and shall pay all expenses for the maintenance of the COMMON ELEMENTS and administration of the ASSOCIATION during such period of time on an accrual basis (giving pro rata credit for prepaid expenses, deposits, etc.). DECLARANT shall be obligated to provide to said ASSOCIATION sufficient funds, in addition to those required by unit owners by assessment, to enable the UNIT OWNER'S ASSOCIATION to operate on a breakeven basis until September 1, 1978 should Unit Owner assessments per

Schedule "E-1" hereof (including DECLARANT) not be adequate for that purpose; PROVIDED, HOWEVER, that DECLARANT'S obligation herein to provide said funds to enable the UNIT OWNER'S ASSOCIATION to operate on a breakeven basis should Unit Owner assessments be inadequate for that purpose shall apply to the planned level of operation and services to be provided by said ASSOCIATION on the date that this Declaration is recorded among the Public Records of Avery County, North Carolina.

From and after September 1, 1978 DECLARANT shall have absolutely no obligation to make payments to or for the UNIT OWNER'S ASSOCIATION for any purpose except for its obligation to make periodic payment of assessments levied on Dwelling Units which DECLARANT may, from time to time, own.

(D) Reserve Funds. From and after the recording of this Declaration the UNIT OWNER'S ASSOCIATION shall establish and maintain a reserve fund or funds for replacement and maintenance of the COMMON

ELEMENTS by allocation and payment monthly to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board of Directors of the UNIT OWNER'S ASSOCIATION.

(E) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the COMMON ELEMENTS including (but not limited to) fixtures and personal property related thereto; provided that to the extent that any such assessment shall exceed the sum and amount of \$5,000.00 it shall have the assent of two-thirds (2/3) of the voting power of the UNIT OWNER'S ASSOCIATION who are voting in person or by proxy at a meeting duly called for such purpose.

(F) Notice and Quorum for Any Action Authorized Under Sub-Paragraphs (C) and (E). Written notice of any meeting called for the purpose of taking any action authorized under Sub-Paragraphs (C) and (E) of this Paragraph 9 shall be sent to all members of the UNIT OWNER'S ASSOCIATION not less than seven (7) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the voting power of the UNIT OWNER'S ASSOCIATION shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date of the preceding meeting.

(G) Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Units on the date of recordation of this Declaration among the Public Records of Avery County, North Carolina. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year for the UNIT OWNER'S ASSOCIATION. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written

notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and unless otherwise provided, the UNIT OWNER'S ASSOCIATION shall collect each month from each Unit Owner one-twelfth (1/12th) of the annual assessment for such Unit. The UNIT OWNER'S ASSOCIATION shall, upon demand, furnish a certificate signed by an officer of the UNIT OWNER'S ASSOCIATION setting forth whether the assessments on a specified Unit have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any purchaser or mortgagee of a Unit relying thereon.

(H) Effect of Nonpayment of Assessments; Remedies of the UNIT OWNER'S ASSOCIATION. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the UNIT OWNER'S ASSOCIATION may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Unit, thereby expressly vests in THE SKYLEAF ASSOCIATION (the UNIT OWNER'S ASSOCIATION), or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the UNIT OWNER'S ASSOCIATION in a like manner as a mortgage or deed of trust lien on real property and such member expressly grants to the UNIT OWNER'S ASSOCIATION a power of sale in connection with any such charge or lien. The lien provided for in this section shall be in favor of the UNIT OWNER'S ASSOCIATION and shall be for the benefit of all other Unit Owners. The UNIT OWNER'S ASSOCIATION, acting on behalf of the Unit Owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such

defaulting Owner's portion of the premium. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR FACILITIES (COMMON ELEMENTS) OR ABANDONMENT OF HIS UNIT.

(I) Subordination of the Assessment Lien to Mortgages, Deeds of Trust and Similar Security Interests. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional mortgage, or similar security interest owned or held by an institutional lender and subordinate to tax liens and special assessments on a Unit made by lawful governmental authority. Sale or transfer of any Unit shall not affect the assessment lien. However, where the mortgagee of an institutional mortgage of record or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of an institutional mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the UNIT OWNER'S ASSOCIATION chargeable to such Unit which became due prior to the acquisition of title to such Unit as a result of foreclosure by such acquirer. Such unpaid shares of common expenses or assessments shall be deemed to be common expenses collectible from all of the Unit Owners including such acquirer, his successors and assigns. No such sale of a unit shall relieve such unit (or its owner) from liability for any assessments thereafter becoming due and payable or from the lien of any subsequent assessment.

(J) Exempt Property. All properties, if any, dedicated to, and accepted by, a local public authority, and all properties owned by a charitable or non-profit organization exempt from ad valorem taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments, irrespective of the tax status of the owner thereof.

10. Rental of Units by Unit Owners.

The respective Units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as any rental in which the occupants of the Unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. This restriction shall not

apply to rentals made through a rental agency specifically approved by the SKYLEAF ASSOCIATION. Other than the foregoing, the owners of the respective Units, including the DECLARANT, shall have the absolute right to lease or rent the same subject to the covenants and restrictions contained in this Declaration of Unit Ownership and further subject to the Bylaws attached hereto. PROVIDED, HOWEVER, that the restrictions herein contained shall not apply to any unit or units owned by DECLARANT and maintained by DECLARANT as a guest unit in connection with its sales and marketing program prior to DECLARANT's sale of all units owned by it.

11. Reconstruction.

In the event that property subject to this Declaration of Unit Ownership is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the property shall be as provided by the provisions of the Unit Ownership Act, subject to the applicable provisions of Paragraph 14 of this Declaration.

12. Conveyance of Dwelling Unit.

In a voluntary conveyance of a Dwelling Unit the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments of the UNIT OWNER'S ASSOCIATION against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of the unpaid assessments against the Grantor due the UNIT OWNER'S ASSOCIATION and such Grantee shall not be liable for, nor shall the Dwelling Unit conveyed be subject to a lien for, any unpaid assessments made by the UNIT OWNER'S ASSOCIATION against the Grantor in excess of the amount therein set forth.

13. Voting.

All agreements and determinations lawfully made by the UNIT OWNER'S ASSOCIATION in accordance with the voting percentages established in the Unit Ownership Act, this Declaration of Unit Ownership or in the Bylaws, shall be deemed to be binding on all owners of Dwelling Units, their successors and assigns.

14. Insurance and Reconstruction.

(A) Insurance. The insurance which shall be carried upon the Condominium Property shall be governed by the following provisions:

(i) Casualty or physical damage insurance shall be carried in an amount equal to the full replacement value (i.e., 90% of the full "replacement cost") of the Condominium Property, exclusive of excavations and foundations, with a replacement cost endorsement and an inflation guard endorsement or an annual review clause, without deduction or allowance for depreciation (as determined annually by the Board of Directors of the UNIT OWNER'S ASSOCIATION with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following: (a) loss or damage by fire or other hazards covered by the standard extended coverage endorsement together with coverage for common expenses with respect to condominium units during any period of repair or reconstruction; and (b) such other risks as from time to time customarily shall be covered with respect to buildings similar to the Buildings in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water or flood (if available) damage, subject to such deductible amounts, not in excess of One Thousand Dollars (\$1,000.00), as the Board shall determine. All Casualty Insurance Policies shall be purchased by the UNIT OWNER'S ASSOCIATION for the benefit of the UNIT OWNER'S ASSOCIATION, the DECLARANT, the Unit Owners and their respective mortgagees, as their interests may appear and shall provide (1) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Units, if any, and (2) that the insurer waives its rights of subrogation against Unit Owners, Occupants and the UNIT OWNER'S ASSOCIATION. All Casualty Insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Board of Directors as trustee for each of the Unit Owners in the percentages established in this Declaration of Unit Ownership for the purposes elsewhere stated herein, and for the benefit of the DECLARANT, the UNIT OWNER'S ASSOCIATION, the Unit Owners, and their respective mortgagees.

(ii) The UNIT OWNER'S ASSOCIATION shall insure itself, the members of the Board of Directors, the Unit Owners and the Occupants against liability for personal injury, disease, illness or death and for

injury to or destruction of property occurring upon, in or about, or arising from or relating to the Condominium Property or any portion thereof, including, without limitation, water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to damage to or destruction of property arising out of any one accident. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner. In the event the insurance effected by the UNIT OWNER'S ASSOCIATION on behalf of the Unit Owners and Occupants against liability for personal injury or property damage arising from or relating to the Condominium Property shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Unit Owners, and any Unit Owner who shall have paid all or any portion of such deficit in an amount exceeding his proportionate share thereof based upon his percentage of interest in the COMMON ELEMENTS shall have a right of contribution from the other Unit Owners according to their respective percentages of interest in the COMMON ELEMENTS.

(iii) The UNIT OWNER'S ASSOCIATION shall provide fidelity insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity insurance coverage shall, at least, meet the following requirements: (a) all such fidelity insurance coverage shall name the UNIT OWNER'S ASSOCIATION as an obligee thereunder; and (b) shall be written in an amount equal to at least 50% of the estimated annual operating expenses of the Association, including reserves; and (c) shall contain waivers of any defense bond upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(iv) Premiums upon insurance policies purchased by the UNIT OWNER'S ASSOCIATION shall be paid by the UNIT OWNER'S ASSOCIATION at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common Expenses.

(v) All insurance policies shall be written with a Company or Companies licensed to do business in the State of North Carolina and holding a rating of "A+AAAAA" or better in Best's Insurance Guide.

(vi) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors of the UNIT OWNER'S ASSOCIATION, or its authorized representative.

(vii) In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by the Owners of the condominium units or their mortgagees, as herein permitted, and any "no other insurance" or similar clause in any policy obtained by the UNIT OWNER'S ASSOCIATION pursuant to the requirements hereof shall exclude such policies from consideration.

(viii) All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon, including any and all mortgagees of the condominium units.

(ix) All policies of casualty insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Board of Directors of the UNIT OWNER'S ASSOCIATION (or any Insurance Trustee) or when in conflict with the provisions of this Declaration of Unit Ownership or the provisions of the North Carolina Unit Ownership Act as the same may be in force from time to time.

(x) All policies of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against the UNIT OWNER'S ASSOCIATION, the Board of Directors thereof, the Owner of any Condominium Unit and/or their respective agents, employees, invitees or mortgagees and of any defenses based upon co-insurance or invalidity arising from the acts of the insured.

(B) Unit Owners Policies of Insurance.

The Owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "Condominium Unit Owner's Endorsement" for improvements and betterments to the condo-

minium unit made or acquired at the expense of the Owner) at his own expense. Such insurance shall be written by the same carrier as that purchased by the Board of Directors of the UNIT OWNER'S ASSOCIATION pursuant to the provisions hereof OR shall provide that it shall be without contribution as against the same. Such insurance policy or policies shall contain the same waiver of subrogation provisions as that set forth in Paragraph 14 (A) (x) hereof. The DECLARANT recommends that each owner of a Condominium Unit in the project obtain, in addition to the insurance hereinabove provided to be obtained by the UNIT OWNER'S ASSOCIATION, a "Tenant Homeowner's Policy", or equivalent, to insure against loss or damage to personal property used in or incidental to the occupancy of the Condominium Unit, additional living expenses, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "Condominium Unit-Owner's Endorsement" covering losses to improvements and betterments to the condominium unit made or acquired at the expense of the Owner.

(C) Responsibility for Reconstruction or Repair.

(1) If any portion of the Condominium Property shall be damaged by perils covered by the Casualty Insurance, the UNIT OWNER'S ASSOCIATION shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and such reconstruction or repair shall be substantially in accordance with the Drawings; provided, however, if such damage renders two-thirds (2/3) or more of the Units then comprised within the Condominium Property untenable, the Unit Owners may, by the vote of those entitled to exercise not less than seventy five percent (75%) of the voting power, elect not to reconstruct or repair such damaged part at a meeting which shall be called within ninety (90) days after the occurrence of the casualty, or, if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment, and upon any such election: (a) the Condominium property shall be deemed to be owned by the Unit Owners as tenants in common; (b) the undivided interest in the property owned by the Unit Owners as tenants in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the COMMON ELEMENTS; (c) any liens affecting any of the Units shall be deemed to be

transferred in accordance with the existing priorities to the percentage of the undivided interest of the Unit Owner in the property as provided herein; and (d) the property shall be subject to an action for sale for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all of the Unit Owners in proportion to their respective undivided ownership of the COMMON ELEMENTS, after first paying off, out of the respective shares of Unit Owners, to the extent sufficient for that purpose, all liens on the Unit of each Unit Owner. No Unit Owner, however, shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged.

(ii) In the event that the proceeds of insurance are not sufficient to repair damage or destruction by fire or other casualty or in the event such damage or destruction is caused by any casualty not herein required to be insured against, then the repair or reconstruction of the damaged COMMON ELEMENTS shall be accomplished promptly by the UNIT OWNER'S ASSOCIATION at its Common Expense and the repair or reconstruction of any condominium unit shall be accomplished promptly by the UNIT OWNER'S ASSOCIATION at the expense of the Owner of the affected Condominium Unit. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for same shall have all the priorities provided for in this Declaration of Unit Ownership.

(D) Procedure for Reconstruction or Repair.

(i) Immediately after a casualty causing damage to any portion of the Condominium Property, the UNIT OWNER'S ASSOCIATION shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(ii) If the proceeds of the Casualty Insurance are not sufficient to defray the estimated costs of reconstruction and repair by the UNIT OWNER'S ASSOCIATION (including the aforesaid fees and premiums, if any) one or more special assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Board of Directors.

(11) The proceeds of the Casualty Insurance referred to in Paragraph 14 (A)(1) hereof and the sums deposited with the Board of Directors by the UNIT OWNER'S ASSOCIATION from collections of special assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Board of Directors and be applied by the Board of Directors to the payment of the cost of reconstruction and repair of the Condominium Property from time to time as the work progresses, but not more frequently than once in any calendar month. Said Board shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the UNIT OWNER'S ASSOCIATION and by an architect in charge of the work who shall be selected by the UNIT OWNER'S ASSOCIATION, setting forth (1) that the sum then requested either has been paid by the UNIT OWNERS ASSOCIATION or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate, (2) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work, and (3) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Board of Directors after the payment of the sum so required. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the UNIT OWNER'S ASSOCIATION.

15. Water and Sewer Charges.

Water and sewer services for the Dwelling Units are to be provided by Sugar Mountain Utility Company or other private utility system facilities and will be individually billed by the provider to each Unit Owner. However, the Association will pay for water and sewer service through September 1, 1978.

16. DECLARANT as Unit Owner.

(A) That so long as DECLARANT, its successors and assigns, owns one or more of the Dwelling Units established and described herein, said DECLARANT, its successors and assigns, (i) shall be subject to the provisions of this Declaration of Unit Ownership and of the Schedules and Exhibits attached hereto; and (ii) covenants to take no action which would adversely affect the rights of the UNIT OWNER'S ASSOCIATION with respect to assurances against latent defects in the property or other rights assigned to the UNIT OWNER'S ASSOCIATION, the members of such UNIT OWNER'S ASSOCIATION and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.

(B) The DECLARANT at the time of the recording of this Declaration of Unit Ownership is the owner in fee simple of all of the real property and individual dwelling units, together with any appurtenances thereto. The DECLARANT is irrevocably empowered, NOTWITHSTANDING ANY PROVISION HEREIN CONTAINED TO THE CONTRARY, to sell, mortgage or lease units to any persons approved by it. Said DECLARANT shall have the right to transact on the Condominium Property any business necessary to consummate sales of units, including but not limited to, the right to maintain models, have signs, employees in the office, use the COMMON ELEMENTS and show dwelling units. Any sales office, signs and all property owned by DECLARANT and utilized for the development and sale of the project shall not be considered COMMON ELEMENTS and shall remain the property of the DECLARANT. In the event there are unsold dwelling units, the DECLARANT retains the right to be the owner thereof under the same terms and conditions as other Unit Owners save for the right to sell, lease or mortgage as contained in this paragraph.

17. Additions to Condominium Property.

As DECLARANT completes future stages or phases of the SKYLEAF CONDOMINIUM COMMUNITY, a Condominium Project, if any, said stages or phases will become part of the Condominium Property by amendment to this Declaration and the Unit Owners of the Dwelling Units constructed on the future stages will become members of the UNIT OWNER'S ASSOCIATION to the same extent as if their Units were originally one of the Units covered by this Declaration. DECLARANT therefore, hereby reserves the right at any time within a period of seven (7) years, commencing on the date of

filing this Declaration for record, that DECLARANT determines to take the action so contemplated (A) to submit from time to time additional stages or phases of the Project to the provisions of this Declaration and the Unit Ownership Act, and (B) to amend this Declaration, in the manner provided in Paragraph 18 hereof, in such respects as DECLARANT may deem advisable in order to effectuate such submission or submissions, including, without limiting the generality of the foregoing, the right to amend this Declaration so as (i) from time to time within said seven (7) year period to include stages or phases of the Project Property and the improvements constructed thereon as part of the Condominium Property, (ii) from time to time to include descriptions of Buildings constructed on said stages of the Project Property in this Declaration and to add Drawings thereof to Schedule "D" hereof, and (iii) to provide that the owners of Units in the additional Buildings will have an interest in the COMMON ELEMENTS of the Condominium Property and to amend Paragraph 7(C) hereof, and the schedule therein referred to, so as to establish the percentage of interest in the COMMON ELEMENTS as to the owners of all Units within the Buildings on the Condominium Property at the time of such amendment or amendments, which percentage shall be, with respect to each Unit, in the various percentages to be shown and described on said Amendment applicable to the particular stages or phases then subjected to this Declaration; which determination shall be made by DECLARANT and shall be conclusive and binding upon all Unit Owners. DECLARANT expressly agrees, however, that there will not be constructed and added to the Project under and pursuant to the provisions of this Paragraph 17 more than a total of forty-four (44) Additional Dwelling Units. DECLARANT, on its own behalf as the owner of all Units in the Condominium Property and on behalf of all subsequent Unit Owners, hereby consents and approves, and each Unit Owner and his mortgagees by acceptance of a deed conveying such Ownership Interest or a mortgage encumbering such Ownership Interest, as the case may be, thereby consents to, and approves, the provisions of this Paragraph 17, including, without limiting the generality of the foregoing, the amendment of this Declaration by DECLARANT in the manner provided in this Paragraph 17 and in Paragraph 18 hereof, and all such Unit Owners and their respective mortgagees, upon request of DECLARANT, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by DECLARANT to be necessary or proper to effectuate said provisions.

18. Amendments to Declaration.

(A) Each Unit Owner and his respective mortgagees by acceptance of a deed conveying an Ownership Interest or a mortgage encumbering such Ownership Interest, as the case may be, hereby irrevocably appoints DECLARANT his Attorney-in-Fact, coupled with an interest, and authorizes, directs and empowers such Attorney, at the option of the Attorney, in the event that DECLARANT exercises the rights reserved in Paragraph 17 hereof to add to the Condominium Property as provided in Paragraph 17 hereof, to execute, acknowledge and record for and in the name of such Unit Owner and any such mortgagee an amendment or amendments of this Declaration for such purpose and for and in the name of such respective mortgagees, a consent and joinder to such amendment or amendments.

(B) This Declaration may be amended upon the filing for record with the Register of Deeds of Avery County, North Carolina of an instrument in writing setting forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by Unit Owners having not less than seventy-five percent (75%) interest in the COMMON ELEMENTS, or in the case of an amendment for the purpose of adding to the Condominium Property pursuant to Paragraph 17 hereof, by DECLARANT acting as Attorney-in-Fact for all of the Unit Owners and their mortgagees as above provided, or in any other case where the Unit Ownership Act requires unanimous consent of the Unit Owners, by all of the Unit Owners.

(C) Any amendment hereto must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and its attached schedules and exhibits are recorded and must contain an affidavit by the President of the SKYLEAF ASSOCIATION or an officer of DECLARANT, as the case may be, that a copy of the amendment has been mailed by certified mail to all Unit Owners and all mortgagees having a bona fide lien of record against any Unit Ownership interest.

(D) Except as hereinabove provided with respect to amendments for the purpose of making additions to the Condominium Property as provided in Paragraph 17 hereof, no amendment of this Declaration shall have any effect, however, upon DECLARANT, the rights of DECLARANT under this Declaration and upon the rights of bona fide mortgagees until the

written consent of DECLARANT and such mortgagees to such amendment has been secured. Such consents shall be retained by the Secretary of the UNIT OWNER'S ASSOCIATION or the DECLARANT, as the case may be, and his certification in the instrument of amendment as to the consent or non-consent of DECLARANT and the names of the consenting and non-consenting mortgagees of the various units may be relied upon by all persons for all purposes.

6-1093

19. Condemnation

(A) General. Whenever all or any part of the property shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The entire award made for such taking shall be payable to the Board of the Unit Owner's Association as Trustee. Unless otherwise required by law at the time of such taking, any award made therefor shall be disbursed by the Trustee, as hereinafter provided in this Article. When used in this Article, the term "improvements" shall mean all improvements made to the property other than buildings containing Units.

