

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 001

19320

DECLARATION OF COVENANTS  
AND RESTRICTIONS

DECLARATION made this 23rd day of July, 1982, by ATLANTIC METROPOLITAN CORPORATION, a Delaware Corporation with an usual place of business in Wilmington, Delaware (hereinafter "Declarant") for purposes of submitting certain property to common use in accordance with the covenants, easements and restrictions hereinafter set forth.

WHEREAS, the Declarant owns the real property described in Exhibit "B" hereto (hereinafter "Premises");

WHEREAS, the Declarant intends to develop the Premises as a planned community in which much of the Premises will be devoted to residential use and will be owned in condominium fashion subject to Time Share Supplement(s) establishing a program of Interval Ownership in one or more condominiums sponsored by the Declarant by submission of all, part or parts of the Premises to the provisions of Chapter 183A of the General Laws of the Commonwealth of Massachusetts, as from time to time amended;

WHEREAS, the Declarant desires to designate certain portions of the Premises as common recreation, access or utility areas to be maintained, operated, administered and improved for the common use and benefit of all of the residents of the Premises;

WHEREAS, the Declarant has constructed or may construct on Lot 1 as shown on plan recorded in Plan Book 271, Page 39, certain recreation, access or utility facilities, which may include, without limitation, an indoor swimming pool, community center, indoor and outdoor tennis courts, or other amenities;

WHEREAS, the Declarant intends to preserve Lot 7 as shown on said plan as open, undeveloped land for purposes of developing and updating a water supply and distribution system for the benefit and enjoyment of the residents of the Premises;

WHEREAS, the Declarant further desires to establish a common plan of covenants, easements, restrictions, rights, conditions and charges for purposes of effectuating the construction, operation, administration and improvement of said common recreation, access and utility areas and facilities and for the purpose of maintaining community standards

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

BOOK 3526 PAGE 002

of appearance and good order throughout the Premises;

WHEREAS, the Declarant has established a Massachusetts nonprofit corporation named SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC., to administer and enforce said common plan as hereinafter provided; and

WHEREAS, the Declarant intends to transfer to SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC. (hereinafter "Corporation") the aforementioned Lot 1 and Lot 7, to be maintained, operated, improved or administered by SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC. as herein provided.

NOW THEREFORE, the Declarant hereby declares that the Premises are and shall be subject to the following covenants, easements, restrictions, rights, conditions and charges, all of which shall equally run with and bind and benefit the premises for the common benefit of the owners, occupants and users thereof.

1. Definitions: As used herein, the following terms shall have the following meanings:

(a) "Board" means the Board of Directors of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC.

(b) "Bylaws" means the Bylaws of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC. which are attached to this Declaration as Exhibit "A" and are made part hereof, as said Bylaws may be from time to time amended.

(c) "Community Facilities" means such recreation, access or utility areas or facilities as may be maintained, operated, improved or administered by the Corporation within the Premises for the benefit of Unit Owners, as contemplated in this Declaration, which Community Facilities may, but need not include the following:

(i) The aforementioned Lot 1, to be conveyed to Corporation, together with the indoor swimming pool, a community center, indoor and outdoor tennis courts and any associated recreation areas or facilities as have been or may be constructed thereon;

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 003

(ii) The aforementioned Lot 7, to be conveyed to Corporation, together with a water supply and distribution system, the Corporation's responsibility for which system shall extend up to the point where the conduits, pipes and other elements thereof enter the buildings and structures situated on the Premises and not maintained by the Corporation, it being understood that the maintenance and repair of the conduits, pipes and other elements of the water distribution system inside of the said buildings and structures shall be the sole responsibility of the Owners thereof or of the Owners' Association which has authority over said buildings and structures;

(iii) Certain facilities not necessarily owned by Corporation, but administered, operated and maintained hereunder, including but not limited to, access roads, driveways, walkways and parking areas, exclusive of roads, driveways, walkways or parking areas which are situated within the locus of a condominium or condominiums;

(iv) Such other recreation, access or utility areas or facilities as may be constructed by the Declarant within the Premises and intended for the use, benefit and enjoyment of all of the Unit Owners in general.

(d) "Corporate Articles" means the Articles of Association of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC., as they may be from time to time amended.

(e) "Corporation" means SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC., a nonprofit corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts.

(f) "Declaration" means this Declaration of Covenants, Easements and Restrictions, as it may be from time to time amended.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 004

N O T  
A N  
O F F I C I A L  
C O P Y

(g) "Declarant" means Atlantic Metropolitan Corporation, a Delaware Corporation with an usual place of business in Wilmington, Delaware, which corporation constitutes the developer of the Premises. The term "Declarant" as used in this Declaration shall also mean and refer to any succeeding developer, person, corporation or other organization or entity which shall come to stand in the place of Atlantic Metropolitan Corporation with respect to the Premises as a whole and its development. Any mortgagee of a Declarant who succeeds to the Declarant's interest in the Premises by foreclosure or acceptance of deed in lieu thereof shall be deemed to be a Declarant.

(h) "Owners Association" means an organization or association, other than the Corporation, of Unit Owners, which association constitutes a responsible agent for said Unit Owners for the assessment and collection of charges due from said Unit Owners arising from their ownership of interests in the Premises, including without limitation any charges due under the terms of this Declaration or the Bylaws, and which association is established pursuant to duly executed and recorded instruments establishing a common scheme, system or plan in connection with the ownership of Residential Units. Owners' Associations shall include, without limitation, SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST, and such other "organizations of Unit Owners," as defined and used in Chapter 183A of the General Laws of the Commonwealth of Massachusetts, for each condominium established on the Premises.

(i) "Premises" means the land described in Exhibit "B" attached to this Declaration, as said Exhibit may be from time to time amended.

(j) "Residential Unit" means any structure or part thereof located within the boundaries of the Premises and intended for residential use by a single family.

(k) "Unit Owners" means owners of Residential Units, and includes owners of Intervals.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 005

2. Initial and Additional Community Facilities:  
Initially, the Community Facilities shall consist of:

(a) Lot 1 as shown on plan recorded in Plan Book 271, Page 39, which said lot is improved with administrative and recreational facilities, including, but not limited to, an indoor swimming pool, community center, and indoor and outdoor tennis courts, which said lot is to be conveyed to the corporation;

(b) Lot 7 as shown on plan recorded in Plan Book 271, Page 39, on which said lot is situated the water supply and distribution system, and which lot is to be conveyed to the corporation;

(c) Those portions of the access roads, driveways, walkways, and parking areas described in 1(c) (iii) as are constructed as of the date of recording of this Declaration.

The Declarant reserves the right, until such time as the Declarant records with the Barnstable County Registry of Deeds a notice stipulating that the development of the Premises is complete, to expand or add to the Community Facilities at any time from time to time. The expanded or additional Community Facilities shall be subject to all of the provisions of this Declaration and the Bylaws. No party other than the Declarant need assent to or approve any expansion of or addition to the Community Facilities.

3. General Control and Use of the Community Facilities:  
The Community Facilities shall be maintained, operated and administered by the Corporation for the common use and benefit of the Unit Owners. In so maintaining, operating and administering the Community Facilities, the Corporation shall act in accordance with the provisions of this Declaration and the Bylaws. The Corporation, in order to reduce the amount of its net costs and expenses, shall have the right to use and enjoy any and all of the Community Facilities upon payment of such fees and upon such terms and conditions as the Corporation deems reasonable. Subject to the provisions of this Declaration and the Bylaws, each Unit Owner, his tenants, guests and invitees, shall have the right and easement to use and enjoy the Community Facilities in common with all others entitled thereto. Such easement shall pass with the title to every unit and shall not be severed therefrom and shall be sold, transferred or otherwise disposed of only as part of a sale, transfer

\* extend to members of the general public the right to

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 006

or other disposition of the Residential Unit to which it is appurtenant.

Each Unit Owner and all tenants, guests and invitees occupying or using any part of the Community Facilities shall comply strictly with the provisions of this Declaration, the Bylaws and any rules and regulations issued by the Board, as the same may be amended from time to time, and with decisions adopted pursuant to this Declaration, the Bylaws and the said rules and regulations. Any failure to comply therewith shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Unit Owners or, in a proper case, by an aggrieved Unit Owner.

4. Easement for Construction of Community Facilities:  
The Declarant shall have the irrevocable right and easement, exercisable by its authorized employees, agents, representatives and contractors, to construct, erect, install, rebuild or replace all such facilities, buildings, structures, installations and improvements in, upon, under and over all of the Premises or any portion or portions thereof as the Declarant shall deem necessary or desirable for the effective establishment of the Community Facilities. For purposes of exercising the rights and easements granted in the preceding sentence the Declarant, acting through its authorized employees, agents, representatives and contractors, shall have the irrevocable right and easement to enter upon all or any portion or portions of the Premises with personnel, vehicles, machinery, equipment, materials and supplies. In exercising the said rights and easements granted under this Paragraph 4, however, the Declarant shall: (a) use reasonable efforts to minimize the disruption and inconvenience to the residents of the Premises; (b) not permanently impair or interfere with the beneficial use and occupancy by any Unit Owner of his Residential Unit, and (c) restore any portion of the Premises disturbed by the work to clean order and condition upon completion of the work. Said right and easement shall expire at such time as the development of the Premises is complete. Evidence of completion of the development of the Premises may be conclusively provided by a document so stating signed by the Declarant and recorded with the Barnstable County Registry of Deeds.

