

# The Arbors of Beaux Catcher Condominium Association Dues

Operating Expenses	Annually	Monthly
Building and HOA Directors Insurance. *	\$ 6,609.00	\$ 550.75
Common Area Maintenance	\$ 1,800.00	\$ 150.00
Accounting & Legal	\$ 600.00	\$ 50.00
Landscaping Maintenance	\$ 8,700.00	\$ 725.00
Utilities	\$ 1,800.00	\$ 150.00
Trash Removal	\$ 2,400.00	\$ 200.00
Association Management	\$ 4,200.00	\$ 350.00
Miscellaneous Repairs & Expenses	\$ 2,400.00	\$ 200.00
<b>Total Operating Expenses</b>	<b>\$ 28,509.00</b>	<b>\$ 2,375.75</b>

Reserves and Replacement Funds	Years	Cost	Monthly
Roof Replacement **	20	\$ 40,425.00	\$ 155.00
Repainting ***	7	\$ 34,000.00	\$ 405.00
Resealing & Restriping Parking Lot	5	\$ 2,100.00	\$ 35.00
			<b>\$ 595.00</b>

	Annually	Monthly
<b>Total Reserves and Replacement Funds</b>	<b>\$ 7,140.00</b>	<b>\$ 595.00</b>
<b>Total Expenses and Reserves</b>	<b>\$ 35,649.00</b>	<b>\$ 2,970.75</b>

## Home Owners Dues

<b>Per Unit Per Month (12 units)</b>	<b>\$ 2,970.75</b>	<b>\$ 247.56</b>
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\* Insurance - property \$4,500,000 and liability limit of \$1,000,000.00  
Includes Directors and Officers Liability coverage of \$1,000,000.00

\*\* Roof replacements - 20 years, \$216/square, 187 squares = \$40,425 = \$152.22/mo say \$155

\*\*\* Repainting \$34,000.00 in 7 years

All above numbers are estimated since no actual operations numbers currently exist.

**PUBLIC OFFERING STATEMENT FOR  
ARBORS OF BEAUX CATCHER MOUNTAIN CONDOMINIUM**

1. INTRODUCTION. This Public Offering Statement is being offered to contract purchasers of condominium units (each a AUnit@; and collectively, the AUnits@) in the proposed Arbors of Beaux Catcher Mountain Condominium (the ACondominium@), as required by the North Carolina Condominium Act. It contains a summary of the important features of the proposed Condominium project, and, by law, must be delivered to each purchaser of a Unit in the Condominium.

Each owner of a Unit (a AUnit Owner@; or, collectively, the AUnit Owners@) owns all of the space bounded by the undecorated interior surfaces of the exterior walls, ceilings and floors of his/her particular Unit. This space is owned in fee simple, and the Unit Owner has the exclusive right to possess it, subject to the easements set forth in the Declaration of Condominium. Additionally, each Unit Owner owns an undivided percentage interest, as a Atenant in common@ with all other Unit Owners, in all of the ACommon Elements@ in the Condominium. These Common Elements may include, but are not limited to, the land on which the Condominium buildings (the ABuildings@) are located (the AProperty@), the structural elements of the Buildings, paved access roads, parking areas, walkways, fences, sidewalks, and landscaped areas. There are also ALimited Common Elements@ that are assigned to specific Units. These Limited Common Elements include private balcony areas, the utility lines serving the HVAC systems, other utility systems within each Unit, garages in the Buildings and covered parking spaces located on the Property. These Limited Common Elements are reserved for the exclusive use of the Unit Owner(s) to which they are assigned, and the Unit Owner(s) shall be responsible for the routine maintenance of these Limited Common Elements, except that the Association (as defined below) shall have the right to contract with maintenance companies to maintain certain of said Limited Common Elements.

A Unit Owner has the right to use and enjoy all of the Common Elements located within the Condominium, and all of the Limited Common Elements allocated to his/her Unit, subject to the rules and restrictions contained in the Declaration of Condominium or imposed from time to time by the Arbors of Beaux Catcher Mountain Condominium Homeowners Association, Inc. (the AAssociation@). Each Unit Owner is automatically a member of the Association by virtue of his/her ownership of a Unit, and must pay his/her share of the cost of maintaining the Common Elements, and of managing the Association, all as set forth in the Declaration of Condominium.

