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QUAIL RUN CLUSTER ASSOCIATION

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DECLARATION OF CONDOMINIUM  
OF  
CAREFREE CAROLINA CONDOMINIUMS  
QUAIL RUN CLUSTER

1 NOTE: This is an unrecorded RESTATED DOCUMENT incorporating all amendments  
2 through December 13, 1993. The original, unamended document is recorded in Book 5, Pages  
3 551-570, Transylvania County Registry.  
4

5 THIS DECLARATION made by CAREFREE CAROLINA COMMUNITIES, INC.  
6 ("Declarant"), pursuant to the Unit Ownership Act of North Carolina, Chapter 47A of the General  
7 Statutes of North Carolina, as amended, (the "Act") for the purpose of creating a Condominium  
8 and establishing certain easements, covenants and restrictions to run with the land;  
9

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

11  
12 ARTICLE I - THE PROPERTY

13  
14 A. Land. Declarant owns in fee simple, subject to certain liens and encumbrances,  
15 the tract or parcel of land described in Exhibit "A" attached hereto and shown on the site plan  
16 (the "Plat") filed for record simultaneously herewith. Said land, including all improvements and  
17 structures now existing or hereafter to be placed by Declarant thereon, all easements, rights and  
18 appurtenances belonging thereto, and all articles of personal property now or hereafter provided  
19 by Declarant and intended for use in connection therewith, is hereinafter referred to as the  
20 "Property".  
21

22 B. Dwellings. Declarant has improved said property by constructing thereon a  
23 building or buildings constructed principally of wood, stone and masonry and which consists of  
24 twelve multi-family living units, each such living unit to be hereinafter referred to as a  
25 "Dwelling".  
26

27 Each Dwelling is more particularly described as to number, location, number of rooms  
28 and immediate common area to which it has access on the Plat, on the floor plans filed for record  
29 simultaneously herewith (the "Plans"), and in Exhibit 'B' attached hereto. Each Dwelling  
30 includes all that portion of a building designated on the Plat and on the Plans as a Dwelling and  
31 bounded by the exposed surfaces of the structural members supporting the roof, by the unexposed  
32 surfaces of the basement concrete slab or the upper surface elevation of the lowest foundation  
33 footing, by the unexposed surfaces of the drywall or plastering forming interior walls and  
34 ceilings, by the exposed interior surfaces of masonry walls, by the exposed surfaces of framing

35 of interior walls and by the exterior surface of all windows and window frames and all exterior  
36 doors and door frames.

37 Each Dwelling encompasses within the space so bounded as described above, all flooring,  
38 floor covering, tile, plaster, wallboard, paint, wall covering, doors, door frames, windows,  
39 window frames, cabinets, fixtures, appliances and other building materials including any  
40 modifications not designated on the Plans which have been installed by or at the direction of the  
41 Dwelling Owner including such items as walls, framing, floors, and stairways. The heating and  
42 air conditioning equipment, the electrical wiring and water and sewer pipes, hose bibs, exterior  
43 stairways and decks, excluding deck railings, serving one Dwelling exclusively are part of such  
44 Dwelling regardless of where they may be situated.  
45

46 C. Common Elements. All portions of the Property not encompassed and included  
47 within the various Dwellings are part of the common areas and facilities (the "Common  
48 Elements") of the Property. The Common Elements include, without limitation, the land and all  
49 parking areas, walks, gardens, trees and shrubs situated thereon; the foundations, framing, exterior  
50 walls, party walls, and roofs of the buildings; and all other parts of the Property necessary or  
51 convenient to its existence, maintenance and safety and not specifically included within a  
52 Dwelling. Ownership of the Common Elements is apportioned among and appurtenant to the  
53 individual Dwellings in the percentages as follows:  
54

55	UNIT NUMBER	PERCENTAGE OF UNDIVIDED INTEREST
56	501	8.43 %
57	502	7.39 %
58	503	7.39 %
59	504	8.43 %
60	601	7.67 %
61	602	9.23 %
62	603	9.23 %
63	604	7.67 %
64	701	7.67 %
65	702	9.23 %
66	703	9.23 %
67	704	<u>8.43 %</u>
68		100.00 %
69		
70		
71		
72		
73		
74		
75		
76		

77 D. Limited Common Elements. Certain portions of the Common Elements are limited  
78 common areas and facilities ("Limited Common Elements"), which are reserved for the use of  
79 a certain Dwelling or Dwellings to the exclusion of the other Dwellings. The Limited Common  
80 Elements and the Dwelling or Dwellings to which they are reserved are as follows:

- 81
- 82 1. The driveway giving immediate access to the entrance of a Dwelling is a
- 83 Limited Common Element reserved for the use of such Dwelling.
- 84 2. Entryways which give access to Dwellings are Limited Common Elements
- 85 reserved for the use of such Dwellings.
- 86

87 But for the reservation of use of any Limited Common Element, such Limited Common  
88 Element shall be included in the definition of Common Element for every purpose expressed in  
89 this Declaration.