(B) Common Area. (a) If the taking is confined to the Common Area and Facilities on which improvements shall have been constructed, and if at least seventy-five percent (75%) of the total vote of the Unit Owner's Association shall decide, within 60 days after such taking to replace said improvements, or any part thereof, on the remaining land included in the Common Area and Facilities and according to plans therefor to be approved by SKYLEAF ASSOCIATION, then the Board of Directors shall arrange for such replacement and the Trustee shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed as provided for in Paragraph 14 hereof; subject, however, to the right hereby reserved to the Unit Owner's Association which may be exercised by a majority of the total vote thereof to provide for the disbursement by the Trustee of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Owners or any one or more of them in amounts disproportionate to the Percentage Interest appurtenant to their Units established herein, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Owners or any one or more of them as the Unit Owner's Association may determine.

(b) In the event that at least seventy-five percent (75%) of the total vote of the Unit Owner's Association shall not decide, within 60 days after such taking, to replace such improvements, or if the taking is confined to the Common Area and Facilities on which no improvements shall have been constructed, then the Unit Owner's Association or the Trustee, as the case may be, shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken, including the right reserved to the Unit Owner's Association to provide for the disbursement by the Trustee of the Remaining proceeds held by it to the Owners in disproportionate amounts to equitably compensate the persons (natural or artificial) suffering losses.

(c) Units. If the taking involves one or more Units, any parts thereof, or the Limited Common Area and Facilities, or parts thereof, to which a Unit or Units have exclusive use, then the award shall be disbursed in the following manner:

(i) The Unit Owner or Owners whose Units, any parts thereof, or the Limited Common Area and Facilities, or parts thereof, to which a Unit or Units have exclusive use, have been taken shall be equitably compensated individually for the loss of their fee simple ownership; and

(ii) All Unit Owners shall also be equitably compensated for their undivided interest in any of the Common Areas and Facilities so taken.

(iii) If the taking involves more than two-thirds of the Units and at least seventy-five (75%) of the total vote of the Unit Owner's Association, evidenced in writing, within sixty days after the condemnation award, decides to terminate the Condominium, upon instrument filed for record in the Registry of Deeds of Avery County, North Carolina, evidencing said effect, the property and all buildings shall be removed from the provisions of the Act and the rights of owners, mortgages, and lienholders shall be as prescribed by law and this Declaration.

20. Miscellaneous Provisions.(A) DECLARANT to appoint initial Directors of the UNIT OWNER'S ASSOCIATION.

The initial Board of Directors of the UNIT OWNER'S ASSOCIATION shall consist of not less than three (3) persons appointed by DECLARANT. These persons may or may not be employees of DECLARANT, and need not own or occupy a Unit. Until these persons are replaced by elected Board members at the first Organizational Meeting of members they shall constitute the Board of Directors and exercise all powers and duties granted to the Board of Directors in the Bylaws. Said Directors are further specifically authorized to enter into a Management Agreement for the ASSOCIATION upon the terms, provisions, conditions and limitations as are herein and in the Bylaws (Schedule "C" hereof) provided for and upon such other terms and conditions as the Directors may deem to be in the best interests of the ASSOCIATION.

(B) Notices of Mortgages. Any Unit Owner who mortgages his Ownership Interest or interest therein shall notify the UNIT OWNER'S ASSOCIATION, in such manner as the UNIT OWNER'S ASSOCIATION may direct, of the name and address of his mortgagee and thereafter shall notify the UNIT OWNER'S ASSOCIATION of the payment, cancellation or other alteration in the status of such mortgages. The UNIT OWNER'S ASSOCIATION shall maintain such information in a book entitled "Mortgagees of Units".

(C) Copies of Notices to Mortgage Lenders. Upon written request to the Board, the holder of any duly recorded mortgage on any Ownership Interest or interest therein shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Ownership Interest or interest therein is subject to such mortgage.

(D) Covenants Running with the Land Each grantee of the DECLARANT, by the acceptance of a deed of conveyance for a Dwelling Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers

created or reserved by this Declaration of Unit Ownership, and all rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration of Unit Ownership were recited and stipulated at length in each and every deed of conveyance.

(E) Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a condominium project. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain or enjoin violation or to recover damages, or both, and against any Dwelling Unit to enforce any lien created hereby; and the failure or forbearance by the UNIT OWNER'S ASSOCIATION or the owner of any Dwelling Unit to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

(F) Termination. Upon the removal of the Condominium Property from the provisions of Unit Ownership Act, all easements, covenants and other rights, benefits, provisions, privileges, impositions and obligations declared in this Declaration of Unit Ownership to run with the land or any Ownership Interest or interest therein shall terminate and be of no further force and effect.

(G) Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration of Unit Ownership

shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

(H) Severability. The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration of Unit Ownership, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration of Unit Ownership.

(I) Time Limits. If any of the privileges, covenants, or rights, created by this Declaration of Unit Ownership shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living children of Gene D. Clark, an officer of the DECLARANT, and the now living children of Eugene B. Graham, III, each of Charlotte, North Carolina.

(J) Liability. (i) Neither DECLARANT, nor any subsidiary of DECLARANT, nor any employee, agent, successor or assign of DECLARANT or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with any authority granted or delegated to them or any of them by or pursuant to this Declaration of Unit Ownership.

(K) Declarant's Right to Amend Declaration with Approval of Veterans Administration or Department of Housing and Urban Development.

In the event that the Declarant shall seek to obtain approval of this Declaration and the plan of development of its property in order that the Dwelling Units constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD") or other governmental agency, it is possible that such agency or agencies will require changes in this Declaration in order to make the Dwelling Units eligible for such loans. In such event, the Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration, and the amendment shall become effective upon recordation of the amendment, along with attached evidence of approval

by the appropriate governmental agency, in the Avery County Registry. A letter from an official of the VA, HUD, or other appropriate governmental agency, requesting or suggesting an amendment, shall be sufficient evidence of the approval of VA, HUD and/or such other agency.

(L) Retained Lands. Certain other properties adjoining or nearby the Skyleaf Development Area (Schedule "A" hereof), owned by DECLARANT and not subject to this Declaration, are referred to herein as Retained Property. Said Retained Property is described on Schedule "F" annexed and attached hereto, made a part hereof and incorporated herein by reference as fully and to the same extent as though set forth herein verbatim in words and figures. At the time of the filing of this Declaration improvements have been constructed on only a portion thereof, and the DECLARANT, its successors and assigns, reserve and retain the right, privilege and option to develop and improve such Retained Property (and to sell and dispose of all or any portions thereof) at such time in the future as may be selected by DECLARANT, its successors and assigns, for such use and purpose as may be permissible under and pursuant to applicable governmental control, if any. SAID RETAINED LANDS SHALL NOT BE CONSIDERED AS A PART OF THE CONDOMINIUM PROPERTY OR THE COMMON ELEMENTS OF THE CONDOMINIUM PROJECT, AND THE SAME HAVE NOT BEEN SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP BY THE DECLARANT.

(M) Rental of Units; Future Phases. To the extent that improvements may be, or have been, constructed on portions of the Skyleaf Development Area which, if submitted to this Declaration by amendment as in this Declaration provided, would be known as future phases of this project DECLARANT, its successors and assigns, retain and reserve the right, privilege and option to rent or lease any or all of the said improvements for residential purposes, subject only to the limitations on renting of units as are prescribed and set forth in Paragraph 10 of this Declaration.

(N) First Mortgagees; Right to Examine Association Books. The holders of first mortgages or first Deeds of Trust on units (Institutional Mortgagees) shall have the right to examine the books and records of the UNIT OWNER'S ASSOCIATION.

(O) Loans to Association. DECLARANT may, at its discretion, loan funds to the UNIT OWNER'S ASSOCIATION from time to time as required, which loans shall be repayable with interest at six percent (6%) per annum as funds are available, but in no event more than one (1) year from the date of advancement of funds.

(P) Service of Notices on the Board. William B. Cocke, Jr., whose mailing address is Newland, Avery County, North Carolina 28288 is hereby appointed agent for service of process and service of all notices required to be given to the Board or the UNIT OWNER'S ASSOCIATION. Any such notices may be delivered to William B. Cocke, Jr., either personally or by certified mail, with postage prepaid, addressed to such agent. The Board may from time to time designate a substitute agent for service of process and service of all notices.

(Q) Headings. The heading to each Paragraph and each Sub-paragraph hereof is inserted only as a matter of convenience for reference and in no way defines, limits or describes the scope or intent of this Declaration of Unit Ownership nor in any way affects this Declaration of Unit Ownership.

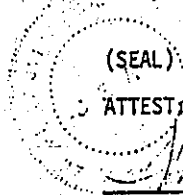
(R) Improvements under Construction (Phase I)

(i) The DECLARANT represents that it will with respect to Phase I (first 25 units) construct the improvements as outlined in Schedule "D", in substantially the same manner as represented thereon, but reserves the right to make changes, including size, materials and design in any Unit or building as it deems advisable, provided that each Unit and building shall remain substantially the same in size, location, materials, exterior appearance and other particulars, so long as such modifications do not result in an increase of obligations to any Unit Owner (other than DECLARANT) or change of any Unit Owner's ratio of undivided interest in the common Areas as stated in Exhibit "E" Column (a);

(ii) The DECLARANT reserves unto itself the right to control, as to such improvements as are under construction or which are to be constructed, all elements of construction, management and access until such improvements (or portion thereof) have been completed.

6-1100

IN WITNESS WHEREOF, the undersigned DECLARANT hereof, the
First Union National Bank of North Carolina, has caused this Declaration
of Unit Ownership to be executed by its President, attested
by its Secretary, and its common seal to be hereunto affixed, all
by authority of all of its Board of Directors duly given, this the day
and year first above written.



Secretary

FIRST UNION NATIONAL BANK OF NORTH CAROLINA
DECLARANT

BY: President

STATE OF NORTH CAROLINA

COUNTY OF Watauga

6-1106

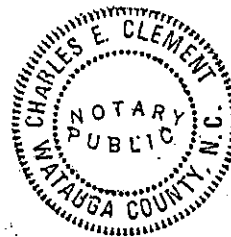
This is to certify that on this day before me personally appeared Charles E. Clement, with whom I am personally acquainted, who, being by me first duly sworn, says that Charles E. Clement is the President and that he, the said Thomas G. Brinkley is the Secretary of the FIRST UNION NATIONAL BANK OF NORTH CAROLINA, the banking association described in and which executed the foregoing DECLARATION OF UNIT OWNERSHIP; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal and the name of the corporation was subscribed thereto by the said Charles E. Clement President and the said Thomas G. Brinkley Secretary subscribed their names thereto and said common seal was affixed thereto all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal this the 17th day of

January, 1938.

Charles E. Clement
Notary Public

My commission expires: 10-21-38



North Carolina

Watauga County

The foregoing certificate of Charles E. Clement

Notary Public, Notary Public is/are, certified to be correct. This instrument was presented for registration and recorded in this office at Book 106, Page 1059.

This 18th day of January 1938 at 8:30 o'clock A.M.

