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THE BYLAWS

OF  
HERON POND AT PELICAN REEF HOMEOWNERS ASSOCIATION, INC.,  
EASEMENTS AND ADDITIONAL RESTRICTIVE COVENANTS  
FOR HERON POND PATIO UNITS

THESE BYLAWS OF HERON POND AT PELICAN REEF HOMEOWNERS ASSOCIATION, INC., EASEMENTS AND ADDITIONAL RESTRICTIVE COVENANTS FOR HERON POND PATIO UNITS, hereinafter referred to as "Bylaws and Additional Restrictive Covenants" are made this 1 day of SEPTEMBER, 1995 by its incorporators, Water View, Inc., hereinafter referred to as "Declarant," and any and all persons, firms, or corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to these Bylaws and Additional Restrictive Covenants.

W I T N E S S E T H :

WHEREAS, Declarant is the owner of a certain tract of land which is referred to as Pelican Reef Subdivision, Section 2, which is more particularly described by plat(s) thereof recorded in the following Plat Book and Pages: 30-76, as revised in Plat Book 30, Page 79; and 30-75, as revised in Plat Book 30, Page 78 in the Office of the Register of Deeds for Pender County to which reference is hereby made for a more complete description; and

WHEREAS, a portion of said Pelican Reef Subdivision, Section 2, contemplates the construction of Patio Units, and so designates the same in the plat(s) thereof recorded in the following Plat Book and Pages: 30-75, as revised in Plat Book 30, Page 78 in the Office of the Register of Deeds for Pender County to which reference is hereby made for a more complete description; and

WHEREAS, a portion of said Pelican Reef Subdivision, Section 2, is comprised of conventional lots, and so designates the same in the plat(s) thereof recorded in the following Plat Book and Pages: 30-76, as revised in Plat Book 30, Page 79 in the Office of the Register of Deeds for Pender County to which reference is hereby made for a more complete description; and

WHEREAS, Horizon Homes, Inc. has entered into a contract to purchase from Declarant said Patio Unit properties and intends to construct thereon and on Common Property said Patio Units and appurtenances, including proper and approved sewage disposal systems and Water Supply Systems; and

WHEREAS, in the event that Horizon Homes, Inc. does not construct all said Patio Units, then Declarant, or its assigns may undertake said construction activities or contract with a third party to purchase from Declarant said Patio Unit properties and construct thereon and on Common Property said Patio Units and appurtenances, including proper and approved sewage disposal systems and Water Supply Systems; and

WHEREAS, Declarant has established a general plan of development to restrict the use and occupancy of Pelican Reef Subdivision by virtue of the Restrictive Covenants of Pelican Reef Subdivision, which were filed on May 5, 1995, and which are recorded at Book 1046, Pages 134 through 152, said Restrictive Covenants being binding on the Patio Units referenced herein; and

WHEREAS, Pelican Reef Homeowners Association, Inc. is a duly formed non-profit corporation organized and existing in the State of North Carolina and whose Bylaws have been recorded and filed with the Register of Deeds of Pender County on May 5, 1995 and are located at Book 1046, Pages 155 through 169; and

WHEREAS, in order to further undertake an efficient operation of the Patio Units, and to maintain and operate the Common Areas,

Recorded and Verified  
Joyce M. Swicegood  
Register of Deeds  
Pender County, NC



including the driveways, and other common improvements (excluding wastewater disposal systems and water supply systems), Declarant, as incorporator, has caused Heron Pond at Pelican Reef Homeowners Association, Inc. to be duly formed as a non-profit corporation; and

WHEREAS, these Bylaws and Additional Restrictive Covenants shall control the operation of Heron Pond at Pelican Reef Homeowners Association, Inc. ("Heron Pond Association"); and

WHEREAS, those properties located within Section 2 of Pelican Reef Subdivision which are not so designated as Patio Units or Heron Pond Common Property/Common Area (as said designations may be amended in accordance with the Restrictive Covenants of Pelican Reef Subdivision, Section 2) shall not be subject to these Bylaws and Additional Restrictive Covenants and the owners thereof not be members of the Heron Pond Association; and

WHEREAS, all property so designated as Patio Units in Section 2 of the Pelican Reef Subdivision (as said designations may be amended in accordance with the Restrictive Covenants of Pelican Reef, Section 2) are subject to these Bylaws and Additional Restrictive Covenants;

WHEREAS, all common property and improvements (excluding Systems and Water Supply Systems) located thereon which is not part of a Patio Unit, as defined below, shall be Common Property subject to the control of the Heron Pond Association; and

WHEREAS, various Systems and Water Supply Systems shall be constructed by the builder/owner or other persons on behalf of the various Patio Unit Owners on Common Property pursuant to the easements granted herein and shall be owned, operated and maintained by the individual Patio Unit Owners and the Heron Pond Association shall have no responsibility thereto.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described in the recorded plat for Pelican Reef Subdivision, Section 2, which are designated as Patio Units (as said designations may be amended in accordance with the Restrictive Covenants of Pelican Reef, Section 2), and all of the property hereinafter made subject to these Bylaws and Additional Restrictive Covenants, shall be held, sold, and conveyed subject to the following rights, easements and obligations, which shall burden and run with said real property and be binding on all parties, and their heirs, successors and assigns, owning any right, title, or interest in the properties now or hereafter subjected to these Bylaws and Additional Restrictive Covenants, and shall inure to the benefit of each Owner thereof and the Heron Pond Association.