90

91 E. Use. Each Dwelling is intended and restricted to use as a single family residence, but  
92 Declarant reserves the right to maintain an office in one or more Dwellings or to exhibit one or  
93 more Dwellings as models.

94

95 F. Name. The name by which the Property shall be known is "Carefree Carolina  
96 Condominium, Section I, Phase II-A, Quail Run Cluster". Declarant reserves the right to use  
97 such name or variations thereof in connection with other developments.

98

99

100 ARTICLE II - THE ASSOCIATION

101 A. Formation. Every owner of a Dwelling ("Owner") shall be a member of and  
102 constitute the Association of unit owners (the "Association"), an incorporated association which  
103 shall be managed by a board of directors (the "Board of Directors") elected by and from the  
104 Owners and by a professional manager (the "Manager") if the Board of Directors so elects. An  
105 Owner may consist of one or more individuals, corporations, partnerships, associations, trustees,  
106 or other legal entities, or any combination thereof.

107

108 B. By-Laws. The Association and the administration of the Property shall be governed  
109 by the By-Laws (the "By-Laws") annexed hereto. The By-Laws may be modified or amended  
110 only in the manner set forth in Article VII hereof.

111

112 C. Voting. On all matters relating to the Association or to the Property upon which a  
113 vote of the Owners is conducted, the Owners shall vote in proportion to their respective interest  
114 in the Common Elements as set forth in Article I. All action taken by a vote of the Owners shall  
115 be by the affirmative vote of a majority of the Owners, as hereinafter defined, unless a different  
116 majority is specified in this Declaration, in the By-Laws, or in the Act.

117

118 D. Majority. Whenever used in this Declaration, the term "Majority of the Owners"  
119 means the Owners of more than fifty percent (50%) of the aggregate interests in the Common  
120 Elements assembled at a duly called meeting of the Owners.  
121

122 E. Binding Effect. All agreements, decisions and determinations lawfully made by the  
123 Association in accordance with the voting percentages established in the Act, this Declaration or  
124 the By-Laws shall be deemed to be binding on all Owners.  
125

126 F. Actions. Without limiting the rights of any Owner, actions may be brought by the  
127 Manager or the Board of Directors, in either case in the discretion of the Board of Directors, on  
128 behalf of two or more Owners, as their respective interests may appear, with respect to any cause  
129 of action relating to the Common Elements or more than one Dwelling. Any individual,  
130 corporation, partnership, association, trustee or other legal entity claiming damages for injuries  
131 without any participation by an Owner shall first exhaust all available remedies against the  
132 Association prior to proceeding against any Owner individually.  
133

#### 134 ARTICLE III - COMMON EXPENSES 135

136 A. Expenses. The Owners shall bear in proportion to their respective interests in the  
137 Common Elements the following expenses ("Common [Expenses]");

- 138 1. Expenses of administration, maintenance, repair or replacement of the  
139 Common Elements;
- 140
- 141 2. Expenses declared to be Common Expenses by the Act, this Declaration  
142 or the By-Laws; and,
- 143
- 144 3. Expenses agreed upon as Common Expenses or lawfully assessed against  
145 the Owners as a group by the Association.  
146

147 Declarant shall not be required to bear any portion of the Common Expenses on account of any  
148 Dwelling owned by Declarant until such Dwelling is completed and ready for occupancy.  
149

150 B. Income. All income, rents, profits and revenues received by the Association shall be  
151 applied and expended in the following order:  
152

- 153 1. To the payment of expenses incurred in generating or collecting such  
154 income, rents, profits and revenues;
- 155 2. To the payment of Common Expenses;
- 156 3. To distributions to the Owners in proportion to their respective interests in  
157 the Common Elements.  
158

159 C. Liability of Owner. No Owner may exempt himself from liability for his contribution  
160 towards the Common Expenses by waiver of the use or enjoyment of the Common Elements or  
161 by abandonment of his Dwelling.  
162