5. Easement for Maintenance, Operation, Administration and Improvement of Community Facilities: The Corporation

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 007

shall have the irrevocable, perpetual right and easement, exercisable by its authorized employees, agents, representatives and contractors to construct, erect, install, use, operate, inspect, maintain, repair, rebuild, replace, relocate, substitute and remove utility installations of every character and all other facilities, buildings, structures and improvements in, upon, under and over all of the Premises or any portion or portions thereof as the Corporation shall deem necessary or desirable to the effective maintenance, operation, administration or improvement of the Community Facilities. For purposes of exercising the rights and easements granted in the preceding sentence the Corporation, acting through its authorized employees, agents, representatives and contractors, shall have the irrevocable right and easement to enter upon all or any portion or portions of the Premises with personnel, vehicles, machinery, equipment, materials and supplies. In exercising the said rights and easements granted under this Paragraph 5, however, the Corporation shall: (a) use reasonable efforts to minimize the disruption and inconvenience to the residents of the Premises, (b) not permanently impair or interfere with the beneficial use and occupancy by any Unit Owner of his Residential Unit and (c) restore any portion of the Premises disturbed by the work to clean order and condition upon completion of the work.

6. Easement for Construction of Residential Units:  
The Declarant shall have the irrevocable right and easement, exercisable by its authorized employees, agents, representatives and contractors, to construct, erect or install not more than 132 additional Condominium Units, as set forth in Master Deed of SOUTHCAPE RESORT & CLUB CONDOMINIUM I, recorded herewith, together with all such utility installations of every character and such access roadways and walkways in, upon, under and over all of the Premises or any portion or portions thereof as the Declarant shall deem necessary or desirable for the effective establishment or use of such Residential Units within the Premises. For purposes of exercising the rights and easements granted in the preceding sentence, or for purposes of constructing, erecting or installing any facilities, buildings, structures, installations or improvements located within portions of the Premises owned, leased or similarly controlled by the Declarant, which facilities the Declarant deems necessary or desirable for the effective establishment or use of Residential Units in said portions of the Premises, the Declarant, acting through its authorized employees, agents, representa-

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 008

tives and contractors, shall have the irrevocable right and easement to enter upon all or any portion or portions of the Premises with personnel, vehicles, machinery, equipment, materials and supplies. In exercising the said rights and easements granted under this Paragraph 6, however, the Declarant shall: (a) use reasonable efforts to minimize the disruption and inconvenience to the residents of the Premises, (b) not permanently impair or interfere with the beneficial use and occupancy by any Unit Owner of his Residential Unit and (c) restore any portion of the Premises disturbed by the work to clean order and condition upon completion of the work. Said right and easement shall expire at such time as the development of the Premises is complete. Evidence of such completion may be provided as specified in Paragraph 4.

7. Easement for Maintenance, Operation, Administration, Improvement and Use of Utilities and Access Ways Serving Residential Units: The Owners' Associations representing a number of Unit Owners and the Unit Owners, if any, not represented by an Owners' Association shall have the irrevocable, perpetual right and easement, exercisable by their authorized employees, agents, representatives and contractors, to use and enjoy, operate, inspect, maintain, repair, rebuild, replace, substitute and remove such utility installations of every character and access walkways and roadways as are established by the Declarant in, upon, under or over all or any portion of the Premises and are intended to serve their Residential Units. For purposes of exercising the right and easements granted in the preceding sentence, the said Owners' Associations and unrepresented Unit Owners, acting through their authorized employees, agents, representatives and contractors, shall have the irrevocable right and easement to enter upon all or any portion of the Premises with personnel, vehicles, machinery, equipment, materials and supplies. In exercising the said rights and easements granted under this Paragraph 7, however, the said Owners' Associations and unrepresented Unit Owners shall: (a) use reasonable efforts to minimize the disruption and inconvenience to the residents of the Premises, (b) not permanently impair or interfere with the beneficial use and occupancy by any Unit Owner of his Residential Unit and (c) restore any portion of the Premises disturbed by the work to clean order and condition upon completion of the work. All Unit Owners shall have the irrevocable, perpetual right and easement to the use and enjoyment of said utility installations and access walkways and roadways.



N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 009

8. Assignment of Rights: The rights and easements retained by the Declarant under Paragraphs 4 and 6 hereof may be assigned in whole or in part by the Declarant to any party who purchases, leases or otherwise acquires from the Declarant an interest in all or part of the Premises.

9. Damage to Community Facilities or Utility or Other Installations and Right to Remove Violations:

(a) Damage by Unit Owners, Residents or Owners' Associations: No Unit Owner, resident of the Premises or Owners' Association shall perform any act or permit or tolerate any conduct or activity which will damage, interfere with or impair the maintenance, operation or use of: (1) the Community Facilities, (2) the Corporation's utility installations or other facilities, buildings, structures and improvements constructed, erected or installed in, upon, under or over the Premises pursuant to Paragraph 5 above, or (3) the utility installations or access roadways and walkways established in, upon, under and over the Premises for the construction or use of Residential Units pursuant to Paragraph 6 above. Before commencing any work which may involve excavation or which might otherwise harm or endanger said Community Facilities, utility installations, access walkways or roadways, or other facilities, buildings, structures and improvements, the Unit Owner, Owners' Association or other person responsible therefor shall consult with the Board or, in the case of items specified in clause (a) (3) of this Paragraph 9, with the appropriate Owners' Association or unrepresented Unit Owners, to determine the location of said Community Facilities, installations, facilities, buildings, structures, improvements, roadways and walkways and to establish appropriate safeguards for their protection.

(b) Right to Remove Violations: In the event that any conduct or activity of a Unit Owner, Owners' Association or other person shall cause or threaten to cause damage, destruction or other harm or injury to the said Community Facilities, utility installations, access walkways or roadways, other facilities, buildings, structures or improvements, the Corporation or, in the case of items specified in clause (a) (3) of this

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 010

Paragraph 9, the appropriate Owners' Association or unrepresented Unit Owners, may, after notice to the offending party or immediately without notice in case of imminent harm or emergency, cause its agents, employees, representatives or contractors to enter upon the portion of the Premises involved and, at the expense of the offending party, remove the threat or repair or replace the harmed or damaged items.

10. Easement for Maintenance of Community Standards: The Corporation shall have the perpetual, irrevocable right and easement, exercisable by its authorized employees, agents, representatives and contractors, to maintain, repair, replace, rebuild, substitute or remove any or all facilities, installations, improvements, grounds, landscaping or any portion or portions thereof within the Premises apart from the Community Facilities, but exclusive of buildings or structures, in order to preserve consistent community standards of maintenance and good order within the Premises. For purposes of exercising the rights and easements granted in the preceding sentence the Corporation, acting through its authorized employees, agents, representatives and contractors, shall have the irrevocable right and easement to enter upon all or any portion or portions of the Premises with personnel, vehicles, machinery, equipment, materials and supplies. In exercising the said rights and easements granted under this Paragraph 10, however, the Corporation shall: (a) use reasonable efforts to minimize the disruption and inconvenience to the residents of the Premises, (b) not permanently impair or interfere with the beneficial use and occupancy by any Unit Owner of his Residential Unit, (c) restore any portion of the Premises distributed by the work to clean order and condition upon completion of the work, and (d) initiate the work, except in emergencies, only after the Unit Owner or Owners' Association with authority over the area of the Premises concerned has been notified in writing of the problem and has failed to initiate action with respect thereto within thirty (30) days after said notice.

11. Restrictions on Improvements: Except for rights reserved by the Declarant to construct 132 additional units, no construction, improvement, addition, removal or work shall be performed within the Premises apart from the Community Facilities, which work will alter the exterior appearance of any building, structure or installation of any kind

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 011

or will establish a new building, structure or installation of any kind, unless the Corporation shall have assented thereto in writing or shall have failed to reject a written request for approval of such work within sixty (60) days following receipt by the Corporation of such a request. The Corporation shall approve an application from an Owners' Association to perform such work only if it determines that the proposed work, when completed:

(a) will conform to any pertinent covenants, easements or restrictions set forth herein, in the Articles or Bylaws, or in the instruments establishing any condominium or other organization or association of Residential Units or otherwise governing the use and enjoyment of Residential Units or the Premises;

(b) will be reasonably compatible with the standards established throughout the Premises as to quality of workmanship and materials, harmony of external design with existing structures and location with respect to topography and finished grade elevation; and

(c) will comply with all applicable building, health, sanitary, zoning and other land use laws or ordinances.

The Corporation shall have the irrevocable, perpetual right and easement to inspect any such approved work during its performance and upon completion and, in the event said work is not completed within a reasonable time, or having been completed does not comply with the Corporation's approval, in its discretion either to remove the noncomplying, or uncompleted work or to complete it or remedy the noncompliance, all at the cost and expense of the Owners' Association or Unit Owner responsible for said work, which Owners' Association or Unit Owner shall reimburse the Corporation for its costs and expenses on demand. For purposes of exercising the rights and easements granted in the preceding sentence the Corporation, acting through its authorized employees, agents, representatives and contractors, shall have the irrevocable right and easement to enter upon all or any portion or portions of the Premises with personnel, vehicles, machinery, equipment, materials and supplies. In exercising the said rights and easements granted under this Paragraph 11, however, the Corporation shall: (a)

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 012

use reasonable efforts to minimize the disruption and inconvenience to the residents of the Premises, (b) not permanently impair or interfere with the beneficial use and occupancy by any Unit Owner of his Residential Unit except to the extent such impairment or interference is necessarily entailed in the removal, completion or remedy of the uncompleted or noncomplying work, (c) restore any portion of the Premises disturbed by the work to clean order and condition upon completion of the work, and (d) initiate the work, except in emergencies, only after the Unit Owner or Owners' Association with authority over the area of the Premises concerned has been notified in writing of the problem and has failed to initiate action with respect thereto within thirty (30) days after said notice. This Paragraph 11, notwithstanding anything herein, shall in no event apply to or in any way restrict any work performed within the Premises by the Declarant or by the Corporation pursuant to the rights reserved to them herein apart from this Paragraph 11.