#### ARTICLE I

#### DEFINITIONS

The following words, when used in these Bylaws and Additional Restrictive Covenants, or any supplemental Bylaws and/or Additional Restrictive Covenants (unless the context shall prohibit), shall have the following meanings:

"Heron Pond Association" shall mean and refer to Heron Pond at Pelican Reef Homeowners Association, Inc., a non-profit North Carolina corporation, its successors and assigns.

"Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Patio Unit. Provided, however, the Declarant shall not be deemed an Owner.

"Owner/Builder" shall mean and refer to Horizon Homes, Inc. or any



other entity which purchases from Declarant said Patio Unit lots and constructs Patio Units and appurtenances, driveways, proper and approved Systems and Water Supply Systems. Declarant may become an Owner/Builder, but only in the event that it expressly assumes said construction responsibilities.

"Property" shall mean and refer to that certain property shown on plat(s) recorded in Plat Books and Pages: 30-75 and 30-78 in the Office of the Register of Deeds for Pender County, North Carolina, which are designated as Patio Units (as may be amended from time to time in the manner set forth in the Restrictive Covenants for Pelican Reef, Section 2). The terms "Property," "Heron Pond Subdivision" and "Heron Pond" are interchangeable.

"Patio Unit" shall mean and refer to that area within a Patio Unit Lot, the boundaries of which are defined by a line parallel to any integral portion of the improved dwelling unit.

"Patio Unit Lot" shall mean those lots which are designated as Patio Units (as may be amended from time to time in the manner set forth in the Restrictive Covenants for Pelican Reef, Section 2) as shown on plat(s) recorded in Plat Books and Pages: 30-75 and 30-78 in the Office of the Register of Deeds for Pender County, North Carolina.

"Common Property" and "Common Area" shall mean all property owned by the Heron Pond Association for the common use and enjoyment of all or any designated class of members in the Patio Units and shall include all property that is subject to these Bylaws and Additional Restrictive Covenants, which are not part of a Patio Unit Lot as defined herein. Common Property includes, without limitation, all existing and future right-of-ways and all greenways, median strips, cul-de-sac centers, driveways, walkways, planting areas, recreational areas, all entry ways, directional, and informational signs (and area set aside for their location) and any other property as may be provided for the common use and benefit of the Heron Pond Association. It being understood that all Systems and Water Supply Systems shall be and remain the property of the applicable Patio Unit owner(s). It being further understood that this enumeration is by way of description of the type of facilities that may be developed and in no way shall bind or obligate the Declarant to provide any of the described facilities and it being further understood that Declarant, in its sole discretion, may include any facility of any type as Common Property. Sanderling Circle, Sanderling Lane, and Sanderling Court shall not be Common Property and instead shall be Common Property of the Pelican Reef Homeowner's Association, Inc. The Common Property shall not be used for public commercial purposes, but may be used for enjoyment of the Heron Pond Association's members for fund-raising activities to support the purposes of the Heron Pond Association. The terms "Common Property" and "Common Area" are interchangeable.

"System" or "Systems" shall mean any wastewater and septic disposal system (whether the same be either a conventional system or bed system) which is constructed to serve any Patio Unit. Regardless of location, Systems shall not be Common Property.

"Water Supply Systems" shall mean any groundwater well and associated facilities including any collection, treatment, storage or distribution facility, which shall be located, in part, on Common Property. Regardless of location, Water Supply Systems shall not be Common Property.



## ARTICLE II

RIGHTS AND DUTIES OF THE HERON POND ASSOCIATION  
AND PROPERTY OWNERS ASSESSMENTSSECTION 1. DECLARATION THAT THIS DOCUMENT SETS FORTH  
ADDITIONAL RESTRICTIVE COVENANTS.

It is understood and intended that Heron Pond lies within Pelican Reef Subdivision, Section 2, and some lots within Section 2 are not properly subject to restrictions that must be imposed upon Heron Pond. Accordingly, certain provisions are included herein for the purposes of establishing and imposing additional easements, restrictions, obligations, duties and rights of Heron Pond Owners, as opposed to other lot owners lying within Pelican Reef Subdivision, Section 2. Therefore, this document shall be deemed and construed to be additional Restrictive Covenants and Easements burdening the Property located within Heron Pond and no other property.

## SECTION 2. RIGHTS, OBLIGATIONS AND DUTIES.

The Heron Pond Association shall have all rights, obligations and duties imposed by the Restrictive Covenants for Pelican Reef, Section 2 and these Bylaws and Additional Restrictive Covenants. In addition, by assignment, the Declarant, at its sole and absolute discretion may impose any right, obligation or duties imposed on Declarant to the Heron Pond Association.

## SECTION 3. ANNUAL ASSESSMENTS.

The Heron Pond Association shall have the duty to repair, replace and maintain all Common Property, including all improvements located thereon, driveways, utilities, landscaping and other improvements located thereon, less and excepting Systems and Water Supply Systems. Heron Pond Association shall have the right, from time to time, to establish a reasonable assessment, which assessment shall be paid by each Owner, in such periodic installments as the Heron Pond Association may determine, to be used to pay:

a. The operational and administrative expenses of the Heron Pond Association;

b. The costs of maintenance, upkeep, replacement and repair of all Common Property and improvements thereon, excluding Systems and Water supply Systems;

c. Other expenses necessary or useful to operate the Heron Pond Association and the Common Areas, including complete landscape maintenance of the Common Area, including the Pond.

The annual assessment payable by each Owner shall be \$125.00 per lot, per calendar year. The annual assessment shall be due and payable on January 31 of each year, commencing January 31, 1996, provided the Board of Directors may elect to permit payment in such installments and at such times as it shall determine. This assessment shall be deferred as to any lot owned by Declarant or Owner/Builder. This assessment will be prorated on a calendar year basis from the date title to each Patio Unit for which an assessment is payable is transferred to the Owner.