SCHEDULE A

6-1102

DESCRIPTION OF SKYLEAF DEVELOPMENT AREA WITH
RESERVATION OF RIGHTS OF WAY AND EASEMENTS.

Those certain tracts or parcels of land known as the Skyleaf Development Area located at Sugar Mountain Resort, Banner Elk Township, Avery County, North Carolina, and more particularly described as follows:

TRACT I:

A 2.322 acre tract located on the Skyleaf Drive approximately 500 feet northeast of the intersection of said drive with Shelter Rock Circle, and being more particularly described as:

BEGINNING on a point on a rock, said rock being located 20 feet north of the center line of Skyleaf Drive and being located South 30°36' East, 74.31 feet from the southwest corner of Skyleaf Condominium Building C and South 62°28' West 103.65 feet from an iron set; thence from the beginning North 02°30' East, 177.33 feet to an iron set; thence North 75°27' East, 65.83 feet to a computed point, corner to Hearthridge; thence with the Hearthridge line South 65°52' East, 315.27 feet to a computed point; thence South 65°52' East, 46.60 feet to a computed point 15 feet from the center line of a proposed tram line; thence with the northwest margin (15 feet from center line) of the proposed tram line South 57°26' West, 248.88 feet to a computed point; thence South 57°26' West, 187.89 feet to an iron set; thence leaving the tram line South 89°49' West, 140.55 feet to an iron set at a 10" ash tree; thence North 06°03' East, 126.12 feet to a point in the center of Skyleaf Drive; thence North 06°03' East, 16.62 feet to an iron set; thence North 62°28' East, 103.65 feet to the BEGINNING, and containing 2.322 acres and being shown on survey #77167 prepared July 20, 1977 under the supervision of David K. Stern RLS No. L-1301, said survey being recorded in Plat Book 9, page 85, Avery County Registry.

Subject, however, to a reservation in the Grantor/Declarant, its successors or assigns for a 30 foot wide pedestrian and vehicular right of way and easement for ingress and egress through the described property for Skyleaf Drive as the same is shown on the survey referred to above, said right of way and easement for Skyleaf Drive to additionally extend from the point where the same terminates as shown on the said survey in an easterly direction to the eastern boundary of the 2.322 acre tract, the precise extended location of said right of way and easement for Skyleaf Drive to be determined at some future date by the Grantor/Declarant, its successors or assigns.

TRACT II:

A 1.575 acre tract located on Skyleaf Drive approximately 1000 feet northeast of the intersection of said drive with Shelter Rock Circle, and being more particularly described as:

BEGINNING on an iron set in the western margin of Skyleaf Drive, said iron being located North 46°13' East, 113.19 feet from the northern most corner of the Skyleaf Condominium Building E; thence from the beginning and with new lines through the First Union National Bank property North 20°11' East, 103.65 feet to an iron set; thence North 75°27' East, 65.83 feet to a computed point, corner to Hearthridge; thence with the Hearthridge line South 65°52' East, 315.27 feet to a computed point; thence South 65°52' East, 46.60 feet to a computed point 15 feet from the center line of a proposed tram line; thence with the northwest margin (15 feet from center line) of the proposed tram line South 57°26' West, 248.88 feet to a computed point; thence South 57°26' West, 187.89 feet to an iron set; thence leaving the tram line South 89°49' West, 140.55 feet to an iron set at a 10" ash tree; thence North 06°03' East, 126.12 feet to a point in the center of Skyleaf Drive; thence North 06°03' East, 16.62 feet to an iron set; thence North 62°28' East, 103.65 feet to the BEGINNING, and containing 1.575 acres and being shown on survey #77167 prepared July 20, 1977 under the supervision of David K. Stern RLS No. L-1301, said survey being recorded in Plat Book 9, page 85, Avery County Registry.

SCHEDULE A
(Cont.)

6-1163

feet to an iron set, said iron being located South 31°14' West, 83.52 feet from the southwestern most corner of Skyleaf Condominium Building D; thence with new lines through the First Union National Bank property North 03°14' East, 246.43 feet to an iron set; thence South 88°17' East, 192.75 feet to an iron set, corner to the First Union National Bank property and a 2.322 acre tract, thence with the line of the 2.322 acre tract South 02°30' West, 177.33 feet to a point on a rock in or near the northern margin of Skyleaf Drive, said rock being located South 84°21' East, 27.60 feet from the southeastern corner of Skyleaf Condominium Building B; thence South 62°28' West, 103.65 feet to an iron set; thence South 06°03' West, 16.62 feet to a point in the center of Skyleaf Drive; thence South 06°03' West, 126.12 feet to an iron set at the corner of the 2.322 acre tract and the First Union National Bank property; thence with the new line through the First Union National Bank property South 85°09' West, 184.41 feet to an iron set, corner to the First Union property and a 2.001 acre tract; thence with the line of the 2.001 acre tract South 74°46' West, 15.22 feet to a point in the center of Skyleaf Drive; thence South 74°46' West, 19.42 feet to the BEGINNING, and containing 1.575 acres and shown on survey #77167-1 prepared August 30, 1977 by David K. Stern, RLS No. L-1301, said survey being recorded in Plat Book 9, page 86, Avery County Registry.

Subject, however, to a reservation in the Grantor/Declarant, its successors or assigns for a 30 foot wide pedestrian and vehicular right of way and easement of ingress and egress through the described property for Skyleaf Drive as the same is shown on the survey referred to above.

TRACT III:

A 2.001 acre tract being located on the north and western sides of Skyleaf Drive approximately 350 feet northeast of the intersection of said drive with Shelter Rock Circle, and being more particularly described as:

BEGINNING on an iron set in the western margin of Skyleaf Drive, said iron being located North 46°13' East, 113.19 feet from the northern most corner of Skyleaf Condominium Building E; thence from the beginning and with the line of a 1.575 acre tract North 74°46' East, 19.42 feet to a point in the center of Skyleaf Drive; thence North 74°46' East 15.22 feet to an iron set; thence with new lines through the First Union National Bank property South 04°03' East, 41.37 feet to an iron set; thence South 20°30' East, 87.97 feet to an iron set; thence South 03°29' East, 97.51 feet to an iron set; thence South 15°51' West, 61.51 feet to an iron set; thence South 36°23' West, 62.38 feet to an iron set; thence South 49°36' West, 49.76 feet to an iron set; thence South 70°52' West, 81.36 feet to an iron set; thence South 86°13' West, 231.46 feet to an iron set; thence North 06°02' West, 18.84 feet to a point in the center of Skyleaf Drive; thence North 07°28' East, 12.40 feet to an iron set; thence North 54°00' East, 58.28 feet to an iron set; thence North 45°20' East, 86.20 feet to an iron set, said iron being located South 81°19' West, 119.91 feet from the southern most corner of Skyleaf Condominium Building E; thence North 12°49' East, 114.23 feet to an iron set; thence North 50°40' East, 249.48 feet to the BEGINNING, and containing 2.001 acres and shown on survey #77167-2 prepared August 30, 1977 by David K. Stern, RLS No. L-1301, said survey being recorded in Plat Book 9, page 87, Avery County Registry.

SCHEDULE A
(Cont.)

6-1104

Subject, however, to a reservation in the Grantor/Declarant, its successors or assigns for a 30 foot wide pedestrian and vehicular right of way and easement for ingress and egress through the described property for Skyleaf Drive as the same is shown on the survey referred to above.

Subject further to the 30 foot wide right of way and easement for a tram line as shown on the survey referred to above.

DESCRIPTION OF THE LAND ON WHICH THE BUILDINGS
AND IMPROVEMENTS OF SKYLEAF CONDOMINIUM
COMMUNITY ARE LOCATED.

That certain tract or parcel of land known as the Skyleaf Condominium Community located at Sugar Mountain Resort, Banner Elk Township, Avery County, North Carolina, and more particularly described as follows:

A 2.322 acre tract located on the Skyleaf Drive approximately 500 feet northeast of the intersection of said drive with Shelter Rock Circle, and being more particularly described as:

BEGINNING on a point on a rock, said rock being located 20 feet north of the center line of Skyleaf Drive and being located South 30°36' East, 74.31 feet from the southwest corner of Skyleaf Condominium Building C and South 62°28' West 103.65 feet from an iron set; thence from the beginning North 02°30' East, 177.33 feet to an iron set; thence North 75°27' East, 65.83 feet to a computed point, corner to Hearthridge; thence with the Hearthridge line South 65°52' East, 315.27 feet to a computed point; thence South 65°52' East, 46.60 feet to a computed point 15 feet from the center line of a proposed tram line; thence with the northwest margin (15 feet from center line) of the proposed tram line South 57°26' West, 248.88 feet to a computed point; thence South 57°26' West, 187.89 feet to an iron set; thence leaving the tram line South 89°49' West, 140.55 feet to an iron set at a 10" ash tree; thence North 06°03' East, 126.12 feet to a point in the center of Skyleaf Drive; thence North 06°03' East, 16.62 feet to an iron set; thence North 62°28' East, 103.65 feet to the BEGINNING, and containing 2.322 acres and being shown on survey #77167 prepared July 20, 1977 under the supervision of David K. Stern RLS No. L-1301, said survey being recorded in Plat Book 9, page 85, Avery County Registry.

Subject, however, to a reservation in the Grantor/Declarant, its successors or assigns for a 30 foot wide pedestrian and vehicular right of way and easement for ingress and egress through the described property for Skyleaf Drive as the same is shown on the survey referred to above, said right of way and easement for Skyleaf Drive to additionally extend from the point where the same terminates as shown on the said survey in an easterly direction to the eastern boundary of the 2.322 acre tract, the precise extended location of said right of way and easement for Skyleaf Drive to be determined at some future date by the Grantor/Declarant, its successors or assigns.