12. Assessments for Expenses: The Unit Owners shall pay for the costs of maintaining, operating, administering and improving the Community Facilities as provided in the Bylaws, but not including the costs of construction of Community Facilities initially established or to be established by the Declarant. The appropriate Unit Owners shall also pay the Corporation's costs of performing services pursuant to a delegation of authority by special agreement with an Owners' Association or with unrepresented Unit Owners and of performing maintenance services pursuant to Paragraph 10 hereof. Each Unit Owner, by acceptance of his unit deed and whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay such costs as herein provided. These costs shall be allocated to and assessed against each appropriate Residential Unit, shall be a personal obligation of the Unit Owner of the Residential Unit against which they are assessed and shall constitute a lien against each such Residential Unit, all as provided in the Bylaws. The Corporation, as provided in the Bylaws, may in lieu of assessments against individual Unit Owners assess in their entirety the total costs allocable to all Unit Owners represented in any given Owners' Association against said Owners' Association, in which case said assessed costs shall be an obligation of the Owners' Association to the Corporation and shall be treated by said Owners' Association as a common expense as provided in Chapter 183A of the General Laws of the

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 013

Commonwealth of Massachusetts or as otherwise provided in the governing instruments of the Owners' Association.

13. Termination:

(a) Prior to the conveyance of all or any portion of the Premises to an Owner other than the Declarant, this Declaration may be revoked and the common plan hereby established terminated at any time by an instrument in writing to this effect signed by the Declarant and recorded with the Barnstable County Registry of Deeds.

(b) After the conveyance of all or any portion of the Premises to an Owner other than the Declarant, this Declaration may not be revoked and the common plan hereby established terminated except by an instrument signed by all (100%) of the Owners of interests in the Premises. Such an instrument of termination must be recorded with the Barnstable County Registry of Deeds prior to its becoming effective. Upon the recording of an instrument terminating this Declaration, the Corporation shall have no further obligation in any way to maintain, operate, administer or improve the Community Facilities.

(c) Notwithstanding the above, no instrument purporting to revoke or terminate this Declaration shall be effective unless assented to by all (100%) of the holders of the first mortgages on interests in the Premises and, during the period of the Declarant's control as specified in the Bylaws, by the Declarant.

14. Amendment:

(a) Prior to the conveyance of all or any portion of the Premises to an Owner other than Declarant, this Declaration may be amended at any time and from time to time by an instrument in writing signed by the Declarant and recorded with the Barnstable County Registry of Deeds.

(b) Subsequent to the conveyance of all or any portion of the Premises to an Owner other than the Declarant, this Declaration may be amended

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 014

only by four-fifths (4/5) of the voting power per Art. III, §5 of Exh. A of the Unit Owners and the first mortgagees of their Residential Units and recorded with the Barnstable County Registry of Deeds, provided that during the period of the Declarant's control as specified in the Bylaws, no amendment shall be effective unless assented to by the Declarant, and provided further that no amendment hereto shall substantially and adversely affect any rights or obligations established herein unless assented to by the persons thereby adversely affected and the first mortgagees of their interests in the Premises.

15. Removal: Notwithstanding any other provisions herein contained, the Declarant reserves the right to remove from the provisions of this Declaration of Covenants, Easements and Restrictions, the following Lots: Lot 2, 4, 5, 6 and 8, as shown on plan recorded in Plan Book 271, Page 39. Provided that, as to any of said Lots not then owned by Declarant, said removal must be consented to in writing by all owners of said Lot. Any Lot removed hereunder shall retain the right to use the water supply facilities on Lot 7, the utility installations and the road shown on above-referenced plan for all purposes for which roads are commonly used in the Town of Mashpee and shall be responsible for such percentage of the maintenance and upkeep of same as the number of units on said Lot bears to the total number of units constructed on the Premises.

16. Severability: If any provision of this Declaration is determined to be invalid or contrary to law in a given set of circumstances, it shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration or the application of said provision to another set of circumstances.

17. Interpretation: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a common plan for the provision, maintenance, operation, administration, improvement and use of the Community Facilities and the Residential Units. The paragraph headings in this Declaration and the Bylaws are for convenience of reference only and shall not determine the intent nor govern the meaning of any provision thereof.

NOT  
AN  
OFFICIAL  
COPY

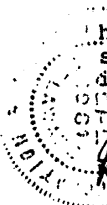
NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

BOOK 3526 PAGE 015

IN WITNESS WHERE OF ATLANTIC METROPOLITAN CORPORATION  
has caused this Declaration to be signed and its corporate  
seal affixed hereto by its officer, thereunto duly author-  
ized, as of the day and year first above written.



*Richard A. Kenny*  
Witness

*Aurin Primack*  
By: Aurin Primack, Senior Vice Pres.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

July 23 , 1982

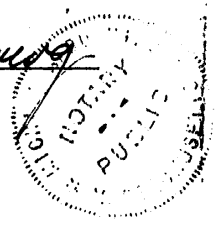
Then personally appeared Aurin Primack,  
as aforesaid of ATLANTIC METROPOLITAN CORPORATION, and acknowl-  
edged the foregoing instrument to be the free act and deed  
of the said corporation, before me.

*Richard A. Kenny*

NOTARY PUBLIC

My Commission Expires:

March 14, 1985



NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

BOOK 3526 PAGE 016

EXHIBIT A-1  
NOT  
OFFICIAL  
COPY

DECLARATION OF COVENANTS AND RESTRICTIONS  
INDEX  
NOT  
OFFICIAL  
COPY

	Page
ARTICLE I Name, Purpose and Definitions .....	1
§ 1. Name, Principal Office and Purposes .....	1
§ 2. Definitions .....	1
ARTICLE II Applicability .....	4
ARTICLE III Membership and Voting Power .....	4
§ 1. Qualification .....	4
§ 2. Privileges and Obligations .....	4
§ 3. Suspension of Membership Rights .....	4
§ 4. Tenants, Guests and Invitees .....	5
§ 5. Voting .....	5
ARTICLE IV Assessments and Liens for Expenses ...	6
§ 1. General .....	6
§ 2. Owner's Liability .....	7
§ 3. Timing of Assessments .....	7
§ 4. Extraordinary Assessments .....	8
§ 5. Assessments of Delegated Services or Premises Maintenance .....	8
§ 6. Unit or Usage Assessments .....	9
§ 7. Creation of Assessment Escrow Accounts ..	9
§ 8. Late Payments of Assessments .....	9
§ 9. Failure to Pay by Owners' Association ...	10
§10. Assessment as the Personal Obligation of Unit Owners and of Owners' Association ..	10
§11. Assessments as Liens .....	11
§12. Release of Perfected Lien .....	11
§13. Certificate with Respect to Unpaid Assessments .....	11
§14. Records .....	12
ARTICLE V Control by Declarant .....	12
§ 1. Reservation of Control .....	12
§ 2. Declarant's Director .....	12
§ 3. Bylaw Amendment .....	13
ARTICLE VI Board of Directors .....	14
§ 1. Authority .....	14
§ 2. Number and Election .....	14
§ 3. Term .....	14



NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

BOOK 3526 PAGE 017

	Page
§ 4. Resignation and Removal .....	14
§ 5. Qualifications .....	15
§ 6. Vacancies .....	15
§ 7. Regular Meetings .....	15
§ 8. Special Meetings .....	16
§ 9. Notice of Meeting .....	16
§10. Quorum .....	16
§11. Action without a Meeting .....	16
§12. Powers and Duties .....	17
§13. Limitations on the Board's Powers .....	19
§14. Manager .....	20
§15. Liability of the Directors .....	20
§16. Protection of Persons Dealing with the Board .....	21
§17. Compensation .....	21
ARTICLE VII Meetings of the Corporation .....	21
§ 1. Annual Meetings .....	21
§ 2. Special Meetings .....	21
§ 3. Notice of Meetings .....	21
§ 4. Record Date .....	22
§ 5. Quorum .....	22
§ 6. Order of Business .....	22
§ 7. Ballots in Lieu of Meetings .....	23
ARTICLE VIII Officers and Agents .....	24
§ 1. Designation .....	24
§ 2. Election .....	25
§ 3. Term .....	25
§ 4. Resignation and Removal .....	25
§ 5. Vacancies .....	25
§ 6. President .....	25
§ 7. Clerk .....	25
§ 8. Treasurer .....	26
§ 9. Authority .....	26
§10. Funds .....	26
ARTICLE IX Interest Not to Disqualify .....	27
ARTICLE X Indemnification of Directors, Officers, Employees and Other Agents .	28
§ 1. Directors and Officers .....	28
§ 2. Employees and Other Agents .....	28
§ 3. Definition of "Charges" .....	28

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

NOT  
AN  
OFFICIAL  
COPY

BOOK 3526 PAGE 018

	Page
§ 4. Limit Upon Indemnification .....	29
§ 5. Other Remedies .....	29
ARTICLE XI Insurance and Fidelity Bonds .....	29
§ 1. Insurance Coverages to be Obtained .....	29
§ 2. General Insurance Provisions .....	30
ARTICLE XII Provisions Relating to Mortgages ....	31
§ 1. Notice to Board .....	31
§ 2. Notice of Unpaid Assessments .....	31
§ 3. Notice of Default .....	31
§ 4. "Listed Mortgagee" Defined .....	31
§ 5. Assignment by Unit Owner of Rights and Options .....	32
ARTICLE XIII Fiscal Year .....	32
ARTICLE XIV Amendments .....	32
ARTICLE XV Construction .....	32

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y  
BOOK 3526 PAGE 019  
BYLAWS

N O T  
A N  
O F F I C I A L  
C O P Y

SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC.

ARTICLE I

Name, Purpose and Definitions

Section 1. Name, Principal Office and Purposes: The name of the corporation is SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC. and its principal office shall be located at Mashpee, Massachusetts. The purposes of the corporation shall be as set forth in the Articles of Association of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC.

Section 2 Definitions: As used herein, the following terms shall have the following meanings:

(a) "Board" means the Board of Directors of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC.

(b) "Bylaws" means the Bylaws of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC. which are set forth herein, as said Bylaws may be from time to time amended.