The annual assessment may be increased or decreased by the Board of Directors of the Heron Pond Association without a vote of the membership to an amount not more than ten percent (10%) of the annual assessment for the previous year. A majority vote of each class of voting members of the Heron Pond Association must approve



an increase or decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than ten percent (10%).

Annually, the Board of Directors of the Heron Pond Association shall have determined and shall have given written notice to each Owner of the annual assessment affixed each year for the immediately succeeding calendar year.

The Declarant and Owner/Builder are not subject to any annual assessments.

#### SECTION 4. SPECIAL ASSESSMENTS.

In addition to the assessments specified hereinabove, the Heron Pond Association may levy special assessments for the purpose of supplementing the annual assessment if the same are inadequate to pay the reasonable repair and maintenance expenses and operating costs of the Heron Pond Association, provided that any such special assessments shall have the assent of a majority of each class of the voting members of the Heron Pond Association at a duly called meeting (except in the manner set forth below for emergencies). Further, the Heron Pond Association shall have the authority to impose a special assessment upon any Patio Unit Owner that is necessary to repair or undertake additional maintenance, which was caused by such Patio Unit Owner's negligent actions or intentional abuse of the common property. It is intended that the Heron Pond Association shall remedy any improvement on Common Areas (excluding Systems and Water Supply Systems) which was damaged by reason of any improper action taken by a Patio Unit Owner, and that the costs for such repair shall be imposed directly upon the offending Patio Unit Owner.

The Declarant and Owner/Builder are not subject to any special assessments.

#### SECTION 5. EMERGENCY SPECIAL ASSESSMENTS.

Notwithstanding any provision of these Bylaws and Additional Restrictive Covenants, the Board of Directors shall have the authority to levy any emergency special assessment if, in the sole discretion of said Directors, the assessment is reasonably required to protect the Heron Pond Association properties or improvements impacted in case of an emergency need to maintain, repair, or replace any Common Property or improvement located thereon, excluding Systems and Water Supply Systems. In such event, the Directors shall give written notice to the members as promptly as possible after the determination of said assessment, and the action shall be binding as though ratified by the requisite vote of the Owners of Patio Unit Lots.

The Declarant and Owner/Builder are not subject to any emergency special assessments.

#### SECTION 6. LATE CHARGES AND INTEREST ON UNPAID ASSESSMENTS.

Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the Board of Directors of the Heron Pond Association, which interest rate shall not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is \$25.00 and shall be charged as to any assessment that is not paid within thirty (30) days of its due date. The initial interest rate for late payment is 18% per year (1.5% per month) which shall commence to accrue on any assessment or other account balance that is not paid within thirty (30) days of the due date. The Board of Directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.



# SECTION 7. LIEN FOR UNPAID ASSESSMENTS.

In the event the Owner of any Patio Unit Lot fails and refuses, after demand by the Heron Pond Association, to pay any annual, special or emergency special assessment, then the Heron Pond Association shall have a continuing lien against said Patio Unit Lot and the Patio Unit Lot Owner's interest in the System and Water Supply System serving said Patio Unit Lot and may enforce collection of said assessment in law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided for such unpaid assessment together with the costs and expenses of collection, including without limitation, reasonable attorneys' fees. Such charges also shall be the personal obligation of the person(s), corporations or entities who were the Owner and Owners of such Patio Unit Lot at the time the assessment came due.

Neither the assessments nor the costs of collection shall be a lien upon any Common Property nor shall the lien upon any lot for such charges be senior to any first lien mortgage or first lien deed of trust regardless of the fact the lien arose prior to the date and time of recording of any such first lien mortgage or deed of trust.

# SECTION 8 RESPONSIBILITY FOR MAINTENANCE AND REPAIR CAUSED BY OWNER'S NEGLIGENT USE OR INTENTIONAL ABUSE.

Any cost incurred by the Heron Pond Association in the operation, maintenance or repair of common property caused by the negligent use or intentional abuse of said common property or the cost and damages resulting from the construction, operation or maintenance of System or Water Supply System, a Patio Unit Lot Owner(s) may be assessed by the Heron Pond Association as an assessment against such Patio Unit Lot(s) and will constitute a charge and continuing lien against such Patio Unit Lot(s) which may be perfected and foreclosed according to the same procedures for annual dues and special assessments provided herein. Notwithstanding the personal obligation of a Patio Unit Owner and lien for these charges against offending Patio Unit Lot Owner(s), such costs shall be a common expense of the Heron Pond Association, and it shall not be a prerequisite that the Heron Pond Association first exhaust its ability to collect such costs from the Owner or any other person or entity before the costs are assessed as a common expense to all Owners in the Heron Pond Subdivision.

# SECTION 9. RULES FOR COMMON PROPERTY USES.

The Heron Pond Association is empowered to enact rules and regulations governing the use of all Common Property.



### ARTICLE III

#### OWNER/BUILDER TO CONSTRUCT IMPROVEMENTS ON COMMON AREA AND TRANSFER IMPROVEMENTS TO THE HERON POND ASSOCIATION

##### SECTION 1. OWNER/BUILDER TO CONSTRUCT DRIVEWAYS AND WALKWAYS ON COMMON PROPERTY

It is intended that common facilities will be located and constructed by the Owner/Builder upon the Common Areas and that these facilities shall be transferred to the Heron Pond Association and maintained by said Heron Pond Association. These facilities include driveways and walkways, but will not include Systems or Water Supply Systems. All facilities, including the plans, specifications and location must be approved by the Declarant.