163 D. Liability of Grantee. In a voluntary conveyance the grantee of a Dwelling shall be  
164 jointly and severally liable with the grantor for all unpaid assessments against the grantor for the  
165 grantor's share of the Common Expenses up to the time of the grant or conveyance, without  
166 prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee  
167 therefor. However, any such grantee shall be entitled to a statement from the Association setting  
168 forth the amount of the unpaid assessments against the grantor, and such grantee shall not be  
169 liable for, nor shall the Dwelling conveyed be subject to a lien for, any unpaid assessments  
170 against the grantor in excess of the amount set forth therein.  
171

172 E. Lien on Dwelling. Any sum assessed by the Association for the share of the Common  
173 Expenses chargeable to any Dwelling, and remaining unpaid for a period of thirty (30) days or  
174 longer, shall constitute a lien on such Dwelling when filed for record in the Office of the Clerk  
175 of Superior Court of Transylvania County in the manner provided therefor by Article 8 of  
176 Chapter 44 of the General Statutes of North Carolina. Upon the same being duly filed, such lien  
177 shall be prior to all other liens except the following: (i) assessments, liens and charges for real  
178 estate taxes due and unpaid on the Dwelling, (ii) all sums unpaid on deeds of trust, mortgages  
179 and other encumbrances duly of record against the Dwelling prior to the docketing of the  
180 aforesaid lien, and (iii) materialmen's and mechanics' liens. Provided the same is duly filed in  
181 accordance with the foregoing provisions, a lien created by nonpayment of an Owner's prorata  
182 share of the Common Expenses may be foreclosed by suit by the Manager or Board of Directors,  
183 acting on behalf of the Owners, in like manner as a deed of trust or mortgage of real property.  
184 In any such foreclosure the Owner shall be required to pay a reasonable rental for the Dwelling  
185 and the Plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect  
186 the same. The Manager or Board of Directors, acting on behalf of the Owners shall have power  
187 to bid on the Dwelling at foreclosure sale, and to acquire and hold, lease, mortgage and convey  
188 the same. A suit to recover a money judgement for unpaid Common Expenses shall be  
189 maintainable without foreclosing or waiving the lien securing the same.  
190

191 F. Foreclosure Purchaser. Where the mortgagee of a lien of record or other purchaser  
192 of a Dwelling obtains title to the Dwelling as a result of foreclosure of the first mortgage or  
193 junior lien, or by deed in lieu of foreclosure, such acquirer of title, his successors and assigns,  
194 shall not be liable for the share of the Common Expense or assessments by the Association  
195 chargeable to such Dwelling which became due prior to the acquisition of title to such Dwelling  
196 by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to  
197 be Common Expenses collectible from all of the Owners, including such acquirer, his successors  
198 and assigns.  
199

200           G. Records. The Board of Directors shall keep, or cause to be kept, detailed, accurate  
201 records in chronological order of the receipt and expenditures affecting the Common Elements,  
202 specifying and itemizing the maintenance and repair expenses of the Common Elements and any  
203 other expenses incurred. Such records and the vouchers authorizing the payments shall be  
204 available for examination by the Owners, or mortgagees of record, their duly authorized agents  
205 or attorneys, at convenient hours on working days that shall be set and announced for general  
206 knowledge. All books and records shall be kept in accordance with good and accepted  
207 accounting practices and a full audit shall be made at least once a year by someone other than  
208 the Treasurer; such audit shall be performed by a certified public accountant, unless waived by  
209 a majority vote of the Board of Directors.

210  
211                           ARTICLE IV - EASEMENTS, COVENANTS AND RESTRICTIONS

212  
213           A. Use of Property. Each Owner shall be entitled to the exclusive ownership and  
214 possession of his Dwelling and may use the Common Elements in accordance with the purpose  
215 for which they were intended without hindering or encroaching upon the lawful rights of other  
216 Owners.

217  
218           B. Utility Easements. Each Owner shall have an easement in common with all other  
219 Owners to use all pipes, wires, ducts, flues, cable, conduits, public utility lines and other  
220 Common Elements, if any, located in any of the other Dwellings and serving his Dwelling. Each  
221 Dwelling shall be subject to an easement in favor of the Owners of all other Dwellings to use the  
222 pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements, if  
223 any, serving such other Dwelling and located in such Dwelling.