(c) "Community Facilities" means such recreation, access or utility areas or facilities as may be maintained, operated, improved or administered by the Corporation within the Premises for the benefit of Unit Owners, as contemplated in the Declaration, which Community Facilities may, but need not include the following:

(i) the aforementioned Lot 1, to be conveyed to Corporation, together with the indoor swimming pool, a community center, indoor and outdoor tennis courts and any associated recreation areas or facilities as have been or may be constructed thereon;

(ii) the aforementioned Lot 7, to be conveyed to Corporation, together with a water supply and distribution system, the Corporation's responsibility for which system shall extend up to the point where the conduits, pipes and other elements

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 020

N O T  
A N  
O F F I C I A L  
C O P Y

thereof enter the buildings and structures situated on the Premises and not maintained by the Corporation, it being understood that the maintenance and repair of the conduits, pipes and other elements of the water distribution system inside of the said buildings and structures shall be the sole responsibility of the owners thereof or of the Owners' Association which has authority over said buildings and structures;

(iii) Certain facilities not necessarily owned by Corporation, but administered, operated and maintained hereunder, including, but not limited to, access roads, driveways, walkways and parking areas, exclusive of roads, driveways, walkways or parking areas which are situated within the locus of a condominium or condominiums;

(iv) Such other recreation, access or utility areas or facilities as may be constructed by the Declarant within the Premises and intended for the use, benefit and enjoyment of all of the Unit Owners in general.

(f) "Corporate Articles" means the Articles of Association of SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC. as they may be from time to time amended.

(g) "Corporation" means SOUTHCAPE RESORT & CLUB COMMUNITY ASSOCIATION, INC., a nonprofit corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts.

(h) "Declaration" means the Declaration of Covenants, Easements and Restrictions executed by the Declarant and dated as of the 23rd day of July, 1982, to be recorded herewith with the Barnstable County Registry of Deeds, as said Declaration may be from time to time amended.

(i) "Declarant" means Atlantic Metropolitan Corporation, a Delaware corporation with an usual place of business in Wilmington, Delaware, which cor-

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 021

poration constitutes the developer of the Premises, or any succeeding development person, corporation or other organization or entity which shall come to stand in the place of Atlantic Metropolitan Corporation with respect to the Premises as a whole and its development. Any mortgagee of a Declarant who succeeds to the Declarant's interest in the Premises by foreclosure or acceptance of deed in lieu thereof shall be deemed to be a Declarant.

(j) "Owners' Association" means an organization or association, other than the Corporation, of Unit Owners, which association constitutes a responsible agent for said Unit Owners for assessment and collection of charges due from said Unit Owners arising from their ownership of interests in the Premises, including without limitation any charges due under the terms of the Declaration or Article IV of these Bylaws, and which association is established pursuant to duly executed and recorded instruments establishing a common scheme, system or plan in connection with the ownership of Residential Units. Owners' Associations shall include, without limitation, SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST, and other "organizations of Unit Owners," as defined and used in Chapter 183A of the General Laws of Massachusetts, for each condominium established on the Premises.

(k) "Premises" means the land described in Exhibit "B" attached to the Declaration, as said Exhibit may be from time to time amended.

(l) "Residential Unit" means any structure or part thereof located within the boundaries of the Premises and intended for residential use by a single family.

(m) "Unit Owners" means holders of legal record title to Residential Units, as such holders may change from time to time, and includes owners of Intervals.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 022

## ARTICLE II

### Applicability

The provisions of these Bylaws are applicable to the use, benefit and enjoyment of any and all Community Facilities. All present and future owners, visitors, tenants and occupants of Residential Units and any other persons who may use the Community Facilities in any manner are subject to these Bylaws and the Declaration. The acceptance of a deed or the entering into of a lease or the act of occupancy with respect to a Residential Unit shall constitute an agreement that these Bylaws and the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with in all respects.

Anything herein to the contrary notwithstanding, these Bylaws shall at all times be subordinate to and governed by the term and conditions of the Declaration.

## ARTICLE III

### Membership and Voting Power

Section 1. Qualification: The Members of the Corporation shall be the Unit Owners.

Section 2. Privileges and Obligations: The Unit Owners shall meet and exercise all voting powers over the Corporation as hereinafter provided. In addition, the Unit Owners shall have the right to the use, benefit and enjoyment of the Community Facilities. All such rights shall be subject to the terms and conditions set forth in the Declaration and these Bylaws and to such reasonable rules and regulations as may be established by the Board for the use and enjoyment of said facilities. The Unit Owners shall be responsible for payment to the Corporation of all charges and assessments as determined pursuant to Article IV. The Corporation may, as provided in the Declaration, extend to members of the general public the right to use and enjoy any or all of the Community Facilities upon payment of such fees and upon such terms and conditions as the Corporation deems reasonable. Such members of the general public shall not, however, otherwise have any right or interest in the Corporation and shall not be members of the Corporation.

Section 3. Suspension of Membership Rights: The membership rights, including voting rights, of any Unit Owner may be suspended by the Board for any period during which the charges

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 023

or assessments owed by him under the provisions of these Bylaws remain unpaid. The Board also may, in its discretion, after reasonable notice and opportunity to be heard, suspend all or any of the membership rights of any person for violation of any provision of the Declaration, these Bylaws, or rules and regulations adopted hereunder, provided that such suspension shall not exceed the greater of sixty (60) days or the duration of any continuing violation, and provided further that new or continued violations subsequent to or during such suspension may be treated as new violations warranting imposition of further suspensions.

Section 4. Tenants, Guests and Invitees: The right of Unit Owners to the use, benefit and enjoyment of the Community Facilities shall include the right to extend to their tenants, guests or invitees the privilege to use, benefit from and enjoy the Community Facilities, subject to the terms of the Declaration, these Bylaws, and rules and regulations of the Board. Any such privilege extended to a tenant, guest or invitee shall be subject to suspension for any violation by said tenant, guest or invitee as provided in Section 3 of this Article and shall be suspended for any period during which the rights of the Unit Owner who extended the privilege are suspended.

Section 5. Voting: At all meetings of the Corporation each Residential Unit shall be entitled to fifty-one (51) votes. As to Residential Units committed to Interval Ownership, each Interval shall be entitled to one (1) vote. All votes shall be cast as follows by the Owner(s) who own that Residential Unit or Interval and whose voting rights are not then suspended:

(a) If only one (1) such Owner of the Unit or Interval is present in person or by proxy at a meeting of the Corporation that Owner shall be entitled to cast the vote attributed to that Unit or Interval. If more than one such Owner is so present, the vote attributed to that Unit or Interval shall be cast only in accordance with their unanimous agreement. Such agreement shall be conclusively presumed if any one of them purports to cast the said vote without protest being made forthwith by any of the others to the person presiding at the meeting. If such protest is promptly made, the purported casting of the vote shall be considered a nullity for all purposes.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 024

(b) Any Owner may vote in person or by proxy. To be valid, a proxy must (i) be in writing signed by or on behalf of all the Owners of the Unit or Interval involved, (ii) be dated, and (iii) be filed with the clerk of the Corporation. Every proxy signed by an Owner shall automatically terminate upon any such Owner's sale or other transfer of his interest in the Unit involved. A proxy may be revoked by notice given by any Owner of the Unit involved in writing to the clerk of the Corporation or in writing or in person to the person presiding at the meeting at which the vote is to be cast. Any proxy which purports to be revocable without such notice shall be void.

(c) Any vote of Owners to approve any of the following actions to be undertaken by the Corporation shall require approval by a majority of the total voting power present at any regular or special meeting of the Unit Owners at which a quorum exists.

ACTION

(i) Borrowing money in excess of \$2,500.00.

(ii) Selling, mortgaging or otherwise encumbering all or any portion of the property of the Corporation, but not including assent to any Community Construction Mortgage or entering into any Community Construction Mortgage Covenants.

(iii) Initiating improvements which involve a total cost of over \$10,000.00, other than improvements the construction cost of which will not be charged in whole or in part to Unit Owners or Owners' Associations.

(iv) Amendment of these Bylaws.

ARTICLE IV

Assessments and Liens for Expenses

Section 1. General: The Unit Owners, consistently with



N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 025

the terms of this Article, shall be assessed at least annually and at such more frequent intervals as the Board may deem appropriate for all net costs and expenses associated with the conduct and operation of the Corporation and its affairs, including, without limitation, the maintenance, improvement, operation and administration of the Community Facilities, the performance of duties delegated to the Corporation by an Owners' Association, and the maintenance of the Premises in accordance with consistent community standards. Assessments shall be allocated equally among the Residential Units, except as provided in Sections 5 and 6 of this Article. Except for assessments made pursuant to Section 5 or Section 6 of this Article, and notwithstanding anything else herein, no Residential Unit shall be assessed more than sixty-two one-hundredths of a percent (0.62%) of such net costs and expenses (or of extraordinary assessments under Section 4) until the expiration of ten (10) years from the date hereof.

Section 2. Owner's Liability: Each and every Unit Owner shall be liable to the Corporation for the assessments charged to his Residential Unit. The Corporation may, in its sole discretion, charge to an Owners' Association the total assessments allocable to all Unit Owners represented by said Owners' Association, in which case said Owners' Association shall be liable to the Corporation for payment of said assessments and said Owners' Association may charge said assessments to the Unit Owners represented by said Owners' Association as a common expense pursuant to Chapter 183A of the General Laws of the Commonwealth of Massachusetts or the governing instruments of the Owners' Association.