##### SECTION 2. EASEMENT FOR CONSTRUCTION ACTIVITIES

The Owner/Builder (or any other person who may construct a Patio Unit) is hereby granted a non-exclusive easement over common properties for the purpose of engaging in the construction activities contemplated by this Article.

##### SECTION 3. OWNER/BUILDER TO TRANSFER DRIVEWAYS AND WALKWAYS TO HERON POND ASSOCIATION

No Owner/Builder or any other person may sell or transfer any Patio Unit to any Owner without first having properly constructed proper driveways and walkways for said Patio Unit. Accordingly, upon completion of a Patio Unit's driveway and walkways and other improvements approved by the Heron Pond Association upon the Common Area, and prior to transfer of a Patio Unit to an Owner, Owner/Builder must transfer to the Heron Pond Association any and all of its rights, title and interest to such driveway, walkways and other improvements (excluding Systems and Water Supply Systems) and the Heron Pond Association must accept ownership thereof.

##### SECTION 4. ONE YEAR WARRANTY

In addition to all other implied and express warranties and covenants, Owner/Builder shall provide the Heron Pond Association with a one (1) year warranty against all defects in the driveways walkways and common property improvements.

### ARTICLE IV

#### SYSTEMS AND WATER SUPPLY SYSTEMS

##### SECTION 1. OWNER/BUILDER TO CONSTRUCT SYSTEMS AND WATER SUPPLY SYSTEMS ON COMMON PROPERTY

It is intended that Systems and Water Supply Systems will be located and constructed by the Owner/Builder upon the Common Areas and that these facilities shall be transferred to Patio Unit Owners and owned, operated, maintained and controlled by said Owners. All Systems and Water Supply Systems, including the plans, specifications and location must be approved by the Declarant.

##### SECTION 2. EASEMENT FOR CONSTRUCTION ACTIVITIES

The Owner/Builder (or any other person who may construct a Patio Unit) is hereby granted a non-exclusive easement over common properties for the purpose of engaging in the construction activities contemplated by this Article.



SECTION 3. OWNER/BUILDER TO TRANSFER SYSTEMS AND WATER SUPPLY SYSTEMS TO PATIO UNIT OWNER

No Owner/Builder or any other person may sell or transfer any Patio Unit to any Owner without first having properly constructed proper Systems and Water Supply Systems for said Patio Unit. Thus, upon completion of a System, Water Supply System and at the closing of the sale of the Patio Unit to an Owner, the Owner/Builder shall transfer any and all of its rights, title and interest to a System and Water Supply serving the Patio Unit to the Owner.

SECTION 2. ONE YEAR WARRANTY

In addition to all other implied and express warranties and covenants, Owner/Builder shall provide the Owner with a one (1) year warranty against all defects in the System and Water Supply System serving said Patio Unit.

SECTION 3. RESPONSIBILITY FOR EXTENDING THE SYSTEM TO OTHER AREAS.

In the event of a failure of a System resulting in the need to utilize the Common Areas or "Proposed Drain Field Area," the Owner of a Patio Unit Lot being served by said System will be responsible for extending the System into any acceptable Common Area or "Proposed Drain Field Area," and the cost of same.

SECTION 4. OPERATION, MAINTENANCE AND REPAIR DUTIES FOR SYSTEMS.

Upon conveyance of any System to an Owner, the Owner shall accept full maintenance and operation responsibilities therefore and must carry out all of its obligations and responsibilities contained therein. Specifically, all Patio Unit Owners must perform any maintenance or repairs required by the Pender County Department of Health, or any other governmental entity, in order to maintain its System in full compliance with all legal standards and all conditions, as the same may be modified from time to time. A Patio Unit Owner must use its best efforts to maintain all improvements permits in good standing at all times.

SECTION 5. OPERATION, MAINTENANCE AND REPAIR DUTIES FOR WATER SUPPLY SYSTEMS.

It is intended that several Patio Units will be serviced by a single Water Supply System. Therefore, a Patio Unit may be connected to an existing Water Supply System upon obtaining Declarant's consent thereto. No Patio Unit Lot owner may refuse to allow a new Patio Unit Lot from being connected to an existing Water Supply System. The following provisions shall govern the maintenance and repair of Water Supply Systems as amongst joint owners:

a. The connected Patio Unit Owners shall be individually responsible for reasonable maintenance, repair and replacement of said Water Supply Systems on a pro rata basis.

b. The costs of maintenance and repair may be enforced by an action at law or equity, and injunctive relief requiring the payment of pro rata costs shall be available to all Patio Unit Lot owners who have paid their portion of the costs. In addition, any Patio Unit Owner who negligently damages or intentionally abuses a Water Supply System will be subject to actions in law and equity, including injunctive relief to repair the same and pay all damages associated with said actions.

c. All Patio Unit Owners will comply with all federal, State and local rules and regulations with regard to said maintenance and repair activities.



d. All interested persons must attempt to settle any disputes by mediation and all interested persons must participate in good faith therein and pay their pro rata share of the costs of said mediation.

SECTION 6. EASEMENTS AND ACCESS TO SYSTEMS AND WATER SUPPLY SYSTEMS.

As the Systems and Water Supply Systems will be constructed upon Common Areas of the Heron Pond Association the Owner/Builder and all Patio Unit Owners shall have a non-exclusive easement right to access all of their System and Water Supply Systems located on the Heron Pond Common Property. If any System is located on property other than Common Area, including the "Proposed Drain Field Area," the Owner/Builder and the Patio Unit Owner shall have the right to go upon any portion of the "Proposed Drain Field Area" or any other Owner's property which may be required for repair or maintenance to the Systems or Water Supply Systems.