224  
225           C. Encroachments. If any portion of the Common Elements now encroaches upon any  
226 Dwelling, or if any Dwelling now encroaches upon any other Dwelling or upon any portion of  
227 the Common Elements, or if any such encroachment shall occur hereafter as a result of (i) settling  
228 of a Dwelling or Dwellings' (ii) repair, alteration or reconstruction of the Common Elements  
229 made by or with the consent of the Association; (iii) repair or reconstruction of a Dwelling or  
230 Dwellings following damage by fire or other casualty; or (iv) condemnation or eminent domain  
231 proceedings, a valid easement shall exist for such encroachment and for the maintenance of the  
232 same so long as the Property remains subject to the Act.

233  
234           D. Right of Access. The Association shall have the irrevocable right, to be exercised by  
235 the Manager or the Board of Directors, to have access to each Dwelling from time to time during  
236 reasonable hours as may be necessary for the maintenance, repair or replacement of any of the  
237 Common Elements therein or accessible therefrom, or for making emergency repairs therein  
238 necessary to prevent damage to the Common Elements or to another Dwelling.



240 E. Maintenance of Common Elements. The necessary work of maintenance, repair and  
241 replacement of the Common Elements and the making of any additions or improvements thereto  
242 shall be carried out only as provided in the Act, this Declaration and the By -Laws.  
243

244 F. Prohibited Work. No Owner shall do any work which would jeopardize the soundness  
245 or safety of the Property, reduce the value thereof or impair any easement or hereditament  
246 without in every such case unanimous consent of all other Owners affected being first obtained.  
247

248  
249 G. Partition. The Common Elements shall remain undivided and no Owner or any other  
250 person shall bring any action for partition or division of any part thereof, unless the Property has  
251 been removed from the provisions of the Act in the manner therein provided. Any covenant to  
252 the contrary shall be null and void.  
253

#### 254 ARTICLE V - INSURANCE 255

256 The following provisions shall apply except as to household furnishings and appliances  
257 which are owned by Unit Owners. Unit Owners shall be responsible for purchasing, maintaining  
258 and insuring their furniture, appliances and any other personal effects belonging to such Unit  
259 Owner which may be located in or about the Unit.  
260

261 A. Purchase of Insurance. The Association shall obtain fire and extended coverage  
262 insurance and vandalism and malicious mischief insurance insuring all of the insurable  
263 improvements within the Condominium Complex, together with such other insurance as the  
264 Association deems necessary in and for the interest of the Association, all Unit Owners and their  
265 Mortgagees, as their interests may appear, in an amount which shall be equal to the maximum  
266 insurable replacement value as determined annually; and the premiums for said coverage and  
267 other expenses in connection with said insurance shall be assessed against the Unit Owners as a  
268 part of the Common Expense. The named insured shall be the Board of Directors of the  
269 Association, as Trustee for the Unit Owners, without naming them, and as Trustee for their  
270 Mortgagees.  
271

272 Provisions shall be made for the issuance of Mortgagee endorsements and memoranda of  
273 insurance to the Mortgagees of Unit Owners. Such policies made to the insurance trustee, and  
274 all policies and endorsements thereon shall be deposited with the insurance trustee.  
275 Notwithstanding the aforesaid, the provisions for such insurance shall be without prejudice to the  
276 right of each Unit Owner to insure his own unit for his benefit. Unit Owners may obtain  
277 insurance coverage at their own expense upon their own personal property and for their personal  
278 liability and living expenses.  
279  
280

281 B. Coverage.

282 1. Casualty. All buildings and improvements upon the Property shall be  
283 insured in an amount equal to the maximum insurable replacement value,  
284 and all personal property included in the Common Elements shall be  
285 insured for its value, all as determined annually by the Board of Directors  
286 of the Association. Such coverage shall afford protection against:

287  
288 (a) Loss or damage by fire or other hazards covered by a standard  
289 extended coverage endorsement;

290  
291 (b) Such other risks as from time to time shall be customarily covered  
292 with respect to buildings similar in construction, location and use as such  
293 buildings including, but not limited to, vandalism and malicious mischief.

294  
295 2. Public Liability. Public liability insurance shall be obtained in such  
296 amounts, not to be less than One Million (\$1,000,000.00) Dollars per  
297 occurrence, and with such coverage as shall be required by the Board of  
298 Directors of the Association including, but not limited to, hired automobile  
299 and non-owned automobile coverages, and with cross liability and  
300 endorsement to cover liabilities of the Unit Owners as a group of Unit  
301 Owners.

302  
303 3. Workmen's Compensation. Workmen's compensation insurance sufficient  
304 to meet the requirements of law shall be obtained.

305  
306 4. Other Insurance. Such other insurance shall be obtained as the Board of  
307 Directors of the Association shall determine from time to time desirable.