SCHEDULE B-1

DEED OF EASEMENT

6-1166

This DEED OF EASEMENT, made and entered into this 9th day of January, 1978, by and between First Union National Bank of North Carolina, hereinafter referred to as Grantor, and The Skyleaf Association as the same is described and defined in paragraph 3(A) of the Declaration of Unit Ownership for Skyleaf Condominium Community, a condominium, hereinafter referred to as Grantee;

W I T N E S S E T H :

The Grantor, for itself, its successors and assigns, as a part of and in consideration of the Declaration of Unit Ownership for Skyleaf Condominium Community, a condominium, does hereby give, grant and convey unto the Grantee, its successors and assigns, a perpetual right of way and easement in common with the Grantor, its successors and assigns for vehicular and pedestrian access to and from the Skyleaf Condominium Community Property as well as the Skyleaf Development Area and the Retained Property as the same are described in Schedule A of the Declaration of Unit Ownership for Skyleaf Community, a condominium, over a portion of Grantor's property located in Banner Elk Township, Avery County, North Carolina, and more particularly described as follows:

A right of way and easement 30 feet in width being described as 15 feet on each side of the following described line:

BEGINNING on the point of intersection of the center of Skyleaf Drive with the northern margin of Shelter Rock Circle (a 60 foot wide street through the Sugar Mountain property), said point being located South 58° 40' East, 15.30 feet from an iron in the northern margin of Shelter Rock Circle and also being located North 58° 40' West, 80.58 feet from another iron in the northern margin of said Shelter Rock Circle which is in turn located North 40° 32' West, 38.37 feet from the western most corner of Lot 179 of Grouse Forest II Subdivision; thence from the beginning and running with the center of Skyleaf Drive, North 04° 02' East, 26.21 feet; North 19° 14' East, 91.60 feet; North 08° 50' East, 58.32 feet; North 15° 22' East, 66.38 feet; North 29° 58' East, 39.79 feet; and North 73° 14' East, 46.38 feet to a point in the center of Skyleaf Drive in the western boundary line of the 2.001 acre tract; thence continuing with the center of said Skyleaf Drive North 86° 06' East, 223.75 feet; North 76° 02' East, 71.68 feet; North 51° 39' East, 57.29 feet; North 35° 00' East, 60.06 feet; North 16° 55' East, 56.57 feet; North 00° 53' West, 50.79 feet; North 09° 56' West, 57.60 feet; North 21° 28' West, 84.45 feet; and North 00° 20' East, 24.25 feet to a point in the center of said Skyleaf Drive in the boundary between the 2.001 acre tract on the south and a 1.575 acre tract on the North; thence continuing with the center of said Skyleaf Drive North 15° 08' East, 66.52 feet; North 35° 10' East, 36.63 feet; North 53° 44' East, 41.50 feet; North 72° 01' East, 30.56 feet; North 83° 17' East, 86.29 feet; and North 74° 48' East, 25.94 feet, to a point in the center of said Skyleaf

6-1107

To have and to hold unto the Grantee, its successors and assigns said perpetual right of way and easement in common with the Grantor, its successors and assigns for vehicular and pedestrian access to and from the Skyleaf Condominium Community Property as well as the Skyleaf Development Area and the Retained Property as the same are described in Schedule A of the Declaration of Unit Ownership for Skyleaf Condominium Community, a condominium; and the Grantor, for itself, its successors and assigns hereby warrants and covenants that it is the owner of the property, that it has the right to grant this easement, and that it will warrant and defend title to the same against the lawful claims of all persons whomsoever.

In witness whereof, the Grantor has caused this Deed of Easement to be executed by its _____ President, attested by its _____ Secretary, and its common seal to be hereunto affixed, all by authority of its Board of Directors duly given, this the day and year first above written.

FIRST UNION NATIONAL BANK
OF NORTH CAROLINA

By: _____

President



Secretary

STATE OF NORTH CAROLINA

COUNTY OF _____

This is to certify that on this day before me personally appeared _____, with whom I am personally acquainted, who, being by me first duly sworn, says that _____ is the _____ President and that _____ he, the said _____ is the _____ Secretary of the FIRST UNION NATIONAL BANK OF NORTH CAROLINA, the banking association described in and which executed the foregoing DEED OF EASEMENT; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal and the name of the corporation was subscribed thereto by the said _____ President and the said _____ President and _____ Secretary subscribed their names thereto and said common seal was affixed thereto all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal this the _____ day of January, 1978.

SCHEDULE B-2

DESCRIPTION OF PROPOSED FUTURE PHASES OF THE PROJECT.

Those certain tracts or parcels of land located at Sugar Mountain Resort, Banner Elk, Township, Avery County, North Carolina, and more particularly described as follows:

TRACT I:

A 1.575 acre tract located on Skyleaf Drive approximately 1000 feet northeast of the intersection of said drive with Shelter Rock Circle, and being more particularly described as:

BEGINNING on an iron set in the western margin of Skyleaf Drive, said iron being located North 46°13' East, 113.19 feet from the northern most corner of the Skyleaf Condominium Building E; thence from the beginning and with new lines through the First Union National Bank property North 20°11' East, 103.80 feet to an iron set; thence North 49°20' East, 52.90 feet to an iron set; thence North 68°22' East, 53.06 feet to an iron set, said iron being located South 31°14' West, 83.52 feet from the southwestern most corner of Skyleaf Condominium Building D; thence with new lines through the First Union National Bank property North 03°14' East, 246.43 feet to an iron set; thence South 88°17' East, 192.75 feet to an iron set, corner to the First Union National Bank property and a 2.322 acre tract, thence with the line of the 2.322 acre tract South 02°30' West, 177.33 feet to a point on a rock in or near the northern margin of Skyleaf Drive, said rock being located South 84°21' East, 27.60 feet from the southeastern corner of Skyleaf Condominium Building B; thence South 62°28' West, 103.65 feet to an iron set; thence South 06°03' West, 16.62 feet to a point in the center of Skyleaf Drive; thence South 06°03' West, 126.12 feet to an iron set at the corner of the 2.322 acre tract and the First Union National Bank property; thence with the new line through the First Union National Bank property South 85°09' West, 184.41 feet to an iron set, corner to the First Union property and a 2.001 acre tract; thence with the line of the 2.001 acre tract South 74°46' West, 15.22 feet to a point in the center of Skyleaf Drive; thence South 74°46' West, 19.42 feet to the BEGINNING, and containing 1.575 acres and shown on survey #77167-1 prepared August 30, 1977 by David K. Stern, RLS No. L-1301, said survey being recorded in Plat Book 9, page 86, Avery County Registry.

Subject, however, to a reservation in the Grantor/Declarant, its successors or assigns for a 30 foot wide pedestrian and vehicular right of way and easement of ingress and egress through the described property for Skyleaf Drive as the same is shown on the survey referred to above.

TRACT II:

A 2.001 acre tract being located on the north and western sides of Skyleaf Drive approximately 350 feet northeast of the intersection of said drive with Shelter Rock Circle, and being more particularly described as:

BEGINNING on an iron set in the western margin of Skyleaf Drive, said iron being located North 46°13' East, 113.19 feet from the northern most corner of Skyleaf Condominium Building E; thence

Bank property South 04°03' East, 41.37 feet to an iron set; thence South 20°30' East, 87.97 feet to an iron set; thence South 03°29' East, 97.51 feet to an iron set; thence South 15°51' West, 61.51 feet to an iron set; thence South 36°23' West, 62.38 feet to an iron set; thence South 49°36' West, 49.76 feet to an iron set; thence South 70°52' West, 81.36 feet to an iron set; thence South 86°13' West, 231.46 feet to an iron set; thence North 06°02' West, 18.84 feet to a point in the center of Skyleaf Drive; thence North 07°28' East, 12.40 feet to an iron set; thence North 54°00' East, 58.28 feet to an iron set; thence North 45°20' East, 86.20 feet to an iron set, said iron being located South 81°19' West, 119.91 feet from the southern most corner of Skyleaf Condominium Building E; thence North 12°49' East, 114.23 feet to an iron set; thence North 50°40' East, 249.48 feet to the BEGINNING, and containing 2.001 acres and shown on survey #77167-2 prepared August 30, 1977 by David K. Stern, RLS No. L-1301, said survey being recorded in Plat Book 9, page 87, Avery County Registry.

Subject, however, to a reservation in the Grantor/Declarant, its successors or assigns for a 30 foot wide pedestrian and vehicular right of way and easement for ingress and egress through the described property for Skyleaf Drive as the same is shown on the survey referred to above.

Subject further to the 30 foot wide right of way and easement for a tram line as shown on the survey referred to above.

SCHEDULE "C"

TO DECLARATION OF UNIT OWNERSHIP FOR SKYLEAF CONDOMINIUM COMMUNITY, a
CONDOMINIUM, DATED THE 9th DAY OF January, 1978.

BYLAWS OF THE SKYLEAF ASSOCIATION

6-1110

ARTICLE I

THE ASSOCIATION

Section 1. Name and Nature of Association. The Association shall be an unincorporated association and shall be called "The SKYLEAF ASSOCIATION" (herein as "the Association"). The business and property of SKYLEAF CONDOMINIUM COMMUNITY, a Condominium, shall be managed and directed by the Board of Directors of the Association.

Section 2. Membership. Each Unit Owner upon acquisition of an Ownership Interest in a Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition of such Unit Owner of his Ownership Interest, at which time the new Unit Owner shall automatically become a member of the Association.

Section 3. Voting Rights. Each member owning the entire Ownership Interest in a Unit shall be entitled to exercise that percentage of the total voting power of the Association which is equivalent to the percentage of interest of such member's Unit in the Common Areas and facilities (herein as "Common Elements"). If two or more persons, whether fiduciaries, tenants in common, tenants by the entirety or otherwise, own an interest in the Ownership Interest in a Unit, there shall be designated one person with respect to such Ownership Interest who shall be entitled to vote at any meeting of the Association. Such person is sometimes hereinafter referred to as "the voting member." Such voting member may be one of the group composed of all of the owners of the Ownership Interest in a Unit or may be some other person designated by such owners to act as proxy on their behalf. Such designation shall be in writing to the Board and shall be revocable at any time by written notice to the Board signed by each of the owners who signed the designation.

Section 4. Proxies. Members may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Board and shall be revocable

at any time by actual notice to the Board by the member or members making such designation. Notice to the Board in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. 6-1111

Section 5. Meetings of Members.

(a) Organizational Meeting. The initial meeting of the Unit Owners to organize the Condominium and elect the initial Board of Directors shall be held upon at least seven (7) but not more than sixty (60) days written notice given by First Union National Bank of North Carolina, their successors or assigns, when the initial sale of 90% of the Units (whether the units are the initial units or units added to the condominium property as provided in the Declaration) has been consummated (or upon the sale of less units if so decided by First Union National Bank of North Carolina) or upon the passage of three (3) years after the date of filing the Declaration to which these By-Laws are attached, whichever shall first occur.

(b) Annual Meeting. The annual meeting of members of the Association for the election of members of the Board, the consideration of reports to be laid before such meeting, and the transaction of such other business as may properly be brought before such meeting shall be held at the office of the Association, or at such other place upon or in close proximity to the Condominium Property as may be designated by the Board and specified in the notice of such meeting, at 10:00 o'clock a.m., eastern time or at such other time as may be designated by the Board and specified in the notice of such meeting. The first annual meeting of members of the Association shall be held one year following the first Organizational Meeting on the second Saturday of the same month of the Organizational Meeting and successive annual meetings of members of the Association shall be held on the second Saturday of the same month in succeeding years, if not a legal holiday and, if a legal holiday, then on the next succeeding Saturday.

(c) Special Meetings. After the first Organizational Meeting special meetings of the members shall be called upon the written request of the President of the Association or, in case of the President's absence, death or disability, the Vice President of the Association authorized to exercise the authority the President, the Board by action at a meeting, or a majority members acting without a

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meeting, or of the members entitled to exercise at least twenty-five percent (25%) of the voting power. Calls for such meeting shall specify the time, place and purpose thereof. No business other than that specified in the call shall be considered at any special meeting.