SECTION 7. EASEMENTS TO RUN WITH THE LAND.

All easements reserved herein, shall run with the land, shall specifically survive the termination, expiration, modification or amendment of these Bylaws and Additional Restrictive Covenants and shall specifically be enforceable and enforced by the Heron Pond Association, the Owner/Builder, the Owners of Patio Unit Lots. The easements relating to Systems shall expire upon abandonment of the System upon extension and connection of a public sewer service to the Patio Unit. The easements relating to Water Supply Systems shall expire upon abandonment of the Water Supply System upon extension and connection of a public water supply service to the Patio Unit.

ARTICLE V

MAINTENANCE AND LANDSCAPING EASEMENTS

SECTION 1. GENERAL MAINTENANCE AND LANDSCAPING DUTIES.

The Heron Pond Association shall have the responsibility of maintaining in good condition all Common Areas and real property within the Subdivision that lies outside a Patio Unit, as defined herein. This responsibility shall include, but not be limited to, maintenance of trees, the Pond, shrubs, grass and walks, and appropriate landscaping. To the extent necessary, the Heron Pond Association may employ personnel necessary to perform these obligations, or may contract with third parties to perform said obligations.

SECTION 2. EASEMENTS.

In order to provide for maintenance and landscaping activities within Patio Unit Lots, there is hereby dedicated to and reserved unto the Heron Pond Association a non-exclusive easement over and among all Patio Unit Lots such that the Heron Pond Association shall have the right to go upon any of such easements for the purposes of maintenance and landscaping. The existence of these easements shall create no obligation for maintenance or repair on improvements lying within the Patio Unit Lots but is simply intended to facilitate a cost effective mechanism for the Heron Pond Association to perform the duties herein delegated to the Heron Pond Association.

SECTION 3. HERON POND ASSOCIATION RESPONSIBILITIES DO NOT INCLUDE PATIO UNITS.

Heron Pond Association is not obligated to perform any maintenance upon any Patio Unit or on any improvement lying within any Patio Unit Lot or any System or Water Supply System. To the extent that



any disputes over maintenance and repairs shall arise, all maintenance and repair responsibilities shall be construed and presumed to be the responsibility of the Patio Unit Owner and not the Heron Pond Association.

## ARTICLE VI

### ADDITIONAL PROPERTIES.

#### SECTION 1. ADDITION OR DECREASE IN THE NUMBER OF PATIO UNITS.

Subject to approval by the Pender County Planning Board and other applicable governmental authorities, Declarant reserves the right to subject to these Bylaws and Additional Restrictive Covenants, and expand or decrease Heron Pond, any of the properties described on the map and plat filed with the Pender County Register of Deeds, and designated Pelican Reef Subdivision, Section 2. It is intended that Declarant, upon acquiring appropriate approvals, shall have the right to create additional Patio Units in the property described and delineated on said plat and subject the same to these Bylaws and Additional Restrictive Covenants and the rules and regulations of Heron Pond Association, and conversely, to decrease the number of Patio Units within Heron Pond, and revert said properties to conventional lots, or other designations, and allow said properties to not be subject to these Bylaws and Additional Restrictive Covenants, nor the rules and regulations of Heron Pond Association.

#### SECTION 2. ADDITIONAL PHASES.

The Declarant may, but is not obligated, to develop one or more additional phases of Heron Pond and incorporate and subject the same to the provisions of these Bylaws and Additional Restrictive Covenants.

## ARTICLE VII

### MEMBERSHIP, VOTING RIGHTS, MEETINGS, DIRECTORS AND OFFICERS

#### SECTION 1. MEMBERSHIP.

Every Owner of any Patio Unit which is subject to these Bylaws and Additional Restrictive Covenants shall be a member of the Heron Pond Association. Membership is appurtenant to the lot and may not be assigned. If and when Declarant adds additional property to Heron Pond, then the Owners of those Patio Units shall be members of the Heron Pond Association. Further, if Declarant reduces the size of Heron Pond, then said properties which are no longer a portion of Heron Pond shall not be a member of the Heron Pond Association. The Declarant and Owner/Builder also shall be members so long as they own property within this Subdivision, as expanded or decreased from time to time.

#### SECTION 2. CLASS MEMBERSHIP VOTING.

The Heron Pond Association shall have two (2) classes of membership:

Class A. Class A members shall be all Patio Unit Owners, including Owner/Builder, but excepting Declarant, and shall be entitled to one vote for each Patio Unit owned. When more than one (1) person owns an interest in a Patio Unit, all such persons shall be members but the vote for such Patio Unit shall be exercised as they, among themselves, shall determine in writing, which writing shall be filed with the Secretary of the meeting prior to voting, but in no event shall more than one vote be cast with respect to any Patio Unit.



Class B. Class B members shall be entitled to a vote of ten (10) votes for each proposed Patio Unit owned. Class B membership shall consist of the Declarant, or its successors or assigns, until the happening of either of the following events, whichever occurs earlier:

a. The earlier of four months after ninety percent (90%) of all Patio Units in Heron Pond are sold and conveyed by Declarant to unrelated third parties or persons; or

b. Ten years from date of recordation of these Bylaws and Additional Restrictive Covenants; or

c. At such time as Declarant voluntarily relinquishes majority control of the Heron Pond Association by a duly recorded instrument.

Upon the happening of the earlier of either the three above-described events, Class B membership shall cease and terminate and shall be converted to Class A membership.