308  
309 C. Premiums. Premiums upon insurance policies purchased by the Association shall be  
310 paid by the Association as a Common Expense.

311  
312 D. Insurance Trustee and Shares of Proceeds. All insurance policies purchased by the  
313 Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees,  
314 as their interests may appear, and shall provide that all proceeds covering property losses shall  
315 be paid to the Board of Directors as insurance trustee. The duty of the insurance trustee shall  
316 be to receive such proceeds as are paid, to make distribution of such proceeds in trust for the  
317 benefit of the Unit Owners and their Mortgagees in the following shares, which shares need not  
318 be set forth on the records of the insurance trustee.

319  
320 1. Common Elements. Proceeds on account of damage to Common Elements  
321 shall be held in undivided shares for each Unit Owner, each such share

322 being in the same proportion as the undivided share in the Common  
323 Elements appurtenant to such Owner's Unit.

324  
325 2. Condominium Units. Proceeds on account of damage to Units shall be  
326 held in the following undivided shares:

327  
328 (a) When the Building is to be Restored--For the Owners of damaged  
329 Units in proportion to the cost of repairing the damage suffered by each  
330 Unit Owner, which cost shall be determined by the Association.

331  
332 (b) When the Building is not to be Restored--An undivided share for each  
333 Unit Owner, each such share being in the same proportion as the undivided  
334 share in the Common Elements appurtenant to such Owner's Unit.

335  
336 3. Mortgagees. In the event a mortgage endorsement has been issued as to  
337 a Unit, the share of the Unit Owner shall be held in trust for the Unit  
338 Owner and the Mortgagee, as their interests may appear; provided,  
339 however, that no Mortgagee shall have any right to determine or participate  
340 in the determination as to whether or not any damaged property shall be  
341 reconstructed or repaired, and no Mortgagee shall have any right to apply  
342 or have applied to the reduction of a mortgage debt any insurance proceeds  
343 except distributions thereof made to the Unit Owner and Mortgagee  
344 pursuant to the provisions of this Declaration.

345  
346 E. Distribution of Proceeds. Proceeds of insurance policies received by the  
347 insurance trustee shall be distributed to or for the benefit of the beneficiary Owners in the  
348 following manner:

349  
350 1. Reconstruction or Repair. If the damage for which the proceeds are paid  
351 is to be repaired or reconstructed, the remaining proceeds shall be paid to  
352 defray the costs thereof as elsewhere provided. Any proceeds remaining  
353 after defraying such costs shall be distributed to the beneficiary Owners,  
354 remittance to Unit Owners and their Mortgagees being payable jointly to  
355 them. This is a covenant for the benefit of any Mortgagee of a Unit and  
356 may be enforced by such Mortgagee.

357  
358 2. Failure to Reconstruct or Repair. If it is determined in the manner  
359 elsewhere provided that the damage for which the proceeds are paid shall  
360 not be reconstructed or repaired, the remaining proceeds shall be  
361 distributed to the beneficial Owners, remittances to Unit Owners and their  
362 Mortgagees being payable jointly to them. This is a covenant for the

363 benefit of any Mortgagee of a Unit and may be enforced by such  
364 Mortgagee.  
365

366 F. Association as Agent. The Association is hereby irrevocabl[y] appointed Agent for  
367 each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each  
368 Owner of any other interest in the Condominium Complex to adjust all claims arising under  
369 insurance policies purchased by the Association and to execute and deliver releases upon the  
370 payment of claims.  
371

372 G. Notice of Insurance Coverage. In any legal action in which the Association may be  
373 exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the  
374 Association shall give notice of the exposure within a reasonable time to all Unit Owners who  
375 may be exposed to the liability and such Unit Owners shall have the right to intervene and  
376 defend.  
377

378 H. Inspection of Insurance Policy. A copy of each insurance policy obtained by  
379 the Association shall be made available for inspection by Unit Owners or their mortgagees of  
380 record at reasonable times.  
381

382 I. Developer's Interest. All insurance purchased by the Association on behalf of  
383 the Unit Owners shall include the Declarant as its interest may appear, and the Declarant shall  
384 share in the proceeds of any insurance payments as its interest may appear.  
385

### 386 RECONSTRUCTION OR REPAIR AFTER CASUALTY

387

388 A. Determination to Reconstruct or Repair. If any part of the Condominium Complex  
389 shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be  
390 determined in accordance with the applicable North Carolina law which is in existence as of the  
391 time such casualty occurs, and if not provided for by North Carolina law at such time, then in  
392 accordance with North Carolina General Statutes Section 47A-25 which is in effect as the date  
393 of this Declaration.  
394