2. NAME AND ADDRESS OF DECLARANT AND CONDOMINIUM.

- A. Declarant. Asheville Beaux Catcher VASS, LLC, a North Carolina limited liability company  
227 E. Front Street  
New Bern, NC 28560

B. Condominium.

Arbors of Beaux Catcher Mountain  
60 Ardmion Park  
Asheville, NC 28801

2. GENERAL DESCRIPTION OF CONDOMINIUM. The Property on which the Condominium will be built contains approximately 2.5 acres in Asheville, North Carolina. The Condominium will consist of two (2) Buildings with frame construction, and cultured stone and concrete siding exterior, containing a maximum of twelve (12) Units, for residential use. Declarant reserves the right to combine and recombine Units. The maximum number of Units MUST BE BUILT.

The Buildings will each contain six (6) units, and each Unit shall have access through separate exterior entrances. Each Unit shall have allocated to it, as a Limited Common Element, either a garage or a covered attached carport. Certain garages will be available for purchase by certain units on a first come, first served basis; otherwise those units to which a garage is not assigned will be assigned a covered attached carport.

In addition to the Buildings, Declarant will construct certain Common Elements, including, without limitation, a system of paved access roads which will run throughout the development; a sanitary sewer and water distribution system; and a storm water management system serving the Condominium, which system shall include pumps, underground lines and pipes, manholes and similar improvements, as necessary. These utility systems may be dedicated by Declarant to the City of Asheville; if not so dedicated, they will be considered Common Elements covered by the Declaration of Condominium.

A summary of the Units available and the anticipated heated square footage of each type of Unit is set forth on the schedule attached hereto as Exhibit AA@ and incorporated herein by this reference. The percentage ownership interest in the Common Elements of the Condominium allocated to each Unit will be based on the heated square footage of the Unit (based on the measurements set forth on Exhibit AA@), and shall be calculated by dividing the heated square footage of the Unit by the total heated square footage of all developed Units, and by multiplying the quotient so calculated by one hundred (100). In accordance with North Carolina General Statute ' 47C-2-107, the Declarant may, without the consent of the Unit Owners or any other Person (unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Declaration of Condominium), reallocate each Unit Owner=s percentage ownership interest in the Common Elements if the allocation shown on Exhibit AA@ is greater or less than the actual whole of such ownership, and amend the Declaration of Condominium to reflect such reallocation.

The square footage measurements for each Unit set forth in Exhibit AA@ are estimates only. For your information, federal appraisal guidelines require that condominium units be measured to the interior faces of interior walls. A final appraisal of your Unit may disclose a heated footage less than or greater than that set forth on Exhibit AA@.

Declarant has acquired the Property and has begun construction of the Buildings, and expects completion of all Units and amenities in the Condominium in December, 2005. Declarant does not guarantee the completion of the Condominium by any particular date, and it reserves the right to modify its construction schedule in the future.

3. CONDOMINIUM DOCUMENTS.

A. Declaration of Condominium. A copy of the proposed Declaration of Condominium for the Condominium is attached hereto as Exhibit AB@ and incorporated herein by this reference (the ACovenants@).

B. Association Documents. Copies of the Association=s Articles of Incorporation (the AArticles@) and proposed Bylaws (ABylaws@), and the proposed Rules and Regulations (the ARules@) for the Condominium are attached hereto as Exhibits AC@, AD@ and AE@, respectively, and incorporated herein by this reference. The Covenants, Articles, Bylaws, and Rules shall hereinafter sometimes be referred to collectively as the ACondominium Documents@.

C. Management Agreement. The Association is not currently a party to any contracts affecting the Condominium; but Declarant anticipates that the Association will enter into a management agreement with a third party management company prior to the final closing of the sale of Units at the Condominium. As such, the projected Association budget attached hereto as Exhibit AF@ and incorporated herein by this reference reflects a management fee of \$4,200.00 per annum (\$29.17 per Unit per month).

4. PROJECTED ASSOCIATION BUDGET. The Association=s projected budget for the first year following the first conveyance of a Unit is attached hereto as Exhibit AF@ and incorporated herein by this reference (the AProjected Budget@). The Projected Budget includes, as required by the provisions of the North Carolina Condominium Act, the following: (a) an amount for repair and replacement reserves, (b) any other reserve amounts, (c) the projected common expense assessment by category or expenditures for the Association, and (d) the projected monthly common expense assessment for each Unit, which is estimated to be \$247.56 for each Unit. The Projected Budget has been prepared by Declarant, based on good-faith estimates from subcontractors, and is based on a collection rate of 100%, and an assumption that the Condominium will be fully complete, with the maximum number of Units which may be built subject to assessment, as of the first conveyance of a Unit. In no event shall the monthly assessment for the calendar year 2005 exceed \$275.00 for each Unit. Declarant has committed to pay excess common expenses of the Association, if any, over such amount during the 2005 calendar year. The calculations for the reserve amounts have assumed inflation increases of four percent (4%) per annum.