Section 3. Timing of Assessments: At least sixty (60) days prior to the commencement of each fiscal year of the Corporation (or in the case of the first fiscal year, not later than sixty (60) days after the commencement of that year), the Board shall estimate the net costs and expenses expected to be incurred during such fiscal year for the operation of the Corporation and the maintenance, operation, improvement and administration of the Community Facilities (exclusive of significant capital improvements and other extraordinary expenses covered by Section 4 of this Article), together with a reasonable reserve for contingencies and replacements. Upon so determining these expenses, which shall be subject to regular annual assessment, the Board shall render, not later than January 15th, to each Unit Owner or Owners' Association, a written statement specifying his or its allocable share thereof. Such statement shall

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 026

provide for payment of the assessment, which shall be due and payable no later than March 1st of each year. If the Board fails so to determine the new annual assessment prior to the commencement of the Corporation's fiscal year, then the previous year's assessment shall continue in effect until such time as the new assessment is determined by the Board and statements are rendered with respect thereto. In the event the Board determines during any fiscal year that the annual assessment so made is less than the net costs and expenses actually incurred, or in the reasonable judgment of the Board likely to be incurred, for the above purposes, the Board shall make supplemental annual assessments and render statements therefor, which shall be due and payable within thirty (30) days of the rendering of such statements. In the event a Residential Unit is rendered uninhabitable by fire or other casualty, the Board, in its discretion, may abate all or a portion of any charges assessed under this Article against the Unit owners of such Residential Unit while it remains uninhabitable.

Section 4. Extraordinary Assessments: For any assessment related to capital improvements or other extraordinary or unusual expenses, the Board shall render to each Unit Owner or Owners' Association a written statement specifying his or its allocable share thereof and stipulating such payment terms therefor, including single sum or installment payments (payable on the same days as the annual assessment installments), as the Board may deem reasonable and appropriate under the circumstances, provided that such payment terms shall apply uniformly to all of the Residential Units concerned.

Section 5. Assessments for Delegated Services or Premises Maintenance: Any assessment arising out of the performance of services delegated to the Corporation by an Owners' Association or by Unit Owners not represented by an Owners' Association shall be allocated equally among all of the Residential Units represented by such Owners' Association or among all said delegating unrepresented Unit Owners. For any assessment arising out of the Corporation's performance of maintenance services in the Premises due to the failure of an Owners' Association or of one or more Unit Owners to maintain an area under its or their control consistently with community standards, or due to the failure of a Unit Owner or an Owners' Association to complete an improvement in compliance with the standards set forth in the Declaration, the Corporation shall allocate such assess-

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 027

ment equally among all of the Residential Units represented by the Owners' Association which has authority over the area of the Premises concerned; if no Owners' Association has authority over the area concerned, the Corporation shall allocate the assessment to the Residential Units which have authority over such area, the allocation to be based upon the respective fractional interest in such area of each Residential Unit. Notwithstanding Section 2 of this Article, any such delegated services or maintenance assessment allocated among Residential Units due to the lack of authority by any Owners' Association over the concerned area shall not be charged to an Owners' Association but shall instead be charged to the Unit Owners of the Residential Units involved.

Section 6. Unit or Usage Assessments: Fees or charges for any services or facilities provided or maintained by the Corporation may be charged to Unit Owners or others on a Unit- or usage-basis if the Board in its discretion deems such assessment to be appropriate or expedient.

Section 7. Creation of Assessment Escrow Accounts: A Unit Owner may, by arrangement with his mortgagee bank, provide for payments to said mortgagee bank by him of installments due to account of assessments in full satisfaction of his obligation to pay said installments to the Corporation. Provided, however, that as a precondition to such an arrangement the mortgagee bank must specifically agree with the Corporation to hold such payments on account of assessments in escrow for the benefit of the Corporation and to pay over to the Corporation upon the Board's, the President's, the Treasurer's or another authorized officer's or agent's written request all sums so held in escrow.

Section 8. Late Payments of Assessments: Any assessment or installment remaining unpaid thirty (30) days after the due date for payment shall accrue interest from said date at a rate equal to eighteen percent (18%) a year or such lesser rate of interest as may then be the maximum rate allowed by law. If the interest is not collected by the mortgagee pursuant to Section 7 of this Article, it shall be payable directly to the Corporation. The Board may in its discretion waive all or part of said interest on overdue assessments, if it determines such waiver is warranted by the circumstances.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 028

Section 9. Failure to Pay by Owners' Association: Should an Owners' Association fail to pay any part or all of an assessment then due and payable by it, such failure shall also be deemed to be a failure to pay by the Unit Owners to whom the assessment is allocable. The Board may in its discretion suspend the use and enjoyment by an Owners' Association and the Unit Owners whom it represents of services or facilities provided or maintained by the Corporation for any period during which the Owners' Association remains in default with respect to an assessment. No such suspension shall be imposed, however, unless and until the Owners' Association shall be given notice and an opportunity to be heard concerning its imposition. In addition, interest on such unpaid assessments shall accrue as provided in Section 8 of this Article. Notwithstanding the above provisions of this Section, any Unit Owner may reinstate his right to use and enjoy services and facilities the use and enjoyment of which was suspended pursuant to this Section by payment to the Corporation of his proportionate share of the concerned unpaid assessment or by establishment to the Board's satisfaction that any partial payment of the assessment made by the Owners' Association included his proportionate share of the assessment, provided, however, that this reinstatement provision shall be available only with respect to services and facilities the use and enjoyment of which can practicably be regulated on an individual Unit Owner basis.

Section 10. Assessment as the Personal Obligation of Unit Owners and of Owners' Association: Each assessment shall be a separate, distinct and personal debt and obligation of the Unit Owners and Owners' Association against whom the same are charged and shall be collectible as such. Suit to recover money judgments for unpaid assessments shall be maintainable without foreclosing or waiving any lien securing the same. No Unit Owner shall be liable for those assessments or installments thereof which are due and payable after the date he transfers record title to his Residential Unit, but he shall be and remain liable after such transfer for all assessments or installments thereof which were due and payable prior to the date of transfer. Each new Unit Owner by taking title to his Residential Unit shall thereby assume and become personally liable for all unpaid assessments then outstanding against his Residential Unit, whether or not such assessments are then due and payable, provided, however, that any purchaser at a foreclosure sale of the first mortgage or transferee by deed in lieu of such foreclosure, or any purchaser from the first mortgagee of a Residential Unit should the first mortgagee purchase at

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 029

N O T  
A N  
O F F I C I A L  
C O P Y

the said foreclosure sale or acquire title by such a deed in lieu of foreclosure, shall not be liable for the payment of assessments unpaid and due as of the time of his acquisition, but he shall be liable for assessments becoming due thereafter.

Section 11. Assessments as Liens: The amount of any unpaid assessment charged to a Unit Owner, whether or not then due and payable, shall be a lien against the Residential Unit to which it is assessed, or against the building containing the Residential Unit to which it is assessed if the Residential Units in said building are not held under separate ownership. Said lien shall be effective upon the date a statement thereof or demand therefor is given to the Unit Owner concerned. In addition, the amount of any interest which may accrue on any such unpaid assessment pursuant to Section 8 of this Article shall constitute a lien against the Residential Unit involved. Such a lien due to interest shall be effective upon the date the interest accrues without need for notice to or demand on the Unit Owner concerned.

Section 12. Release of Perfected Lien: Upon payment of a delinquent assessment with respect to which a lien has been perfected together with all interest due thereon and all expenses, including attorneys' fees, reasonably incurred in the collection thereof, the perfected lien shall be released in the same manner as required with respect to mortgages by a document executed by the President or Treasurer of the Corporation.

Section 13. Certificate with Respect to Unpaid Assessments: No Unit Owner shall convey, mortgage, sell or lease his Residential Unit unless and until he shall have paid in full to the Board all assessments theretofore assessed by the Board against his Residential Unit which are due and unpaid. Within ten (10) business days after receiving an appropriate request from a Unit Owner, from a purchaser of a Residential Unit under a written contract of sale therefor or from a Residential Unit mortgagee addressed to the President or Treasurer of the Corporation and payment of a reasonable fee, not to exceed ten dollars (\$10.00), the said President or Treasurer shall supply a certificate in recordable form stating the amount of any unpaid assessments charged to the Residential Unit. Such certificate shall, when recorded with the Barnstable County Registry of Deeds, operate to discharge the Residential Unit concerned from

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 030

any lien for any other sums then unpaid and due to the Corporation.

Section 14. Records: The Treasurer shall keep detailed, accurate records in chronological order of the receipts and expenditures by the Corporation, specifying and itemizing the maintenance and repair expenses and any other expenses incurred. Said records shall be available for examination by the Unit Owners, Owners' Associations, their agents and their mortgagees, at all reasonable times.

#### ARTICLE V

##### Control by Declarant

Section 1. Reservation of Control: The Declarant reserves the right to control the Corporation and its affairs as provided in Sections 2 and 3 of this Article, notwithstanding any provisions in Article VI or elsewhere in these Bylaws to the contrary. This reservation of control shall expire and this Article shall cease to be of any force or effect upon completion of the development of the Premises or upon the completion and occupation of one hundred and sixty-three (163) Residential Units, whichever first occurs. The Declarant may, however, prior to such expiration, at its option, relinquish by written notice to the Corporation all or any part of the control herein reserved to the Declarant, in which case the provisions of this Article, except as necessary to accomplish the partial relinquishment of control, shall remain in effect.

Section 2. Declarant's Director: The Declarant shall have the sole right, power and authority to appoint, remove and fill any vacancy in one (1) position on the Board to be known as the "Declarant's Director." The Declarant may appoint any person, without restriction or qualification, to the position of Declarant's Director. The Declarant's Director shall serve on the Board in addition to the Directors provided for in Article VI, and shall exercise in all respects the rights, powers and authority of a member of the Board, except that the Declarant's Director shall not take part in any vote to fill vacancies on the Board under Section 6 of Article VI. In addition, the Declarant's Director shall have the irrevocable and sole authority to authorize or approve the Corporation's assent to any Community Construction Mortgage or the Corporation's entering into any Community Construction Mortgage Covenants. Further,

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 031

the following shall apply:

(a) The Declarant's Director shall, except in the case of votes to fill vacancies on the Board, retain the following share of the total voting power of the Board:

<u>Number of Residential Units Completed</u>	<u>Share of Voting Power</u>
0 - 51	80%
51 - 100	67%
Over 100	51%

(b) The quorum required for action by the Board, other than to fill vacancies on the Board, shall be the presence of Directors representing at least fifty percent (50%) of the voting power of the Board.