(d) Notices of Meetings. Not less than seven (7) nor more than sixty (60) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by these Bylaws to give such notice. The notice shall be given by personal delivery or by United States mail to each member of the Association. If mailed, the notice shall be addressed to the members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purpose of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any member of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at any such meeting without protesting, prior to or at the commencement of the meeting, lack of proper notice shall be deemed to be a waiver of notice by such member of such meeting.

(d) Quorum; Adjournment. At any meeting of the members of the Association, the members of the Association entitled to exercise a majority of the voting power of the Association present in person or by proxy shall constitute a quorum for such meeting; provided, however, that no action required by law, by the Declaration or by these Bylaws to be authorized or taken by a designated percentage of the voting power of the Association may be authorized or taken by a lesser percentage; and provided further, that the members of the Association entitled to exercise a majority of the voting power represented at a meeting of members, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned for lack of a quorum or without completing the business scheduled to come before the meeting, notice of the time and place to which such meeting is adjourned need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

(e) Order of Business. The order of business at all meetings of members of the Association shall be as follows:

- (1) Calling of meeting to order
- (2) Proof of notice of meeting or waiver of notice
- (3) Reading of minutes of preceding meeting
- (4) Reports of officers
- (5) Reports of committees
- (6) Election of inspectors of election
- (7) Election of members of Board
- (8) Unfinished and/or old business
- (9) New business
- (10) Adjournment

Section 6. Actions Without a Meeting. All actions, except removal of a Board member, which may be taken at a meeting of the Association, may be taken without a meeting with the approval of, and in a writing or writings signed by members of the Association having the percentage of voting power required to take such action if the same were taken at a meeting. Such writings shall be permanently filed with the Secretary of the Association.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number and Qualification. Except as provided in Section 11 of this Article II, the Board shall consist of not less than three nor more than seven persons, the exact number of directors required from time to time to be fixed by Resolution of the Board of Directors of this Association. Except as provided in Section 11 of this Article II all persons nominated or elected to the Board shall be a Unit Owner and Occupant, officers of a corporation or other business entity owning an individual condominium unit or a partner in a partnership owning an individual condominium parcel.

Section 2. Election of Board; Vacancies. Board members shall be elected at the first Organizational Meeting, the annual meeting of members of the Association or at a special meeting called for such purpose. At a meeting of members of the Association at which Board members are to be elected, except as provided in Section 11 of this Article II, only persons nominated as candidates shall be eligible for election as Board members and the candidates receiving the greatest number of votes shall be elected. In the event of the occurrence of any vacancy or vacancies in the Board, however caused, the remaining Board members, though less than a majority of the total authorized number of

Board members, may, by vote of a majority of their number, fill any such vacancy for the unexpired term.

Section 3. Term of Office; Resignations. Each Board member shall hold office for the term stated below or until his successor is elected, or until his earlier resignation, removal from office or death. Any Board member may resign at any time by oral statement to that effect made at a meeting of the Board or in a writing to that effect delivered to the Secretary of the Association, such resignation to take effect immediately or at such other time as the Board member may specify. Members of the Board shall serve without compensation. At the first annual meeting the members shall elect one-third (1/3) of the directors for a term of one year, one-third (1/3) of the directors for a term of two years and one-third (1/3) or the remaining number of directors for a term of three years; and at each annual meeting thereafter the members shall elect one-third (1/3) of the directors for a term of three years. In the event of any increase in the number of directors, the additional directors shall be elected so that each respective "third" of directors shall be increased equally, as nearly as may be, and, in the event of any decrease in the number of directors, each respective "third" of directors shall be decreased equally, as nearly as may be.

Section 4. Organizational Meeting. Immediately after each annual meeting of members of the association, the newly elected Board members and those Board members whose terms hold over shall hold an organizational meeting for the purpose of electing officers and transacting any other business. Notice of such meetings need not be given.

Section 5. Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined by a majority of the Board, but at least four such meetings shall be held during each fiscal year.

Section 6. Special Meetings. Special meetings of the Board of Directors shall be held at any time upon call by the President or any two (2) Board members. Written notice of the time and place of each such meeting shall be given to each Board member either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purpose of the meeting; PROVIDED, HOWEVER, that attendance of any Board member at any such

meeting without protesting, prior to or at the commencement of the meeting, lack of proper notice shall be deemed to be a waiver by him or her of notice of such meeting, and such notice may be waived in writing either before or after the holding of such meeting, by any Board member, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organizational, regular or special meeting.

Section 7. Quorum; Adjournment. A quorum of the Board of Directors shall consist of a majority of the Board members then in office; provided that a majority of the Board members present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned for lack of a quorum or without completing the business scheduled to come before the meeting, notice of the time and place to which such meeting is adjourned need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration of Unit Ownership or in these Bylaws.

Section 8. Powers and Duties. Except as otherwise provided by law, the Declaration of Unit Ownership or these Bylaws, all power and authority of the Association shall be exercised by the Board of Directors. In carrying out the purposes of the Condominium Property and subject to the limitations prescribed by law, the Declaration of Unit Ownership or these Bylaws, the Board, for and on behalf of the Association, may

(a) purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer, and dispose of property of any description or any interest therein;

(b) make contracts;

(c) effect insurance;

(d) borrow money, and issue, sell and pledge notes, bonds, and other evidences of indebtedness of the Association;

(e) levy assessments against Unit Owners;

(f) employ lawyers and accountants to perform such legal and accounting services as the Board may authorize; and

(g) do all things permitted by law and exercise all power and authority within the purposes stated in these Bylaws, or the Declaration or incidental thereto;

(h) cause the association to be incorporated and adopt a seal;

(i) in addition to the foregoing the Board of Directors shall have the following duties and powers:

(A) Duties. It shall be the duty of the Board of Directors to:

(i) cause to be kept a complete record of all its acts and Association affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;

(ii) supervise all officers, agents and employees of this Association; and to see that their duties are properly performed;

(iii) as more fully provided in the Declaration of Unit Ownership and/or these Bylaws, to:

(1) establish the annual assessment period and fix the amount of the annual assessment against each member at least thirty (30) days in advance of each annual assessment period;

(2) foreclose the lien against any Unit or property of a member for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same; and

(3) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period.

(iv) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(v) procure and maintain adequate liability and hazard insurance on property, if any, owned by the Association;

(vi) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate and as is required by the Declaration of Unit Ownership and/or these Bylaws; and

(vii) cause the Condominium Property to be maintained.

(B) Powers: The Board of Directors shall have power to:

(i) adopt and publish rules and regulations governing the use of the facilities of the Association, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(ii) suspend the voting rights and right to use of the facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(iii) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, or the Declaration of Unit Ownership;

(iv) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(v) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 8.1 Management Agent. The Board of Directors shall employ for the Association a Management Agent (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize, including, but not necessarily limited to, the duties set out in subsections (a) through (d) of this Section 8.1. A copy of all such agreements shall be available to every unit owner. Any and all Management Agreements entered into by the Board shall provide that said Management Agreement, and any succeeding Management Agreements, may be cancelled prior to the expiration thereof upon (i) thirty (30) days prior written notice and (ii) an affirmative vote of sixty percent (60%) of the voting power of the Association. Except as herein provided, no such Management Agreement shall be cancelled prior to effecting by the Association or its Board of Directors a new Management Agreement, which new Management Agreement will become effective immediately upon the cancellation of the then existing Management Agreement. It shall be the duty of the Association or its Board of Directors to effect a new Management Agreement upon the expiration or cancellation of any existing Management Agreement unless self-management is undertaken as herein provided. Any and all Management Agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this size and type. The Association may undertake self-management upon the affirmative vote of 75% of the voting power of the Association and upon the approval of 100% of the institutional lenders holding institutional mortgages upon the units covered hereby. The Association shall not employ any new Management Agent without thirty (30) days prior written notice to the holders of all first mortgages (institutional mortgages) on the condominium units. Said Management Agent, subject to supervision by the Board of Directors, shall provide for the:

(a) Care, upkeep and surveillance of the condominium project and its general and limited Common Elements and services in a manner consistent with law and the provisions of these Bylaws and the Declaration of Unit Ownership.

(b) Collection of assessments and/or carrying charges from the members and for the assertion and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of the condominium project and for the proper care of the general or limited common elements and to provide services for the project in a manner consistent with law and the provisions of these Bylaws and the Declaration of Unit Ownership.

(d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the project and the use of the general and limited common elements to prevent unreasonable interference with the use and occupancy of the condominium project and of the general and limited Common Elements by the members, all of which shall be consistent with law and the provisions of these Bylaws and the Declaration of Unit Ownership.

Section 9. Removal of Members of the Board. Except for Board members appointed pursuant to Section 11 of this Article II, at any regular or special meeting of members of the Association duly called, at which a quorum shall be present, any one or more of the Board members may be removed with or without cause by the vote of the members of the Association entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, and a successor or successors to such Board member or members so removed shall then and there be elected to fill the vacancy or vacancies thus created. Any Board member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

Section 10. Fidelity Bonds. The Board shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate Fidelity Bonds in accordance with the requirements of the Declaration of Unit Ownership. The premiums

for such bonds shall be paid by the Association and shall be a Common Expense.

Section 11. Initial Board of Directors; Declarants' Sell-out Period. From the time of formation of this Association until the first Organizational Meeting of members the Board shall consist of not less than three (3) persons appointed by FIRST UNION NATIONAL BANK OF NORTH CAROLINA ("Declarant"). These persons may or may not be employees of Declarant and need not own or occupy a Unit. Until these persons are replaced by elected Board members they shall constitute the Board of Directors and exercise all powers and duties granted to the Board of Directors in these Bylaws. Said Directors are further specifically authorized to enter into a Management Agreement for the Association upon the terms, provisions, conditions and limitations as are herein and in the Declaration of Unit Ownership provided for and upon such other terms and conditions as the Directors may deem to be in the best interest of the Association.

ARTICLE III

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the Organizational Meeting or the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many 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 only.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration of Unit Ownership. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE IV

OFFICERS

Section 1. Election and Designation of Officers. The Board shall elect a President and a Vice President, each of whom shall be a member of the Board. The Board shall appoint a Secretary and a Treasurer who may or may not be members of the Board but who shall be members of the Association and the Board may also appoint an Assistant Treasurer and Assistant Secretary and such other officers as in their judgment may be necessary who may or may not be members of the Board but who are members of the Association. NOTWITHSTANDING the requirements of this section, members of the Board of Directors who are appointed or designated pursuant to the provisions of Article II, Section 11 of these Bylaws shall be deemed qualified to serve as officers of the Association if they are so elected or appointed by the Board.