5. COMMON EXPENSES. Declarant at the present time does not provide any services and does not pay for any expenses which Declarant anticipates may become a subsequent common expense of the Association, except for those matters disclosed above, all of which are reflected in the Projected Budget.

6. INITIAL RESERVE FUND PAYMENT. Declarant will collect from each purchaser at closing a working capital contribution equal to twice the monthly assessment for common expenses reflected in the Projected Budget, which capital contribution shall not exceed each Unit. This amount, which is non-refundable, will be paid over by Declarant to the Association to capitalize the operating funds of the Association.

7. CONVEYANCE OF UNITS. Declarant expects to own the Property subject to an acquisition and development loan to partially capitalize the construction of the Project, which loan will be secured by the Property (the AProject Loan@). Every Unit sold and its related interest in the Common Elements will be released from the lien of the Deed of Trust at the time of closing or shortly thereafter. Each Unit will, however, be conveyed subject to the following: (a) lien of Buncombe County and City of Asheville taxes for the year of closing and subsequent years, which are not yet due and payable; (b) standard title exceptions for general utility service easements; and (c) the easements and restrictions set forth in the Condominium Documents.

8. LIMITED WARRANTY. In addition to the implied warranties of quality contained in N.C.G.S. '47C-4-114 (that the Unit will be free from defective materials, constructed in a workmanlike manner, constructed according to sound engineering and construction standards, and suitable for residential use), Declarant will cause the general contractor that constructs the Condominium to warrant each Unit for a period of one (1) year from the date of closing for that Unit, in accordance with that contractor=s then-prevailing warranty standards and the terms of the purchase and sale agreement for the Unit. Declarant expressly disclaims any implied warranties relating to the appliances, heating and air conditioning systems, equipment and other personal property located in the Condominium, but will furnish to the purchaser or to the Association all manufacturers= warranties with respect to those items. In addition, Declarant makes no representations or warranties as to the condition or health of any shrubs, trees, or plantings located within the Condominium, but will deliver to the Association any nursery=s warranties with respect to those plants. No additional express or implied warranties, unless required by law, are or will be made by Declarant.

9. PURCHASER=S RIGHT TO TERMINATE. The purchaser must receive this Public Offering Statement before signing a contract for purchase. No conveyance of title by deed can occur until seven (7) calendar days following the signing of a contract for purchase. The purchaser has the absolute right to cancel the contract to purchase during that seven (7) calendar day period without penalty. Under the North Carolina Condominium Act, a purchaser electing to cancel a contract may do so by hand delivering notice to the Declarant or by mailing notice by pre-paid United States mail to Declarant at the address specified above.

10. NO PENDING LEGAL ACTION. There are no known or recorded unsatisfied judgments or pending suits against the Association the Declarant or pertaining in any way to the Condominium. There are no pending suits material to the Condominium of which the Declarant has actual knowledge.

11. **EARNEST MONEY DEPOSIT.** In accordance with N.C.G.S. ' 47C-4-103(a)(12), any escrow deposit or down payment made by a purchaser in connection with the purchase of a Unit will be held in an escrow account with an insured bank or savings and loan institution, as required by the North Carolina Condominium Act and as described below. The name of the escrow agent is Realty World c/o Dean Pistor, its address is 6 East Chestnut Street, Asheville, NC 28801 and the escrow account is with Branch Banking and Trust Company, whose address is 850 Merrimon Avenue, Asheville, NC 28804. All payments held in such escrow account shall be deemed to belong to the purchaser and not the Declarant. The deposit shall be held in such account until the seven (7) day period during which the purchaser may cancel the purchase contract expires, or the date of cancellation by the purchaser thereunder, whichever occurs first.

12. **INSURANCE.** The Association currently has no insurance coverage in force. The minimum requirements for the insurance coverage that will be maintained by the Association for the benefit of Unit Owners are set forth in Section 6.4 of the Bylaws, and includes 100% replacement coverage on the Building (less a commercially reasonable deductible not to exceed \$10,000.00), liability insurance with coverage of at least \$1,000,000.00 per occurrence, and fidelity bond coverage. The Association may elect to obtain more extensive insurance coverage once it is organized. You are urged to consult with your insurance adviser to assure that you are aware of the extent of insurance coverage to be provided by the Association, and the advisability of purchasing additional insurance to cover your individual exposure, such as the value of your personal property, or individual liability insurance coverage.