### SECTION 3. PLACE OF MEETINGS.

All meetings of members shall be held at the principal office of the Heron Pond Association, or such other place either within or without the State of North Carolina, as shall be designated in the notice of the meeting or agreed upon by a majority of the membership.

### SECTION 4. ANNUAL MEETINGS.

The annual meeting of members shall be held at 1:00 p.m. on the 1st day of April of each year, if not a legal holiday, but if a legal holiday, then on the next day following not a legal holiday, for the purpose of electing directors of the Heron Pond Association and for the transaction of such other business as may be properly brought before the meeting.

### SECTION 5. SUBSTITUTE ANNUAL MEETING.

If the annual meeting shall not be held on the day designated by these Bylaws and Additional Restrictive Covenants, a substitute meeting may be called in accordance with the provisions of "Special Meetings" of this Article. A meeting so called shall be designated and treated for all purposes as an annual meeting.

### SECTION 6. SPECIAL MEETINGS.

Special meetings of the members may be called at any time by the Board of Directors of the Heron Pond Association, or by any member pursuant to the written request of the holders of not less than one-tenth of all votes entitled to be cast on any issue to be considered at the special meeting. Only those matters that are within the purpose or purposes described in the required meeting notice may be acted upon at a special meeting of the members unless the vote is nonetheless valid, despite said lack of notice, in the manner set forth below.

### SECTION 7. NOTICE OF MEETINGS.

Written notice stating the time and place of the meeting shall be sent not less than ten (10) days before and not more than sixty (60) days before the date thereof, if delivered personally or by first class, certified or registered mail, by or at the direction of the President, the Secretary, or other person calling the meeting, to each member of the record entitled to vote at such meeting. If the notice is mailed by other than first class, certified or registered mail, then said notice must be sent not less than thirty (30) and no more than sixty (60) days before the



date thereof.

In the case of an annual or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted unless it is a matter other than election of directors, on which the vote of the members is expressly required by the provisions of the North Carolina Nonprofit Corporation Act. In the case of a special meeting, the notice of meeting shall specifically state the purpose for which the meeting is called.

When the Heron Pond Association gives notice of any meeting of members, the Heron Pond Association shall give notice of a matter a member intends to raise at the meeting if:

1. Requested in writing to do so by a person entitled to call a special meeting; and
2. The request is received by the Secretary or President of the Heron Pond Association at least ten (10) days before the Heron Pond Association gives notice of the meeting.

When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty (30) days in any one adjournment, it is not necessary to give any notice of the adjourned meeting, other than by announcement at the meeting at which the adjournment is taken.

The transactions of any meeting of members, however called and with whatever notice, if any, are as valid as though taken at a meeting duly held after regular call and notice, if:

1. All the members entitled to vote are presented in person or by proxy and no objection to holding the meeting is made by any member; or
2. A quorum is present either in person or by proxy and no objection to holding the meeting is made by anyone so present and if, either before or after the meeting, each person entitled to vote who is not present, in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting or an approval of the action taken as shown by the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

#### SECTION 8. VOTING LISTS.

At least five (5) days and not more than thirty (30) days before a notice is sent of a meeting of members (hereinafter referred to as "record date"), the Secretary of the Heron Pond Association shall prepare an alphabetical list of the members entitled to vote at such meetings, with the address of and number of votes entitled to be cast by each said member, which list shall be kept on file at the registered office of the Heron Pond Association, or at a reasonable place identified in the meeting notice, for a period of ten (10) days prior to each meeting, and shall be subject to inspection by any member at any time during the usual business hours. Persons who become members after the record date shall not be entitled to vote at a meeting. The voting list also shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of the meeting. Upon paying a reasonable cost of copying said list, any member may receive a copy of the list, provided that said member is acting in good faith and for a proper purpose. Under no circumstances may the list be used to solicit money or property or for any other commercial purpose or sold to or purchased by any person.

#### SECTION 9. QUORUM.



The holders of a majority of the votes entitled to be cast, represented in person or by proxy, shall constitute a quorum at meetings of members. If there is not a quorum at the opening of the meeting of members, such meeting may be adjourned from time to time by the vote of the majority of the votes which are cast on a motion to adjourn; and, at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting.

The members at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

#### SECTION 10. PROXIES.

Votes may be cast either in person or by one or more agents authorized by a written proxy executed by the member or by his duly authorized attorney in fact. A proxy is not valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting. No proxy shall be valid after ten (10) years from the date of its execution. All proxies must comply with N.C. Gen. Stat. § 55A-7-24, and the vote by proxy and the Heron Pond Association's obligation to accept or reject said proxy shall be governed by said statute.

#### SECTION 11. ACTION WITHOUT A MEETING.

Any action required or permitted by these Bylaws and Additional Restrictive Covenants and the North Carolina Nonprofit Corporation Act may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the Heron Pond Association for inclusion in the minutes or filing with the corporate records.

#### SECTION 12. SUSPENSION OF VOTING RIGHTS.

The Heron Pond Association will have the right to suspend the voting rights (if any) of a member for any period during which assessment of his lot remains unpaid and enforce collection of the same.

#### SECTION 13. BOARD OF DIRECTORS.

There shall be five (5) members of the Board of Directors of the Heron Pond Association who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called at the request of the President of the Heron Pond Association or by any three (3) directors. So long as Declarant or its successors and assigns is the Class B member, it shall select the Board of Directors provided it must select two (2) of the members from the lot Owners, other than the Declarant. All meetings of directors shall be held at the principal office of the Heron Pond Association, or such other place either within or without the State of North Carolina, as shall be designated in the notice of the meeting or agreed upon by a majority of the directors. Meetings and actions of the Board of Directors shall otherwise be in accordance with the North Carolina Nonprofit Corporation Act.