Section 2. Term of Office: Vacancies. The officers of the Association shall hold office until the next organizational meeting of the Board and until their successors are elected, except in cases of resignation, removal from office or death. The Board may remove any officer at any time with or without cause by a majority vote of the Board members then in office. Any vacancy in any office may be filled by the Board.

Section 3. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of members of the Association and shall preside at all meetings of the Board. Subject to directions of the Board, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board or otherwise be provided for in the Declaration of Unit Ownership or in these Bylaws.

Section 4. Vice President. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board. 8-11-21

Section 5. Secretary. The Secretary shall keep the minutes of meetings of the members of the Association and of the Board. He shall keep such books as may be required by the Board, shall give notices of meetings of members of the Association and of the Board required by law, the Declaration of Unit Ownership or these Bylaws, and shall have such authority and shall perform such other duties as may be determined by the Board or otherwise be provided for in the Declaration of Unit Ownership or these Bylaws.

Section 6. Treasurer. The Treasurer shall receive and have in charge all money, bills, notes and similar property belonging to the Association, and shall do with the same as may be directed by the Board. He shall keep accurate financial accounts and hold the same open for the inspection and examination of the Board and shall have such authority and shall perform such other duties as are determined by the Board.

Section 7. Other Officers. The Assistant Secretaries and Assistant Treasurers, if any, and any other officers whom the Board may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board.

Section 8. Delegation of Authority and Duties. The Board is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein. The office of Treasurer may be held by any other officer of the Association, except that the President shall not also hold the office of Treasurer.

ARTICLE V

GENERAL POWERS OF THE ASSOCIATION

Section 1. Common Expenses. The Association, for the benefit of all the Unit Owners, shall pay all Common Expenses arising with respect to, or in connection with, the Condominium Property, including, without limitation, the following:

(a) Utility Service for Common Areas and Facilities. The cost of water, waste removal, electricity, telephone, heat, power or any

other utility service for the Common Elements and, to the extent that the same are not separately metered or billed to each Condominium Unit, for the Condominium Units, excluding the Limited Common Areas and Facilities (herein as Limited Common Elements). Upon determination by the Board that any Unit Owner is using excessive amounts of any utility services which are Common Expenses, the Association shall have the right to levy special assessments against such Unit Owner to reimburse the Association for the expense incurred as a result of such excessive use;

(b) Casualty Insurance. The premium upon a policy or policies of Casualty Insurance insuring the Common Elements, with extended coverage, vandalism and malicious mischief endorsements, as provided in the Declaration, the amount of which insurance shall be reviewed annually;

(c) Liability Insurance. The premium upon a policy or policies of insurance for the Association, the members of the Board, the Unit Owners and the Occupants against liability for personal injury, disease, illness or death or for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Elements, as provided in the Declaration, and the limits of such policy shall be reviewed annually;

(d) Workmen's Compensation. Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) Wages and Fees for Services. The wages and/or fees for services, of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Condominium Property, the services of any person or persons required for the maintenance or operation of the Condominium Property (including a recreation director, if any), and legal and/or accounting services necessary or proper in the operation of the Condominium Property or the enforcement of the Declaration of Unit Ownership and these Bylaws and for the organization, operation and enforcement of the rights of the Association;

(f) Care of Common Areas and Facilities (the Common Elements). The cost of landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintaining, decorating, repairing and replacing of the Common Elements, excluding the Limited Common Elements.

(g) Exterior Maintenance. The cost of exterior maintenance in accordance with the following provisions:

(i) In addition to Maintenance upon the Common Elements, the Association shall provide exterior maintenance upon each unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens and screen doors, exterior door and window fixtures and other hardware or decks, balconies or patios, except that such exterior maintenance shall include painting of decks, balconies and patios.

(ii) In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, or guests, or invitees, such negligent or willful act to be determined by the Board of Directors acting in good faith after hearing all available facts, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such unit is subject.

(iii) In the event an Owner of any unit shall fail to maintain the premises and the improvements situated thereon in a manner reasonably satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said unit and to repair, maintain, and restore the unit and the exterior of the building and any other improvements erected thereon. The cost of such maintenance shall be added to and become part of the assessment to which such unit is subject.

(h) Additional Expenses. The cost of any materials, supplies, furniture, labor, services, maintenance, repairs, replacements, structural alterations and insurance, which the Association is required to secure or pay for pursuant to the terms of the Declaration and these Bylaws or by law or which the Association deems necessary or proper for the maintenance and operation of the Condominium Property as a first class Condominium Project or for the enforcement of the Declaration of Unit Ownership and these Bylaws;

(i) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance which may in the opinion of the Association or the Board constitute a lien against the Condominium Property or against the Common Elements, rather than merely against the interests therein of such Unit Owner responsible for the existence of such lien or encumbrances; provided, however, that the Association shall levy a special assessment against such Unit Owner to recover the amount expended in discharging such lien or encumbrance.

(j) Certain Maintenance of Units. The cost of the maintenance and repair of the Limited Common Elements and of any Unit, if such maintenance or repair is necessary, in the discretion of the Association or the Board, to prevent damage to or destruction of any part of the Common Elements, or any other Unit, and the Unit Owner having the exclusive right to use such Limited Common Elements or owning such Unit requiring such maintenance or repair shall have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Unit Owner; provided, however, that the Association shall levy a special assessment against such Unit Owner to recover the amount expended for such maintenance or repair.

(k) The cost (whether by voluntary contribution, assessment or otherwise) of maintaining roads leading to the condominium property.

(l) All invoices, vouchers, bills or other requests for payment from Association funds, together with payment vouchers therefore, must be approved in writing by the President or Treasurer of the Association prior to payment.

Section 2. Association's Right to Enter Units. The Association or its agents may enter any Unit or portion of the Limited Common Elements when necessary in connection with any maintenance, repair or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practical, and any damage

caused thereby shall be repaired by the Association. The Association reserves the right to retain a pass key to each Unit and no locks or other devices shall be placed on the doors to the Units to obstruct entry through the use of such pass key. In the event of any emergency or manifest danger originating in or threatening any Unit at a time when required alterations or repairs are scheduled, the management or its representatives or any other person designated by the Board may enter the Unit immediately, whether the Unit Owner is present or not.

Section 3. Capital Additions and Improvements. Whenever, in the judgment of the Board, the Common Elements shall require additions, alterations or improvements (as opposed to maintenance, repair and replacement) costing in excess of Five Thousand Dollars (\$5,000.00) and the making of such additions, alterations or improvements shall have been approved by Unit Owners entitled to exercise not less than two-thirds (2/3) of the voting power of the Association, the Board shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing Five Thousand Dollars (\$5,000.00) or less may be made by the Board without approval of the Unit Owners, and the cost thereof shall constitute a common expense, and the Association may specially assess therefor if the funds are not otherwise available.

Section 4. Rules and Regulations. The Association, by vote of the members entitled to exercise a majority of the voting power of the Association, or the Board of Directors thereof may adopt such reasonable Rules and Regulations, and from time to time amend the same, as it or they may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the Unit Owners and Occupants. Written notice of such Rules and Regulations shall be given to all Unit Owners and Occupants and the Condominium Property shall at all times be maintained subject to such Rules and Regulations. In the event such Rules and Regulations shall conflict with any provisions of the Declaration of Unit Ownership or of these Bylaws, the provisions of the Declaration and of these Bylaws shall govern.

Section 5. Special Services. The Association may arrange for special services and facilities for the benefit of such Unit Owners and Occupants as may desire to pay for the same, including, without limitation,

the cleaning, repair and maintenance of Units and special recreational, education or medical facilities. The cost of any such special services or facilities shall be determined by the Association and may be charged directly to participating Unit Owners as a special assessment or paid by the Association as a Common Expense, in which case a special assessment shall be levied against such participating Unit Owners to reimburse the Association therefore.

Section 6. Delegation of Duties. Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating in accordance with the Declaration of Unit Ownership, to persons, firms or corporations, including any manager or managing agent, such duties and responsibilities of the Association as the Board shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

ARTICLE VI

FINANCES OF ASSOCIATION

Section 1. Preparation of Estimated Budget. Each year on or before September 1st, the Association shall estimate the total amount necessary to pay all the Common Expenses for the next calendar year together with reasonable amounts considered by the Association to be necessary as reserves for contingencies and replacements, and shall on or before September 15th notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemizations thereof. The "estimated cash requirement" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements. On or before October 1st of the ensuing year and the 1st of each and every month of said year, each Unit Owner shall be obligated to pay to the Association as it may direct one-twelfth (1/12th) of the assessment made pursuant to this Section. On or before the date of each annual meeting, the Association shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited, according to each Unit Owner's percentage of

ownership in the Common Elements, to the next monthly installments due from Unit Owners under the current year's estimate, until exhausted, and any net shortage shall be added, according to each Unit Owner's percentage of ownership in the Common Elements, to the installments due in the succeeding six months after rendering the accounting.

Section 2. Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, such extraordinary expenditures shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements. The Association shall serve notice of such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessments shall be payable with the next regular monthly payment becoming due to the Association not less than ten (10) days after delivery or mailing of such notice of further assessment. All unit Owners shall be obligated to pay the adjusted monthly amount.

Section 3. Budget for First Year. The budget for the remainder of the calender year 1977 and for the calendar year 1978 shall be determined by the Board appointed by Declarant.

Section 4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or deliver to the Unit Owners the annual or adjusted estimate shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed and/or delivered.

Section 5. Books and Records of Association. The Association shall keep full and correct books of account and the same shall be open for inspection by any Unit Owner or his representative duly authorized

in writing, at such reasonable time or times during normal business hours as may be requested by such Unit Owner. Upon ten (10) days notice to the Board, any Unit Owner and/or the holder of a first mortgage or Deed of Trust on any unit, shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

Section 6. Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all of the Unit Owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the Unit Owners in proportion to each Unit Owner's percentage ownership in the Common Elements.