13. **ASSESSMENTS FOR USE OF COMMON ELEMENTS.** Other than the annual and special maintenance assessments provided by Article VII of the Bylaws, there are no present and no known or anticipated future fees or charges to be paid by Unit owners for the use of the common elements and other Condominium facilities.

14. **ZONING AND LAND USE REQUIREMENTS.** The Property is zoned ARM-16@ under the terms of the Zoning Ordinance of the City of Asheville. This zoning classification permits construction of attached residential dwellings. In addition, the Condominium is subject to all use restrictions as set forth in the Declaration (see attached Exhibit AB@), including, but not limited to, the following:

A. Residential or Retail Purposes Only. All Units may be used only for residential purposes. Notwithstanding the foregoing, any Unit owned by Declarant may be used as a sales or model Unit.

B. No Unlawful Activity. A general prohibition against unlawful, offensive or obnoxious activity, including limitations on overloading the electrical systems or the load-bearing capacity of the floors.

C. Parking Limitations. Limitations on the use of the parking areas in the Condominium, including a prohibition against the parking of any vehicles on the access drive in a manner that blocks the access drive or driveway of another Unit owner, and a prohibition on the outside parking

of any boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle within the Condominium at any time. The Declaration establishes a series of fines to be imposed by the Association for violation of the parking restrictions.

D. Restrictions on Animals. A prohibition against any animals, livestock or poultry of any kind, except for a maximum of two (2) small domesticated household pets per Unit (reptiles and rodents shall be expressly prohibited), and rules regarding pets, such as a requirement that pets not be kept or bred for commercial purposes, that pets be kept on leashes when outside their Unit, and that an owner clean up after any pet that defecates in the common areas on the Condominium.

E. Restrictions on Exterior Alterations. A prohibition against exterior alterations to any Unit (including, but not limited to, the installation of a satellite dish) without the prior written approval of the Association, and a prohibition against any signs or flags on the exterior of a Unit. Notwithstanding the foregoing, flags of the United States and the State of North Carolina may be flown on all national holidays and at other times permitted by the Association.

15. ALIENATION OF COMMON ELEMENTS. Under the North Carolina Condominium Act and the terms of the Declaration, portions of the Common Elements of the Condominium may be conveyed by the Association or subjected to a security interest only if persons entitled to cast at least eighty percent (80%) of the votes allocated to Units, not owned by the Declarant, agree to the action.

16. EXHIBITS.

The following exhibits are attached to and are an integral part of this Public Offering Statement:

Exhibit AA@ B Schedule of Units

Exhibit AB@ B Declaration of Condominium

Exhibit AC@ B Association=s Articles of Incorporation

Exhibit AD@ B Association=s Bylaws

Exhibit AE@ B Rules and Regulations

Exhibit AF@ B Projected Initial Annual Budget

**EXHIBIT A**

**SCHEDULE OF UNITS AND PERCENTAGE INTERESTS**

<b>Unit Number</b>	<b>Heated Square Footage</b>	<b>Percentage Interest</b>
101	1708	9.06004
102	1708	9.06004
103	1708	9.06004
104	1708	9.06004
201	1481	7.85593
202	1524	8.08402
203	1524	8.08402
204	1481	7.85593
205	1481	7.85593
206	1524	8.08402
207	1524	8.08402
208	1481	7.85593
<b>Total</b>	<b>18852</b>	<b>100</b>

**EXHIBIT B**  
**DECLARATION OF CONDOMINIUM**

[Attached]

NORTH CAROLINA

DECLARATION OF CONDOMINIUM

BUNCOMBE COUNTY

THIS DECLARATION OF CONDOMINIUM is made and entered into the \_\_\_ day of \_\_\_\_\_, 2005, by Asheville Beaux Catcher VASS, LLC, a North Carolina Limited Liability Company (ADeclarant@), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes.

1. ESTABLISHMENT.

Declarant is the owner of certain real property in Buncombe County, North Carolina, more particularly described in Paragraph 2 below; and

Declarant intends to construct two multi-story buildings on said real property containing a maximum of twelve (12) units for sale as individual units and to sell and convey the same to various purchasers subject to the covenants, conditions and restrictions hereinafter set forth; and

Declarant intends and desires by the filing of this Declaration of Condominium to submit the property described in Paragraph 2 below and improvements to be constructed thereon together with all of the appurtenances thereto to the provisions of Chapter 47C of the North Carolina General Statutes,(NORTH CAROLINA CONDOMINIUM ACT),and hereby declares the same to be known and identified as AArbors of Beaux Catcher Mountain Condominiums@.