(c) During any vacancy in the position of Declarant's Director, that position shall nevertheless still be deemed to represent its appropriately retained percentage of the voting power of the Board for purposes of determining the presence of a quorum of the Board.

(d) Special meetings of the Board or of the Corporation may be called by the Declarant's Director in his discretion.

Section 3. Bylaw Amendment: The Declarant shall have the sole right, power and authority to amend these Bylaws. In any exercise of its reserved rights to amend the Bylaws pursuant to this Section, however, the Declarant shall not amend these Bylaws so as to impair the voting rights of the Unit Owners or of the Directors other than Declarant's Director, provided that the Declarant may from time to time amend Section 1 of this Article to increase the number of Residential Units the completion and occupation of which shall terminate Declarant's control under this Article, but provided further that any such amendment to said Section 1 shall be made by the Declarant only if before the completion and occupation of the number of Residential Units specified in said Section 1 prior to said amendment the Declarant shall have added sufficient land to the Premises so as to make the total size of the residential project upon comple-

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 032

tion large enough to reasonably contain the increased number of Residential Units specified in said Amendment.

#### ARTICLE VI

##### Board of Directors

Section 1. Authority: Subject to any limitations imposed by the Declaration, the Corporate Articles, these Bylaws or by law, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by, the Board of Directors.

Section 2. Number and Election: Except for the initial Board selected by the incorporators, there shall be at least three (3) but not more than nine (9) Directors. At each annual meeting of the Corporation the Unit Owners shall set the number of Directors and elect persons to fill vacancies on the Board, provided that the number of Directors shall be at least equal to the number of Owners' Associations established in the Premises as of the date of the annual meeting of the Corporation. On behalf of each Residential Unit, the Unit Owners thereof shall be entitled to vote for the number of Directors to be elected, but there shall be no cumulative voting. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be deemed elected.

Section 3. Term: Each Director shall hold office for a term of one (1) year and until his successor is elected and qualified, except that the terms of the positions on the first Board shall be fixed by the incorporators and the initial term of each position on the Board thereafter created by the Unit Owners as provided in Section 2 of this Article shall be fixed by the Unit Owners when the position is so created.

Section 4. Resignation and Removal: Any Director may resign at any time by written notice to the President or the Board, which resignation shall become effective upon receipt thereof or at any later date specified therein. Any Director may be removed from such position with or without cause, at any annual or special meeting of the Corporation by a vote of two-thirds (2/3) of the total votes of the Unit Owners, provided that notice of such removal vote shall have been given to the Unit Owners, as provided herein,



N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 033

at least twenty-one (21) days prior to any annual meeting and at least ten (10) days prior to any special meeting, and provided further that the Director involved shall have the right to be heard at the meeting.

Section 5. Qualification: Only Unit Owners shall be eligible to serve as Directors, provided that where a corporation is a Unit Owner, any officer, stockholder or other representative of such corporate Unit Owner shall be eligible to serve as Director. In addition, there shall be as Director at least one separate Unit Owner from each group of Residential Units represented by an Owners' Association, provided that as to any Owners' Association coming into existence between annual meetings of the Corporation, the Director for that Owners' Association need not be added and elected until the next annual meeting of the Corporation. If a Director ceases to be a Unit Owner, or is the sole remaining Director representing an Owners' Association and ceases to be a Unit Owner representing that Owners' Association, his membership on the Board shall thereupon terminate and a vacancy to be filled pursuant to Section 6 of this Article shall be created. A person may succeed himself as Director.

Section 6. Vacancies: A vacancy on the Board, however arising, shall be filled by majority vote of all of the remaining Director or Directors at any regular or special meeting of the Board. If all positions on the Board are vacant, the Unit Owners shall hold a special meeting to elect new Directors to fill the vacancies in the same manner as provided in Section 2 of this Article for election of Directors at annual meetings. Each person so appointed to fill a vacancy shall serve for the unexpired term of his predecessor and until his successor is elected and qualified.

Section 7. Regular Meetings: A regular meeting of the Board shall be held immediately following the annual meeting of the Corporation, provided that the Board may by resolution change the date and time of such meeting. Other regular meetings of the Board may be held at such times as the Board shall by resolution determine. All Directors shall be given notice of any resolution changing or establishing times for regular meetings.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 034

Section 8. Special Meetings: Special meetings of the Board shall be called by the President in his discretion, by the Clerk upon the written request of two (2) members of the Board or upon written request signed by one-fourth (1/4) of the Unit Owners entitled to cast votes or by twenty (20) Unit Owners (whichever is less), and any such special meeting shall be held at the time and place specified by the President or set forth in such written request, as the case may be.

Section 9. Notice of Meeting: Notice of any regular meeting of the Board shall not be required, except as otherwise herein provided. Notice of special meetings shall be given to each member of the Board, personally or by mail, telephone or telegraph, at least three (3) days prior thereto, unless all of the Directors either are present at such meeting and do not object to the lack of notice or waive such notice in writing executed before or after such meeting. Any such notice or waiver thereof shall state the purpose for which such special meeting is being called.

Section 10. Quorum: Fifty percent (50%) of the Directors then in office shall constitute a quorum for the transaction of business, provided that if at any time there shall be only one Director then in office, he shall constitute a quorum solely for purposes of electing Directors to fill then-existing vacancies on the Board pursuant to Section 6 of this Article and not for the purposes of transacting any other business. Less than a quorum may transact business if the remaining Directors subsequently assent in writing to the decisions of the Board by signing a copy of the minutes of the meeting to be filed with the records of the Board. When a quorum is present at any meeting, the votes of a majority of the Directors in attendance shall decide any business brought before such meeting. The presence of a quorum shall be determined at the commencement of the meeting.

Section 11. Action Without a Meeting: The Board also may transact without a meeting any business which it is authorized to transact at a meeting, provided that the Directors unanimously assent in writing to the decisions of the Board concerning such business by signing the official record of said decisions to be filed with the records of the Board. Any action so taken shall have the same force and effect as though taken at a duly called and held meeting of the Directors.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 035

Section 12. Powers and Duties: Except as otherwise provided herein, the Board of Directors shall have the following powers and duties:

(a) To appoint and remove at pleasure all officers, agents and employees of the Corporation, prescribe their duties, fix their compensation, and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Unit Owner, officer or Director of the Corporation in any capacity whatsoever.

(b) To establish, assess, levy and collect the assessments or charges referred to in Articles III and IV.

(c) To maintain, improve, alter, repair, operate and otherwise administer the Community Facilities.

(d) To perform such services as may be delegated to the Corporation by an Owners' Association or by Unit Owners not represented by an Owners' Association.

(e) To notify Unit Owners and Owners' Associations of any failure on their part to maintain the areas of the Premises within their authority according to community standards of maintenance and good order within the Premises, and to correct any such failure if said Unit Owners or Owners' Associations fail to initiate action with respect to such failure to maintain within thirty (30) days after notice thereof.

(f) To hold and exercise such rights and easements and to provide such facilities and services as are contemplated by the Declaration.

(g) To obtain all policies of insurance as may be required by the Declaration, these Bylaws or by law or as the Board may from time to time determine.

(h) To obtain any legal, accounting, administrative, and other services deemed advisable by the Board, including the services of a manager and any other personnel to whom the Board,

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 036

in its discretion, may delegate certain of its powers and duties.

(i) To adopt, amend, modify, and rescind from time to time and enforce rules and regulations of the Corporation (i) governing the use and enjoyment of the Community Facilities by the Unit Owners and their families, guests, tenants and invitees, and (ii) governing the use and enjoyment of the Community Facilities by members of the general public and establishing the fees, terms and conditions therefor.

(j) To approve or reject requests for permission to make improvements in the Premises apart from the Community Facilities as provided in the Declaration and to adopt, amend, modify and rescind from time to time and enforce rules and regulations regarding the procedures for making, reviewing and granting or denying such requests.

(k) To cause to be kept a complete record of all of the Board's acts and the affairs of the Corporation and to present a statement thereof to the Unit Owners at the annual meeting of the Corporation.

(l) To purchase or otherwise acquire title to or an interest in, sell, lease, mortgage and otherwise use, encumber and dispose of any property, real or personal, tangible or intangible.

(m) To open and maintain bank accounts, and to authorize the drawing of checks and other financial instruments, and to keep a full and complete record of all financial transactions, which record shall be reasonably available for inspection by the Unit Owners, and to prepare periodic financial reports and accountings as may be required by the Unit Owners.

(n) To borrow or in any other manner raise such sum or sums of money or other property as it shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidence of indebtedness, which

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 037

may mature at a time or times, and to execute and deliver any mortgage, pledge, or other instrument to secure any such borrowing; provided, however, that the Board shall have no authority to bind the Unit Owners personally.

(o) To sign, seal, acknowledge, deliver and record in any one or more public offices or places of recording all such instruments and documents as the Board shall deem necessary or desirable in the exercise of its powers and the discharge of its duties.

(p) To exercise for the Corporation all powers, duties and authority vested in or delegated to said Corporation or necessary or appropriate to the discharge of its responsibilities under the Declaration, the Corporate Articles and these Bylaws, except those specifically otherwise conferred by the Declaration, the Corporate Articles, these Bylaws or by law.

Section 13. Limitations on the Board's Powers:

(a) Unless specifically authorized herein, the Board shall not delegate to anyone the following powers:

(i) To appoint and remove officers of the Corporation.

(ii) The powers specified in Sections 12(j), 12(m) and 12(n) of this Article.

(b) Notwithstanding anything herein to the contrary, none of the following actions shall be taken by the Corporation unless such action shall first have been approved by a vote of the Unit Owners as provided in Article III, Section 5(c):

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 038

(i) Borrowing money in excess of \$2,500.

(ii) Selling, mortgaging or otherwise encumbering all or any portion of the property of the Corporation, provided that no vote of Unit Owners shall be required for assent to any Community Construction Mortgage or entering into any Community Construction Mortgage Covenants.

(iii) Initiating improvements involving a total cost of over \$10,000.00 provided that no vote of Unit Owners shall be required to initiate improvements the construction cost of which will not be charged in whole or in part to Unit Owners or Owners' Association.