Section 7. Annual Audit. The books of the Association shall be audited once a year by the Board and such audit shall be completed prior to each annual meeting. In addition, an outside audit shall be made at least once during each calendar year.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Indemnification of Board Members and Officers. Each Board member and officer of the Association, and each former Board member and former officer of the Association, shall be indemnified by the Association against the cost and expenses reasonably incurred by him in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which he is or may be made a party by reason of his being or having been such Board member or officer of the Association (whether or not he is a Board member or officer at the time of incurring such costs and expenses), except with respect to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for misconduct or negligence in the performance of his duty as such Board member or officer. In case of the settlement of any action, suit or proceeding to which any Board member or officer of the Association, or any former Board member or officer of the Association, is made a party or which may be threatened to be brought against him by reason of his being or having been a Board member or officer of the Association, he shall be indemnified by the Association against the

costs and expenses (including the cost of settlement) reasonably incurred by him in connection with such action, suit or proceeding (whether or not he is a Board member or officer at the time of incurring such costs and expenses), if (a) the Association shall be advised by independent counsel that, in such counsel's opinion, such Board member or officer did not misconduct himself or was not negligent in the performance of his duty as such Board member or officer with respect to the matters covered by such action, suit or proceeding, and the cost to the Association of indemnifying such Board member or officer (and all other Board members and officers, if any, entitled to indemnification hereunder in such case) if such action, suit or proceedings were carried to a final adjudication in their favor could reasonably be expected to exceed the amount of costs and expenses to be reimbursed to such Board members and officers as a result of such settlement, or (b) disinterested Association members entitled to exercise a majority of the voting power shall, by vote at any annual or special meeting of the Association, approve such settlement and the reimbursement to such Board member or officer of such costs and expenses. The phrase "disinterested members" shall mean all members of the Association other than (i) any Board member or officer of the Association who at the time is or may be entitled to indemnification pursuant to the foregoing provisions, (ii) any corporation or organization of which any such Board member or officer owns of record or beneficially ten percent (10%) or more of any class of voting securities, (iii) any firm of which such Board member or officer is a partner, and (iv) any spouse, child, parent, brother or sister of any such Board member or officer. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such Board member or officer, and shall not be exclusive of other rights to which any Board member or officer may be entitled as a matter of law or under the Declaration of Unit Ownership, any vote of the Association members or any agreement.

Section 2. Amendments. Provisions of these Bylaws may be amended by the Unit Owners at a meeting held for such purpose by the affirmative vote of those unit owners entitled to exercise not less than seventy-five percent (75%) of the voting power; provided that Amendment of Article II, Section 11 shall require the affirmative vote of those unit owners entitled to exercise not less than one hundred percent (100%) of the

voting power. Any such amendment shall not be effective until it is set forth in an Amendment to the Declaration, duly recorded, as required under Chapter 47A of the North Carolina General Statutes (the Unit Ownership Act.) No such amendment shall conflict with the provisions of the Declaration or of the Unit Ownership Act. All Unit Owners shall be bound by an amendment upon the same being passed and duly set forth in an amended Declaration duly recorded.

Section 3. Definitions. The terms used in these Bylaws (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of these Bylaws and of any amendment hereto shall have the respective meanings specified in Paragraph 3 of the Declaration of Unit Ownership.

SCHEDULE D

DESCRIPTION OF THE CONDOMINIUM PROJECT.

The multi-unit buildings, dwelling units, layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, and location of the common areas and facilities affording access to each unit of Skyleaf Condominium are more particularly shown and described on the drawings of said buildings and units prepared by James William Ritter, Registered Architect, recorded in Condominium Book 3, page 1, Avery County Registry and on the "as built" survey by David K. Stern, Registered Land Surveyor, recorded in Plat Book 9, page 85, Avery County Registry.

SCHEDULE E

RATIO OF UNDIVIDED INTEREST IN COMMON AREAS AND FACILITIES, UNIT DESIGNATION, LOCATION, APPROXIMATE AREA, NUMBER OF ROOMS AND IMMEDIATE COMMON AREA TO WHICH UNITS HAVE ACCESS.

The ratio of undivided interest appurtenant to each unit in the common area and facilities, and limited common area and facilities, has been determined by the ratio of the fair market value of the subject unit as of the date of this Declaration as the same bears to the aggregate fair market value of all units on said date, all of which are set forth immediately below, along with the unit designation, unit location, approximate area, number of rooms, and immediate common area to which the unit has access:

UNIT DESIGNATION	UNIT LOCATION (BUILDING)	APPROXIMATE AREA (SQUARE FT)	NUMBER OF ROOMS	IMMEDIATE COMMON AREA TO WHICH UNIT HAS ACCESS	RATIO OF UN- DIVIDED INTEREST IN COMMON AREAS AND FACILITIES	
					A**	B***
1	A	888	6	*	3.65%	1.22%
2	A	640	4	*	3.04%	1.01%
3	A	888	6	*	3.59%	1.20%
4	A	640	4	*	2.99%	.99%
5	A	1251	8	*	4.26%	1.42%
6	A	1317	8	*	4.37%	1.45%
7	A	640	4	*	2.87%	.96%
8	A	1251	8	*	4.04%	1.34%
9	A	1317	8	*	4.31%	1.44%
10	B	1317	8	*	4.53%	1.51%
11	B	888	6	*	3.65%	1.22%
12	B	888	6	*	3.76%	1.25%
13	C	888	6	*	3.76%	1.25%
14	C	1317	8	*	5.20%	1.73%
15	C	1317	8	*	5.41%	1.80%
16	C	1251	8	*	4.86%	1.62%
17	C	640	4	*	3.15%	1.05%
18	C	640	4	*	3.04%	1.01%
19	C	888	6	*	4.15%	1.38%
20	C	888	6	*	3.98%	1.35%
21	C	888	6	*	3.59%	1.20%
22	C	1317	8	*	5.09%	1.70%
23	C	1317	8	*	5.03%	1.67%
24	C	1251	8	*	4.69%	1.56%
25	C	640	4	*	2.99%	.99%
26	D	888	6	*		1.64%
27	D	640	4	*		1.03%
28	D	828	6	*		1.60%
29	D	888	6	*		1.62%
30	D	640	4	*		1.01%
31	D	828	6	*		1.55%
32	D	789	6	*		1.60%
33	D	789	6	*		1.58%
34	D	789	6	*		1.62%

UNIT DESIGNATION	UNIT LOCATION (BUILDING)	APPROXIMATE AREA (SQUARE FT)	NUMBER OF ROOMS	IMMEDIATE COMMON AREA TO WHICH UNIT HAS ACCESS	RATIO OF UN- DIVIDED INTERE IN COMMON ARE/ AND FACILITIES	
					A**	B***
41	D	888	6	*		1.58%
42	D	640	4	*		.97%
43	D	1251	8	*		1.80%
44	D	1317	8	*		1.84%
45	D	1317	8	*		1.88%
46	D	1251	8	*		1.82%
47	D	640	4	*		.98%
48	E	888	6	*		1.69%
49	E	640	4	*		1.03%
50	E	828	6	*		1.68%
51	E	888	6	*		1.63%
52	E	640	4	*		1.01%
53	E	828	6	*		1.58%
54	E	789	6	*		1.65%
55	E	789	6	*		1.64%
56	E	789	6	*		1.69%
57	E	828	6	*		1.68%
58	E	789	6	*		1.73%
59	E	828	6	*		1.69%
60	E	640	4	*		1.03%
61	E	640	4	*		.99%
62	E	888	6	*		1.73%
63	E	888	6	*		1.71%
64	E	640	4	*		.98%
65	E	1251	8	*		1.95%
66	E	1317	8	*		2.02%
67	E	1317	8	*		2.10%
68	E	1251	8	*		1.99%
69	E	640	4	*		.98%

* Adjacent common area as shown on Schedule D.

** Column A identifies the ratio of undivided interest in common areas and facilities of the twenty-five (25) units subject to the Declaration.

*** Column B identifies the minimal ratio of undivided interest in common areas and facilities of the Skyleaf Condominium community in the event all proposed phases are subjected to this Declaration. See paragraph 7A of the Declaration.

SCHEDULE E-1

MONTHLY PAYMENT TOWARDS MAXIMUM ANNUAL
ASSESSMENT FOR EACH DWELLING UNIT UNTIL
SEPTEMBER 1, 1978.

<u>UNIT DESIGNATION</u>	<u>UNIT LOCATION (BUILDING)</u>	<u>MONTHLY PAYMENT</u>
1	A	\$ 50
2	A	45
3	A	50
4	A	45
5	A	56
6	A	56
7	A	45
8	A	56
9	A	56
10	B	56
11	B	50
12	B	50
13	C	50
14	C	56
15	C	56
16	C	56
17	C	45
18	C	45
19	C	50
20	C	50
21	C	50
22	C	56
23	C	56
24	C	56
25	C	45

SCHEDULE F

RETAINED PROPERTY.

The "Retained Property" adjoining or nearby the Skyleaf Development Area (described in Schedule A) owned by First Union National Bank of North Carolina, the Declarant, which is not subject to the Declaration of Unit Ownership for Skyleaf Condominium Community, a Condominium, is located in Banner Elk Township, Avery County, North Carolina, and more particularly described as follows:

A 44.432 acre tract, except that portion excluded below, being located on the northeastern side of Shelter Rock Circle, 500 feet north of intersection of Little Sugar Lane with said road; being bounded by Lots 179, 279, 281 and 284 of Grouse Forest II and other Sugar Mountain Property; AND being more particularly described as:

BEGINNING on an iron in the northeastern margin (30 feet from the center line of Shelter Rock Circle), said iron being the northwestern corner of Lot 179, Grouse Forest II (grid co-ordinates N875989.18 E-1154192.67), and being located North 38°27' West 101.11 feet from an iron corner to Lot 178 and 179, and running with the northern margin of Shelter Rock Circle the following courses and distances: North 40°32' West 38.37 feet to an iron; North 58°40' West 95.88 feet to an iron; South 88°33' West 40.93 feet to an iron; and South 58°02' West 40.41 feet to an iron, corner to Lot 279 in the northwestern margin of said road; thence leaving the road and with the line of Lot 279, North 84°32' West 116.55 feet to an iron, corner to Lot 279 and 281; thence with the line of Lot 281, North 84°24' West 145.72 feet to an iron in the northeastern margin of Little Sugar Lane; thence with the northern margin of Little Sugar Lane the following courses and distances: North 46°22' West 34.38 feet to an iron; South 83°55' West 61.69 feet to an iron; and South 35°25' West 52.09 feet to an iron corner to Lot 284 in the northwestern margin of Little Sugar Lane; thence leaving Little Sugar Lane and with line of Lot 284, North 56°11' West 157.32 feet to an iron, corner to Lot 284, Sugar Mountain; thence with new lines through the Sugar Mountain property: South 83°02' West 234.22 feet to a point; North 43°48' West 339.48 feet to a point; North 45°31' East 1184.45 feet to a point; North 64°28' East 742.50 feet to a point; South 65°51' East 513.56 feet to a point; South 24°09' West 178.19 feet to a point; South 65°51' East 379.85 feet to the center of tower #3; South 57°26' West 150.00 feet to a point under the tram line; South 32°34' East 206.67 feet to a point; and South 56°07' West 1130.40 feet to an iron, corner to Lot 179; thence with the line of Lot 179, South 56°17' West 175.71 feet to the BEGINNING. Containing 44.432 acres as surveyed and platted by David K. Stern, RLS L-1301, August 5, 1973.

Excluded from the Retained Property described above are the three tracts of land described in Schedule A attached to this Declaration of Unit Ownership. Furthermore, the Retained Property is subject to the Deed of Easement as set forth in Schedule B-1 attached to this Declaration of Unit Ownership.