395 If the damages to an improvement is to a Common Element, the damaged property  
396 shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that  
397 the Condominium Complex shall be terminated.  
398

399 B. Plans and Specifications. Any reconstruction or repair must be substantially in  
400 accordance with the plans attached to this Declaration as a part of Exhibit B.  
401

405 C. Responsibility. If the damage is only to those parts of one Unit for which the  
406 responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be  
407 responsible for reconstruction and repair after casualty. In all other instances, the responsibility  
408 of reconstruction and repair after casualty shall be that of the Association.  
409

410 D. Estimates of Cost. Immediately after a determination is made to rebuild or repair  
411 damage to property for which the Association has the responsibility of reconstruction and repair,  
412 the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.  
413

414 E. Assessments. The amount by which an award of insurance proceeds to the insurance  
415 trustee is reduced on account of a deductible clause in an insurance policy shall be assessed  
416 against all Unit Owners in proportion to their shares in the Common Elements, provided that the  
417 cost of such insurance was a common expense. If the proceeds of such assessments and of the  
418 insurance are not sufficient to defray the estimated costs of a reconstruction and repair or upon  
419 completion of reconstruction and repair, the funds for the payment of the costs of reconstruction  
420 and repair are insufficient, assessments shall be made against the Unit Owners in sufficient  
421 amounts to provide funds for the payment of such other costs. Such assessments shall be in  
422 proportion to the Owner's share in the Common Elements.  
423

424 F. Construction Funds. The funds for payment of costs of reconstruction and repair after  
425 casualty, which shall consist of proceeds of insurance held and funds collected from assessments  
426 against Unit Owners, shall be disbursed by the Insurance Trustee in payment of such costs in the  
427 following manner and order:  
428

- 429 1. Association - Lesser Damage - If the amount of the estimated costs of  
430 reconstruction and repair which is the responsibility of the Association is  
431 less than \$5,000.00, then the construction fund shall be disbursed in  
432 payment of such costs by the Association; provided, however, that upon  
433 request by a Mortgagee which is a beneficiary of an insurance policy, the  
434 proceeds of which are included in the construction fund, such fund shall  
435 be disbursed in the manner hereafter provided for the reconstruction and  
436 repair of major damage.  
437
- 438 2. Association - Major Damage - If the amount of the estimated costs of  
439 reconstruction and repair which is the responsibility of the Association is  
440 more than \$5,000.00, the construction fund shall be disbursed in payment  
441 of such costs in the manner required by the Board of Directors of the  
442 Association and upon approval of an architect qualified to practice in North  
443 Carolina and employed by the Association to supervise the work.  
444
- 445 3. Unit Owner - The portion of insurance proceeds representing damage for  
446 which the responsibility of reconstruction and repair lies with a Unit

447 Owner shall be paid to the Unit Owner, or if there is a mortgage  
448 endorsement as to such Unit, then to the Unit Owner and Mortgagee  
449 jointly, who may use such proceeds as they may deem appropriate.  
450

- 451 4. Surplus - It shall be presumed that the first monies disbursed in payment  
452 of costs and reconstruction and repair shall be from insurance proceeds.  
453 If there is a balance in a construction fund after payment of all costs of the  
454 reconstruction and repair for which the fund is established, such balance  
455 shall be distributed to the beneficial Owners of the fund in the manner  
456 elsewhere stated; provided, that the part of a distribution to a beneficial  
457 Owner which is not in excess of assessments paid by such Owner into the  
458 construction funds shall not be made payable to any Mortgagee.  
459

#### 460 ARTICLE VI - REPAIR AND RESTORATION 461

462 Except as herein provided, damage to or destruction of any portion of the Property shall  
463 be promptly repaired or restored by the Manager or the Board of Directors, using for that purpose  
464 proceeds of any insurance obtained on the Property by the Manager or the Board of Directors.  
465 Owners shall be liable for assessment for any deficiency in proportion to their interests in the  
466 portion or portions of the Property repaired or restored. If the Property shall be more than two-  
467 thirds (2/3) destroyed by fire or other disaster and Owners holding three-fourths (3/4) or more  
468 of the undivided interest in the Common Elements duly resolve not to proceed with repair or  
469 restoration, then and in that event:  
470

471 A. The property shall be deemed to be owned as tenants-in-common by the Owners.  
472

473 B. The undivided interest in the Property owned by the Owners as tenants-in-common  
474 which shall appertain to each Owner shall be the percentage of undivided interest previously  
475 owned by such Owner in the Common Elements.  
476