#### SECTION 14. OFFICERS.

The Board of Directors shall appoint one director to act as President of the Heron Pond Association, one director to act as Secretary of the Heron Pond Association and one director to act as the Treasurer of the Heron Pond Association. The Board is also



empowered to appoint an Assistant Secretary of the Heron Pond Association. The same director may act as both Treasurer and Secretary. Said Officers shall have only the authority to act as the Board confers upon them, subject to the provisions of the North Carolina Nonprofit Corporation Act.

SECTION 15. The President shall have the following duties:

He/she shall, when present, preside at all meetings of members. He/she shall sign, with any other proper officer, any deeds, mortgages, bonds, contracts or other instruments which may be lawfully executed on behalf of the Heron Pond Association, except where required or permitted by law to be otherwise signed and executed, except where the signing and execution thereof shall be delegated by the Board of Directors to some other officer or agent.

SECTION 16. The Secretary and/or Assistant Secretary shall have the following duties:

He/she shall keep accurate records of the acts and proceedings of all meetings of members and directors. In addition, he/she will demand and all Owners must provide copies of all easements, surveys, or other available information reasonably necessary for the Owners to understand fully the location of all improvements in and directly associated with Heron Pond. He/she shall give all notices required by law and by these By-Laws and shall prepare and file all reports required by law. He/she shall have general charge of the corporate books and records and of the corporate seal, if any, and he/she shall affix the corporate seal, if any, to any lawfully executed instrument requiring it.

SECTION 17. The Treasurer shall have the following duties:

He/she shall have the custody of all funds belonging to the Heron Pond Association and shall receive, deposit and disburse the same under the direction of the Board of Directors. He/she shall keep full and accurate accounts of the finances of the Heron Pond Association in books specially provided for that purposes; and he/she shall cause a true statement of its assets and liabilities as of the close of each fiscal year and of the results of the operation and of charges in surplus for such fiscal year, all in reasonable detail to be made and filed at the registered or principal office of the Heron Pond Association within four (4) months after the end of such fiscal year. The Board of Directors shall have the option of requiring and acquiring a bond in a sufficient amount to cover any actions undertaken by the Treasurer.

#### ARTICLE VIII

##### ARCHITECTURAL CONTROL

SECTION 1. As with all other Pelican Reef Owners, Heron Pond Owners and the Owner/Builder shall be subject to the Restrictive Covenants of Pelican Reef Subdivision and The Bylaws of Pelican Reef Homeowners Association, Inc. and the Architectural Review Committee of the Pelican Reef Homeowners Association, Inc.

#### ARTICLE IX

##### DISSOLUTION

SECTION 1. The Heron Pond Association may be dissolved by an affirmative vote of at least sixty-six percent (66%) of the membership and the affirmative vote of the Declarant, its successors and assigns. No dissolution may be voted upon or enacted unless and until the Restrictive Covenants governing this property are properly terminated, said termination being a



condition precedent to the authority of the Heron Pond Association to dissolve and file Articles of Dissolution.

SECTION 2. Upon dissolution, and after all liabilities and obligations of the Heron Pond Association are paid and discharged, or adequate provisions made therefor, and after assets of the Heron Pond Association which are held upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, have been returned, transferred, or conveyed in accordance with such requirements, then the members shall receive a proportionate share of the Heron Pond Association's assets based upon the ratio of the number of lots owned by said member to the total number of lots owned by all members.

#### ARTICLE X

##### N.C. GEN. STAT. § 55A

The Heron Pond Association shall be bound by and at all times comply with the provisions of the North Carolina Nonprofit Corporation Act, N.C. Gen. Stat. §§ 55A-1-01 et seq., including maintaining and providing all members access to all required documentation and records, providing all required notices to members and maintaining a registered office and registered agent in the State of North Carolina. The initial registered agent shall be Water View, Inc., and the initial registered office shall be 54 Narrow Way, Wilmington, North Carolina 28405. The registered agent and office of the Heron Pond Association may be changed from time to time by a majority vote of the Directors.

#### ARTICLE XI

##### INDEMNIFICATION

The Heron Pond Association shall indemnify any director, officer or agent against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with an action, suit or proceeding, if the Heron Pond Association determines that he acted in good faith and in a manner he reasonably believed to be in the best interest of the Heron Pond Association. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, will not in itself create a presumption that the person did or did not act in good faith and in a manner in which he reasonably believed to be in the best interest of the Heron Pond Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

#### ARTICLE XII

##### BANKING

All funds in the Heron Pond Association will be deposited in its name in the checking account or accounts as shall be designated by the Directors.

#### ARTICLE XIII

##### INSURANCE

During the course of the term for which this Heron Pond Association is formed, the Heron Pond Association may carry liability insurance in amounts deemed appropriate by the Board of Directors.



ARTICLE XIV

CAPTIONS, ENFORCEMENT, INVALIDATION AND AMENDMENTS

SECTION 1. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

SECTION 2. 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 nor the intent of any provisions hereof.

SECTION 3. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In the event it is necessary to enforce these Bylaws and Additional Restrictive Covenants by appropriate legal or equitable proceedings, the party or parties violating or attempting to violate the same shall be liable for the cost of such proceedings, including reasonable attorney's fees.

SECTION 4. Invalidation of any one or more of these covenants by judgment or court shall not adversely affect the balance of these Bylaws and Additional Restrictive Covenants, which shall remain in full force and effect.