(c) The Board shall assent to any Community Construction Mortgage and enter into any Community Construction Mortgage Covenants upon request therefor from the Declarant, and shall generally cooperate with the Declarant in the construction of the Community Facilities.

Section 14. Manager: The Board may employ a manager or managing agent for the Corporation with such compensation and on such other terms and conditions as it deems advisable. The Board may delegate to such manager or managing agent such powers and duties assigned to the Board as the Board deems desirable in the best interests of the Corporation, subject to Section 13 of this Article.

Section 15. Liability of the Directors: The Directors shall not be liable to the Unit Owners or the Corporation for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith and except as provided hereinbelow. The Corporation shall indemnify and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability, other than as Unit Owners, with respect to any contract made by them on behalf of the Corporation, except with respect to any such contract made in bad faith

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 039

or contrary to the provisions of the Declaration or these Bylaws.

Section 16. Protection of Persons Dealing with the Board:

Any instrument or document, including but not limited to deeds, mortgages, leases, contracts and releases, signed by a majority of the Directors, as they are certified to as being incumbent by the Clerk of the Corporation, may be relied upon as conclusively establishing that such instrument or document was the duly authorized and empowered free act of the Corporation, and shall be binding upon the Corporation. No purchaser, mortgagee, lender or other person dealing with the Directors, as they are certified to as being incumbent by the Clerk, shall be bound to ascertain or inquire further as to the persons who are then members of the Board nor be affected by any notice, implied or actual, relative thereto.

Section 17. Compensation: No Director shall receive compensation for any service he may render to the Corporation in his capacity as a Director thereof. However, a Director may be reimbursed in the Board's discretion for actual expenses he incurs in the performance of his duties.

ARTICLE VII

Meetings of the Corporation

Section 1. Annual Meetings: The regular annual meeting of the Corporation shall be held at the principal office of the Corporation on the 31st day of July in each year, at the hour of 7:00 p.m., or at such other reasonable place and time as may be designated by written notice from the Board mailed or delivered to the Unit Owners not less than twenty-one (21) days prior to the revised date for said meeting.

Section 2. Special Meetings: Special Meetings of the Corporation for any purpose may be called at any time by the President, or by the Board upon the written request of any two (2) members of said Board, or upon written request from one-fourth (1/4) of the Unit Owners entitled to cast votes or, if less, from twenty (20) Unit Owners.

Section 3. Notice of Meetings: Notice of the time and place of all meetings of the Corporation, including the annual meeting, shall be given to the Unit Owners by the

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 040

Clerk, and in the case of special meetings and when required herein with respect to votes to be taken at the annual meeting shall set forth the purpose for which the meeting is being called. Such notice shall be delivered personally to the Unit Owners or shall be sent through the mail, postage prepaid, to the address appearing on the books of the Corporation, such delivery or mailing to occur at least twenty-one (21) days prior to any annual meeting or meeting in lieu thereof and at least ten (10) days prior to any special meeting. Except for any Unit Owner who has registered a different address with the Clerk, each Unit Owner's address shall be deemed to be the post office address for his Residential Unit.

Section 4. Record Date: The Directors may, for a period not in excess of thirty (30) days prior to the date of any meeting of the Corporation, fix in advance a time as a record date for determining the Unit Owners having a right to notice of and to vote at such meeting, and in such case only Unit Owners of record on such record date shall have such rights, notwithstanding any transfer by a Unit Owner of his interest in his Residential Unit after the record date. If no record date is fixed, the record date for the aforementioned purposes shall be 5:00 p.m. on the day next preceding the day on which notice of a meeting of the Corporation is given.

Section 5. Quorum: Unless otherwise provided in the Declaration, the Corporate Articles, these Bylaws or by law, the presence at any annual or special meeting in person or by proxy of Unit Owners entitled to cast one-fourth (1/4) of the total votes of the Unit Owners shall constitute a quorum for any action. When a quorum is present, unless otherwise provided in the Declaration or these Bylaws, a majority of the total voting power present in person or by proxy shall decide any business brought before the meeting. If the required quorum is not present at any such meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The presence of a quorum shall be determined at the commencement of the meeting.

Section 6. Order of Business: The order of business at all meetings of the Corporation shall be as follows:



N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 041

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of the Board.
- (f) Reports of committees.
- (g) Election of inspectors of election  
(when so required).
- (h) Election of Directors (when so required).
- (i) Unfinished Business.
- (j) New business.

Section 7. Ballots in Lieu of Meetings: The Board may in its discretion present questions for decision by the Unit Owners by means of written ballots mailed to the Unit Owners in lieu of presentation of such questions at an annual or special meeting of the Corporation, provided that no such ballot shall be effective to elect or remove Directors or to change the number of Directors. The record date for determining the Unit Owners entitled to vote on any such ballots shall be 5:00 p.m. on the day next preceding the day on which the ballots are mailed. The ballots shall be mailed to all Unit Owners entitled to vote as of said record date and with them shall be mailed written explanations of the questions presented and of the consequences of each of the various alternative ways in which a Unit Owner may vote on each question.

Each ballot shall identify the Residential Unit to which it pertains and shall conspicuously contain, in addition to the questions presented for decision, an opportunity for the Unit Owner casting the ballot to request for each question that the question be presented at an annual or special meeting of the Corporation. Such opportunity to request a meeting may be made by any Unit Owner for any question on the ballot in addition to voting on that question. The Board shall further specify on the ballots or explanatory material the date by which the ballots must be received by the Corporation in order to be valid, provided that in no event shall such date be earlier than fifteen (15) days following the date on which the ballots were mailed to the Unit Owners.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 042

The vote on any question presented by ballot to the Unit Owners shall be in all respects as valid as if duly presented and voted on at an annual or special meeting of the Corporation, except as follows:

(a) If the number of ballots returned to the Corporation within the specified period represent less than a quorum of the Unit Owners as provided in Section 5 of this Article, then with respect to all questions on the ballot the vote so taken shall be advisory only and shall in no way constitute a valid and binding vote of the Unit Owners;

(b) If for any question on the ballot at least one-half (1/2) of the votes cast on that question request that the question be presented at a meeting of the Corporation, then with respect to that question the vote so taken shall be advisory only and shall in no way constitute a valid and binding vote of the Unit Owners; and

(c) Should the number of votes requesting a meeting on a given question constitute one-fourth (1/4) of the total number of votes entitled to be cast, the vote on that question shall be advisory only, shall in no way constitute a valid and binding vote of the Unit Owners and shall be deemed to be the written request of Unit Owners pursuant to Section 2 of this Article for a meeting to consider that question.

Should any Residential Unit be owned by more than one Unit Owner, then each Unit Owner of that Residential Unit shall receive a ballot and explanatory material. The Unit Owners of a given Residential Unit may, however, cast only one (1) ballot with respect to that Residential Unit, which ballot must be signed by or on behalf of all said Unit Owners in order to be valid.

#### ARTICLE VIII

##### Officers and Agents

Section 1. Designation: The officers of the Corporation shall be a President, a Treasurer, a Clerk and such other officers as the Board from time to time may determine. The

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 043

Treasurer and Clerk need not be Unit Owners or members of the Board. The President shall be a member of the Board.

Section 2. Election: The officers shall be elected by the Declarant, in the first instance, and thereafter by majority vote of the Directors at their regular meeting, or if such regular meeting is not held or in the event of resignation, removal or decease of an officer, at any special meeting of the Directors.

Section 3. Term: All officers shall hold office for a term of one (1) year and until their successors are elected and qualified, except that the term of office of the initial officers chosen by the Declarant shall be determined by said Declarant.

Section 4. Resignation and Removal: Any officer may resign at any time by written notice to the Board, the President or the Clerk, which notice shall take effect on the date of receipt of such notice or at any later date specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer may be removed at any time with or without cause by a vote of the majority of the entire Board, provided that any officer removed for cause shall first be granted an opportunity to be heard by the Board.

Section 5. Vacancies: A vacancy in any office may be filled in the manner prescribed for a regular election thereto. The officer elected to fill such a vacancy shall serve for the remainder of the term of the officer he replaces and until his successor is elected and qualified.

Section 6. President: The President, or his designate, shall preside at all meetings of the Board and of the Corporation, and the President shall have such other powers and perform such other duties as are provided in the Declaration or in these Bylaws, as may be required by the Board or the Corporation from time to time, or as are ordinarily exercised by the presiding officer of a corporation, including the appointment of committees from among the Unit Owners and their families.

Section 7. Clerk: The Clerk shall record the votes and keep the minutes of all meetings of the Board and of the Corporation in a book or books to be kept for that purpose. He shall keep the records and documents of the Board and

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

of the Corporation. He shall record in a book kept for that purpose the names of all Unit Owners, together with their addresses as registered by said Unit Owners and shall have such other powers and duties as may be delegated to him by the Board or the Corporation from time to time.

Section 8. Treasurer: The Treasurer shall be responsible for the funds of the Corporation and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Corporation and any other financial data required by the Board or by the Corporation. He shall be responsible for the deposit of all funds in the name of the Board or the Corporation in such depositaries as may be designated by the Corporation from time to time and shall have such other powers and duties as may be delegated to him by the Board or the Corporation from time to time. The Board may delegate such of the Treasurer's powers and duties to the manager or managing agent as it deems to be advisable. Within sixty (60) days after the end of each fiscal year of the Corporation the Treasurer shall send a report to all Unit Owners showing all receipts and disbursements for that fiscal year, and if no Unit Owner objects to said report within thirty (30) days of receipt thereof, it shall be deemed to be accepted and binding on the Unit Owners.

Section 9. Authority: The Board may authorize any Director, officer, employee or other agent in the name of and on behalf of the Corporation to enter into any contract or execute, sign, acknowledge or deliver any instrument or to sign checks, drafts or other orders for payment of money or notes or other evidences of indebtedness, and such authority may be general or it may be confined to specific instances. Unless so authorized by the Board, no Director (acting alone), officer, employee or agent shall have the power or authority to bind the Corporation by any contract or engagement, to pledge its credit, or to render it financially liable for any purpose in any amount.