477 C. Any liens affecting any of the Dwellings shall be deemed to be transferred in  
478 accordance with the existing priorities to the percentage of the undivided interest of the Owner  
479 in the Property as provided herein.  
480

481 D. The Property shall be subject to an action for sale for partition at the suit of any  
482 Owner, in which event the net proceeds of sale, together with the net proceeds of insurance  
483 policies, if any, shall be considered as one fund and be divided among all the Owners in  
484 proportion to their respective shares of the Owners, to the extent sufficient for the purpose, all  
485 liens on the undivided interest in the Property owned by each Owner.  
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ARTICLE VII - AMENDMENTS

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491 A. This Declaration and the By-Laws may be amended from time to time by resolution  
492 adopted by the affirmative vote of the Owners of two-thirds (2/3) of the total interest in the  
493 Common Elements subject to the following conditions:  
494

- 495 1. No amendment by the Owners shall alter the dimensions of a Dwelling or  
496 the percentage of the interest in the Common Elements appurtenant thereto  
497 without the consent of the Owner of such Dwelling; and,  
498  
499 2. No amendment by the Owners shall be effective prior to January 1, 1987,  
500 without the consent of Declarant so long as Declarant owns any Dwelling.  
501  
502 3. No amendment which affects mortgagees of record shall be effective unless  
503 51% of such mortgagees of record shall approve such amendment.  
504

505 B. Recording. No amendments to this Declaration shall be effective unless and until  
506 recorded in accordance with the Act.  
507

508 ARTICLE VIII - DECLARANT  
509

510 A. Rights and Powers. Until one hundred twenty (120) days after 75% of the unit estates  
511 have been conveyed by transfer of title to unit estate owners, Declarant shall be entitled to  
512 exercise, without the consent of the Owners, all powers granted to the Owners or to the Board  
513 of Directors by the Act, this Declaration, or the By-Laws, and any action taken by the Owners  
514 or by the Board of Directors during such time shall be valid only if approved by Declarant.  
515 Declarant shall be entitled to withhold approval of any such action for any reason.  
516

517 B. Successor. The term "Declarant" as used in this Declaration and in the By-Laws shall  
518 be deemed to include any person who succeeds to the title of Declarant to any portion of the  
519 Property by sale or assignment of all the interest of Declarant in the Property, if the instrument  
520 of sale or assignment expressly so provides, or by exercise of a right of foreclosure or power of  
521 sale granted in or conveyed by any mortgage, deed of trust or deed to secure debt given by  
522 Declarant and duly recorded prior to the recording of this Declaration. Any such person shall  
523 be entitled to exercise all rights and powers conferred upon Declarant by the Act, this  
524 Declaration, or the By-Laws.  
525

526 C. Contracts or Leases. Declarant shall not bind the Owner's Association, prior to  
527 passage of control, either directly or indirectly to contracts or leases (including a management  
528 contract) unless the Owner's Association is provided with a right of termination of any such  
529 contract or lease, without cause, which is exercisable without penalty at any time after transfer  
530 of control, upon not more than 90 days' notice to the other party thereto.

ARTICLE IX - MORTGAGE HOLDERS OF RECORD

A. Notice of Action. Upon written request to the Owner's Association, identifying the name and address of a holder of a first mortgage on a unit estate, such mortgage holder will be entitled to timely written notice of:

1. Any condemnation loss or any casualty loss which affects a material portion of the project or any unit estate on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable.
2. Any delinquency in the payment of assessments or charges [owed] by an owner of a unit estate subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days.
3. Any lapse, cancellation or material modification of any insurance policy, or fidelity bond maintained by the Owner's Association.
4. Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on unit estates which have at least 51 percent of the votes of unit estate subject to eligible mortgage holders.
5. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of eligible holders holding mortgages on unit estates which have at least 51 percent of the votes of unit estates subject to eligible mortgage holders.
6. Unless the formula for reallocation of interests in the common areas after a partial condemnation or partial destruction of a condominium project is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of such a project may be effected without the prior approval of eligible holders holding mortgages on all remaining unit estates whether existing in whole or in part, and which have at least 51 percent of the votes of such remaining unit estates subject to eligible mortgage holders.



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7. When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self management by the Owners' Association shall require the prior consent of owners of unit estate to which at least 67 percent of the votes in the Owners' Association are allocated and the approval of eligible holders holding mortgages on unit estates which have at least 51 percent of the votes of unit estates subject to eligible mortgage holders.