SECTION 5. The Declarant reserves the right to amend these Bylaws and Additional Restrictive Covenants from time to time without joinder of any of the Owners for the following purposes:

1. To clarify the meaning of or to correct clerical errors in the Declarations.

2. To correct grammar, spelling, capitalization and other matters of syntax.

SECTION 6. All other amendments to this Declaration shall require an affirmative vote of at least sixty-six percent (66%) of the membership and the affirmative vote of the Declarant, its successors and assigns.

Duly adopted this the 1 day of Sept, 1995.

WATER VIEW, INC.

BY: Donald J. Rhine  
Donald J. Rhine, President



Attested to:

James Rhine ASSISTANT  
SECRETARY



OK10726624

STATE OF NORTH CAROLINA

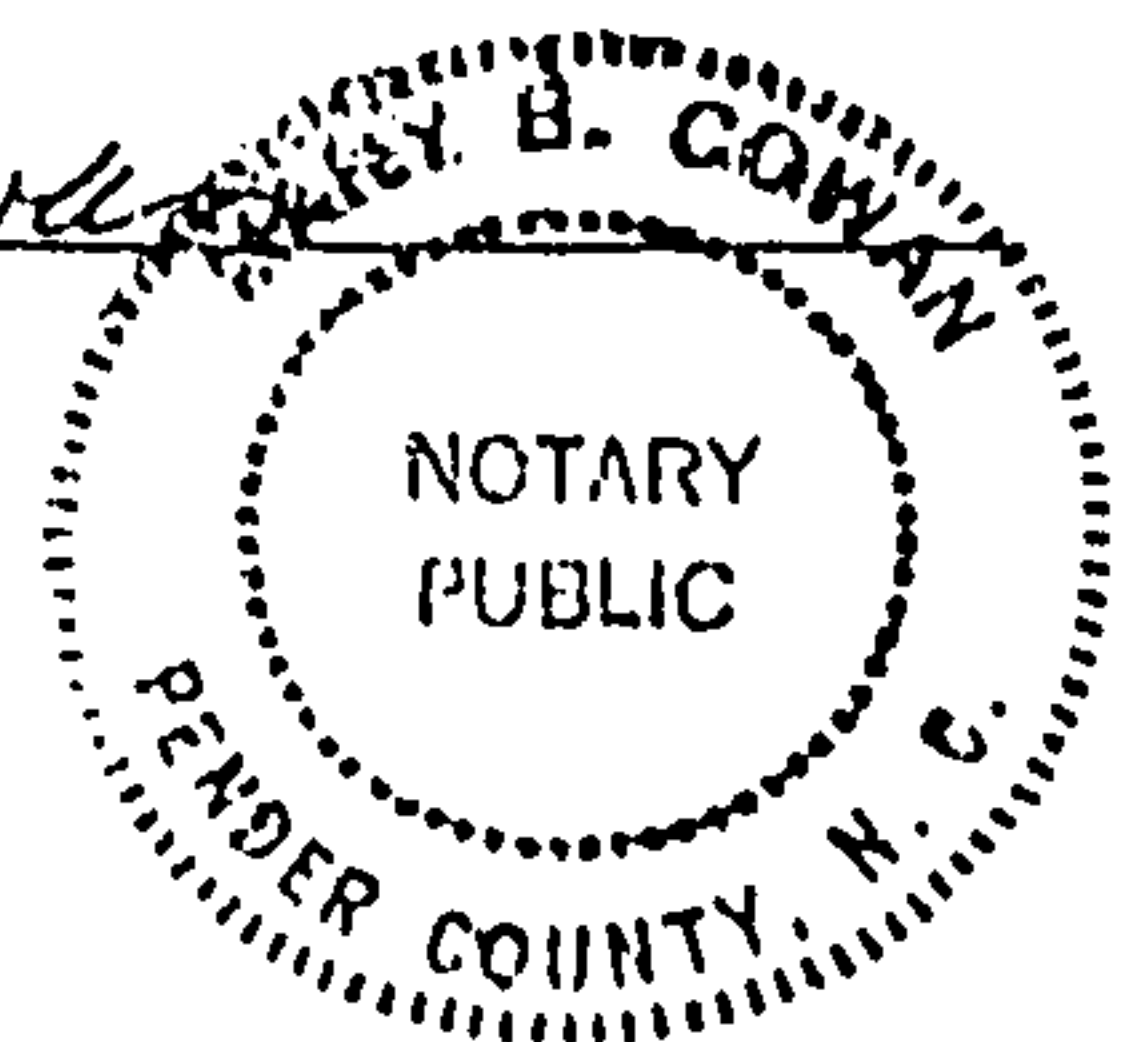
COUNTY OF PENDER

I, a Notary Public of the County and State aforesaid, certify that Donald J. Rhine personally came before me this day and acknowledged that he is the President of Water View, Inc., a North Carolina corporation, and that by authority duly given and as the act and deed of the said corporation the foregoing instrument was signed in its name by him as its President, sealed with its corporate seal and attested by Rebecca Rhine as its Assistant Secretary.

Witness my hand and seal, this 1 day of September, 1995.

Mary B. Conway  
NOTARY PUBLIC

Commission expires: May 15, 1997



North Carolina - Pender County  
The foregoing (or annexed) certificate of  
Mary B. Conway  
is certified to be correct.

This 20 day of Sept, A.D. 1995

JOYCE M. SWICEGOOD, Register of Deeds  
By: Joy R. James  
Deputy/Assistant Register of Deeds