Section 10. Funds: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of said Corporation in such banks, trust companies or other depositaries as the incorporators, initially, or the Board, subsequently, may select for the purpose of such deposit, and any Director, officer, employee, or agent to whom such power is expressly delegated by the Board may endorse, sign and deliver checks, drafts and other orders

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 045

for the payment of money to the order of the Corporation.

ARTICLE IX

Interest Not to Disqualify

No person shall be disqualified from holding any office in the Corporation by reason of any interest as defined below. In the absence of deceit or fraud, any Unit Owner, Director or officer of the Corporation, or any concern in which any such Unit Owner, Director or officer has any interest, may be a party to or may be pecuniarily or otherwise interested in any contract, transaction or other act of or involving the Corporation, and

(a) such contract, transaction or act shall not be in any way invalidated or otherwise affected by that fact;

(b) no such Unit Owner, Director, officer or concern shall be liable to account to the Corporation for any profit or benefit realized through any such contract, transaction or act; and

(c) any such director may be counted in determining the existence of a quorum at any meeting of the Board or of any committee thereof which shall authorize any such contract, transaction or act, and may vote to authorize the same;

provided, however, that such contract, transaction or act, other than assent to any Community Construction Mortgage or entering into Community Construction Mortgage Covenants, shall be duly authorized or ratified by a majority of the Board who are not so interested and to whom the nature of such interest has been disclosed.

The term "interest" shall include any personal interest and interest as a director, officer, stockholder, shareholder, trustee, member or beneficiary of any concern.

The term "concern" shall mean any corporation, association, trust, partnership, firm or person other than the Corporation.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 046

#### ARTICLE X

##### Indemnification of Directors, Officers Employees and Other Agents

Section 1. Directors and Officers: Each Director and officer of the Corporation, including those who have so served but are no longer such, shall be indemnified by the Corporation against all charges which may be reasonably incurred or paid by him in connection with any claim, actual or threatened action, suit or proceeding (civil, criminal or other, including appeals) which may be made or brought against him by reason of his being or having been such a Director or officer or by reason of any alleged act or omission by him in any or each such capacity, and also against all charges which may be reasonably incurred or paid by him in reasonable settlement of any such claim, action, suit or proceeding.

The determination whether a settlement is or was reasonable shall be made by a majority of a quorum of the Board comprising those Directors who are not involved in the claim, action, suit or proceeding, and if there be no such quorum, then by one or more disinterested persons to whom the question may be referred by the Board. Such indemnification may include, at the discretion of those Directors not directly the subject of such claim, suit or proceeding (though less than a quorum), payment by the Corporation in advance of expenses incurred in defending a civil or criminal action or proceeding, provided that any such payment shall be made only after receipt of an undertaking by the person indemnified to repay such payment if he shall be determined to be not entitled to indemnification.

Section 2. Employees and Other Agents: The Board may, by general vote or by vote pertaining to a specific employee or agent or class thereof, authorize indemnification of the Corporation's employees and agents, other than those officers, Directors and persons referred to in Section 1 of this Article, to whatever extent the Board may determine, which may be in the same manner and to the same extent provided in Section 1 of this Article.

Section 3. Definition of "Charges": As used in this Article the term "charges" shall include, without limitation, judgment awards, settlement awards, awards by other tribunals or bodies, attorneys' fees, costs, fines, penalties and other liabilities.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 047

Section 4. Limit Upon Indemnification: Indemnification under this Article, whether under Section 1 or Section 2, shall not be made, and no person shall be entitled to indemnification, in any case where such claim, action, suit or proceeding shall proceed to final adjudication and it shall be finally adjudged, nor shall any settlement be determined reasonable if it is found that the Director, officer, person, employee or agent desiring indemnification has not acted in good faith in the reasonable belief that his action was in the best interests of the Corporation. Neither a judgment of conviction nor the entry of any plea in a criminal case shall of itself preclude such Director, officer, employee or agent from indemnification under this Article, if he acted in good faith, for a purpose which he reasonably believed to be in the best interests of the Corporation, and had no reasonable cause to believe that his conduct was unlawful or contrary to the terms of the Declaration, the Corporate Articles, or these Bylaws.

Section 5. Other Remedies: The rights of indemnification herein provided for shall be severable, shall not be exclusive of other rights to which any Director, officer, employee or agent may now or hereafter be entitled, shall continue as to a person who has ceased to be such Director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### ARTICLE XI

##### Insurance and Fidelity Bonds

Section 1. Insurance Coverages to be Obtained: The Corporation shall obtain and maintain, to the extent obtainable, the following insurance:

(a) Fire insurance with extended coverage and vandalism and malicious mischief endorsements insuring all of the insurable property of the Corporation. Such insurance is to be in an amount at least equal to one hundred percent (100%) of the replacement value of the said property and is to be payable to the Corporation as named insured.

(b) Public liability insurance covering all property of the Corporation in such amounts as the Corporation may from time to time determine, but in no event less than one million dollars (1,000,000.00) for personal injury (both

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 048

on a per person and per occurrence basis) and/or property damage, insuring the Corporation, the Board, the manager (if any), all persons acting or who may come to act as agents or employees of the Corporation, the Board or the manager, and with cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder.

(c) Workmen's compensation insurance as required by law.

(d) A fidelity bond or bonds insuring the Corporation as the named insured against dishonest acts of any Directors, officers, managers, employees, agents or others who may be responsible for handling the funds of the Corporation. Said bond(s) shall be in amount(s) as the Board shall from time to time determine, but shall in no event amount to less than one and one-half times the amount of the Corporation's annual assessment budget for the year involved.

(e) Such insurance as may be required in any mortgage, lease or other agreement of the Corporation.

(f) Such other insurance as the Board may from time to time determine.

Section 2. General Insurance Provisions: With respect to any and all policies of insurance provided for under Section 1 of this Article:

(a) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by said policies and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, and shall make any necessary changes in said policies in order to meet the coverage requirements determined by the Board to be appropriate in light of said review.

(b) The Board shall be required to make every effort to see that all said policies shall (1) contain waivers of subrogation by the insurer



N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 049

as to claims, except in case of arson or fraud, against the Corporation, the Board, the manager (if any), all persons who act or come to act as agents or employees of the Corporation, the Board or the manager, and all Unit Owners and other persons entitled to occupy any Residential Unit or other portion of the Premises; (2) contain a waiver of defense of invalidity on account of the conduct of any of the Unit Owners or other persons over which the Corporation has "no control"; and (3) provide that said policies may not be canceled or substantially modified without at least twenty (20) days' written notice to all of the insureds thereunder and all mortgagees of the Corporation.

#### ARTICLE XII

##### Provisions Relating to Mortgages

Section 1. Notice to Board: A Unit Owner who mortgages his Residential Unit shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the mortgage with the Board. The Board shall maintain such information in a book entitled "Mortgages of Units."

Section 2. Notice of Unpaid Assessments: The Board, whenever so requested in writing by a mortgagee of a Residential Unit, shall promptly report any then-unpaid assessments due or any other default with respect to the mortgaged Residential Unit.

Section 3. Notice of Default: The Board, when giving notice to a Unit Owner of a default in paying assessments or other default, shall send a copy of such notice to the Listed Mortgagees of the Residential Unit concerned.

Section 4. "Listed Mortgagee" Defined: As used in these Bylaws, "Listed Mortgagee" shall mean a lender who holds a first mortgage of record on a Residential Unit and as to whom the Board has received written notice, either from the concerned Unit Owner or from the lender, verifying the existence of the mortgage and specifying the address to which notices are to be sent when written notices are required by these Bylaws to be sent to Listed Mortgagees by

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 050

the Board. Such a mortgagee shall remain a Listed Mortgagee until the Board receives written notice from the mortgagee of withdrawal of the listing or that the mortgage is discharged of record.

Section 5. Assignment by Unit Owner of Rights and Options:  
The right of any Unit Owner to vote, to grant or withhold any consent, and to exercise any other right or option granted to a Unit Owner by the Declaration, the Corporate Articles or these Bylaws, may be assigned or transferred in writing to or restricted in favor of any Listed Mortgagee, and the Board shall be bound by any such assignment, transfer or restriction upon notice in writing to the Board by a Listed Mortgagee setting forth the terms thereof.

#### ARTICLE XIII

##### Fiscal Year

The Fiscal year of the Corporation shall begin on the first day of January and end on the last day of December in each year.

#### ARTICLE XIV

##### Amendments

The bylaws may be altered or amended by vote of the Unit Owners at an annual or special meeting of the Corporation as provided in Section 5(c)(iv) of Article III, provided that notice of the proposed amendment or amendments shall have been given to the Unit Owners, as herein provided, at least twenty-one (21) days before the meeting.

#### ARTICLE IV

##### Construction

In the event of a conflict between the Corporate Articles and these Bylaws, the Corporate Articles shall control and in the event of a conflict between the Declaration and these Bylaws, the Declaration shall control. The section headings contained in these Bylaws are for convenience of reference only and shall not determine the construction or interpretation of any provision of these Bylaws.

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

N O T  
A N  
O F F I C I A L  
C O P Y

BOOK 3526 PAGE 051

EXHIBIT "B"  
(DECLARATION OF COVENANTS, EASEMENTS & RESTRICTIONS)

The land situated in the Town of Mashpee (Barnstable County), Commonwealth of Massachusetts, described as follows:

Lots 1, 2, 3, 4, 5, 6, 7 and 8, together with the forty-foot (40') wide private way serving said Lots, all as shown on plan entitled: "Plan of Land, Mashpee, Massachusetts Scale 1" = 80', April 2, 1973, Harry R. Feldman, Inc., Surveyors, 112 Shawmut Avenue, Boston, Mass." which said plan is recorded in Barnstable Plan Book 271, Page 39.