ARTICLE X - CREATION OF CAREFREE CAROLINA ASSOCIATION

\*DELETED IN ITS ENTIRETY\*

ARTICLE XI - MISCELLANEOUS

A. Application. All Owners, tenants of Owners, employees of Owners and tenants, or any other persons that may in any manner use the Property or any part thereof shall be subject to the Act and to this Declaration and the By-Laws.

B. Compliance. Each Owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration or in the Deed to the Dwelling of such Owner. Failure to comply with any of the same shall be ground for an action to recover sums due, or damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner.

C. Waiver. No provision hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

D. Conflicts. This Declaration is executed to comply with the requirements of the Act, and in the event that any of the provisions hereof conflict with the provisions of the Act, the Act shall control.

E. Severability. The provisions of this Declaration are severable, and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder hereof.

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F. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

G. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and the neuter and the singular and the plural whenever the context requires or permits.

H. Termination. All of the Owners may remove the Property from the provisions of the Act by an instrument to that effect duly recorded, provided that the holders of all liens affecting any of the Dwellings consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the Owner in the Property as hereinafter provided. Upon removal of the Property from the provisions of the Act, the Property shall be deemed to be owned in common by the Owners. The undivided interest in the Property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Elements.

I. Service of Process. Service of Process on two or more Owners in any action relating to the Common Elements or more than one Dwelling may be made on the following person:

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, this the 16 day of July, 1984.

CAREFREE CAROLINA COMMUNITIES, INC.

BY: (Signed) John B. Richard

ATTEST:

BY: (Signed) Jeffrey K. Portman  
Secretary

645 DECLARATION OF CONDOMINIUM OF CAREFREE CAROLINA CONDOMINIUMS,  
646 EXHIBIT B - DESCRIPTION OF INDIVIDUAL DWELLING UNITS  
647

648 Dwelling Unit Number 501 is a one story dwelling Unit, having 1520 square feet of  
649 heated floor space, containing two bedrooms, two baths, living, dining space, basement and other  
650 features as shown on the plans and specifications filed for record simultaneously herewith (the  
651 "Plans").  
652

653 Dwelling Unit Number 502 is a two story dwelling Unit, having 1334 square feet of  
654 heated floor space, containing two bedrooms, two and one-half baths, living, dining space,  
655 basement and other features as shown on the plans and specifications filed for record  
656 simultaneously herewith (the "Plans").  
657

658 Dwelling Unit Number 503 is a two story dwelling Unit, having 1334 square feet of  
659 heated floor space, containing two bedrooms, two and one-half baths, living, dining space,  
660 basement and other features as shown on the plans and specifications filed for record  
661 simultaneously herewith (the "Plans").  
662

663 Dwelling Unit Number 504 is a one story dwelling Unit, having 1520 square feet of  
664 heated floor space, containing two bedrooms, two baths, living, dining space, basement and other  
665 features as shown on the plans and specifications filed for record simultaneously herewith (the  
666 "Plans").  
667

668 Dwelling Unit Number 601 is a one story dwelling Unit, having 1520 square feet of  
669 heated floor space, containing two bedrooms, two baths, living, dining space and other features  
670 as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").  
671

672 Dwelling Unit Number 602 is a two story dwelling Unit, having 1830 square feet of  
673 heated floor space, containing three bedrooms, three baths, living, dining space and other features  
674 as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").  
675

676 Dwelling Unit Number 603 is a two story dwelling Unit, having 1830 square feet of  
677 heated floor space, containing three bedrooms, three baths, living, dining space and other features  
678 as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").  
679

680 Dwelling Unit Number 604 is a one story dwelling Unit, having 1520 square feet of  
681 heated floor space, containing two bedrooms, two baths, living, dining space and other features  
682 as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").  
683

684 Dwelling Unit Number 701 is a one story dwelling Unit, having 1520 square feet of  
685 heated floor space, containing two bedrooms, two baths, living, dining space and other features  
686 as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").

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Dwelling Unit Number 702 is a two story dwelling Unit, having 1830 square feet of heated floor space, containing three bedrooms, three baths, living, dining space and other features as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").

Dwelling Unit Number 703 is a two story dwelling Unit, having 1830 square feet of heated floor space, containing three bedrooms, three baths, living, dining space and other features as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").

Dwelling Unit Number 704 is a one story dwelling Unit, having 1520 square feet of heated floor space, containing two bedrooms, two baths, living, dining space, garage and other features as shown on the plans and specifications filed for record simultaneously herewith (the "Plans").