2. PROPERTY DESCRIPTION.

All that certain property situated, lying and being in Buncombe County, North Carolina, and being more particularly described on Exhibit AA@ attached hereto and incorporated herein by reference (the AProperty@).

3. FORM OF ADMINISTRATION.

The property of the condominium and its business shall be managed, controlled, directed and administered by the Arbors of Beaux Catcher Mountain Condominium Homeowners Association, Inc. (herein the AAssociation@) as provided in the Articles of Incorporation and By-Laws of the Association, which Articles of Incorporation and By-Laws are attached hereto as ExhibitsAC@ and AD@ and made a part hereof. Each Unit Owner shall be a member of the Association.

All powers granted in this Declaration or the By-Laws to the Association shall be exercisable by the Board of Directors, except as expressly provided in the Declaration, the By-Laws, or NCGS 47C.

Declarant shall transfer control of the Association to the Unit Owners on or before December 31, 2006.

#### 4. UNIT DESIGNATION.

Declarant does hereby establish within the Property twelve (12) units, and does hereby designate all such units for separate ownership. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings, and floors, which are shown on the aforesaid plans filed in the Buncombe County Registry. Mechanical equipment, stairways, and appurtenances located within or outside any unit and designed to serve only that unit shall be a part of the unit.

Each Unit Owner has an unrestricted right of ingress and egress to his or her unit. This right shall be perpetual and it shall pass with the unit estate as transfers of unit ownership might occur. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void unless the unit to which that interest is allocated is also transferred.

#### 5. PARTY WALLS.

The walls, flooring and ceilings connecting adjacent units are party walls and are situated on or about the boundary line separating units. In the case of any walls, flooring and ceilings that are herein described as party walls, all furring, wallboard, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit and all other portions of such walls, floors or ceilings are a part of the common elements, pursuant to NCGS 47C-2-102(1).

Each wall which is built as a part of the original construction of a unit and placed on the dividing line between the units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use. Notwithstanding any other provisions of this Declaration, a Unit Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

#### 6. COMMON AREAS AND FACILITIES.

The common areas and facilities consist of all parts of the multi-unit buildings situated on the land described above other than individual units therein as described in Paragraph 4 above, including without limitation the following:

- (a) The land on which the buildings are erected and all land described in Paragraph 2 above.
- (b) All foundations, columns, girders, beams, supports and other structural members.
- (c) The roof and all exterior walls and interior walls except those partition walls and all ceilings, floors, and stairways wholly within a unit.
- (d) All central appurtenant installments for operations and for services such as power, lights, telephone, security system, cable TV, cold water for common building usage, heat and air conditioning for common building usage, if any, including pipes, ducts, wiring, cables and conduits, whether located in common areas or in units and all other central mechanical equipment spaces, except that heat and air conditioning equipment designed to serve a particular unit shall not be part of the common areas and facilities.
- (e) All waterlines and sewer lines located outside public street rights-of-way and City of Asheville utility easements.
- (f) All of the parts of the property and all apparatus installations existing in the building or upon the property for common use necessary or convenient to the existence, maintenance, or safety of the property.
- (g) All landscaping, parking areas, other site improvements, trash collection areas and equipment related thereto.

#### 7. LIMITED COMMON AREAS AND FACILITIES.

Limited Common Areas and Facilities shall mean and include those common areas and facilities reserved for use by a certain Unit or Units to the exclusion of other Units, including any deck, porch, patio, courtyard, balcony, and/or storage room appurtenant to such of the Units as are shown on the Plans, or any assigned parking garage or covered attached carport. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy such Limited Common Areas and Facilities as are associated with such Unit Owner=s Unit. The cleanliness and orderliness of the Limited Common Areas and Facilities shall be the responsibility of the individual Unit Owner, but the responsibility for maintenance, painting, repair and replacement thereof, together with control over the exterior decoration of same, shall be and remain with the Association. There are no Limited Common Areas and Facilities except as provided in this Paragraph 7.

## 8. PERCENTAGE OF OWNERSHIP IN COMMON AREAS.

Each unit shall have an undivided ownership interest in the common areas as shown on the attached Exhibit AB". The percentage of common area per unit shall not be changed without the unanimous consent of the owners herein.

Every owner of a Unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

Each Unit together with its undivided interests in the common areas and facilities, shall, for all purposes be, and is hereby declared to be, and to constitute a separate parcel of real property and the Unit Owner thereof shall be entitled to the exclusive ownership and possession of his unit subject only to the covenants, restrictions, and easements herein and by the By-Laws, rules, regulations and resolutions adopted pursuant thereto.

## 9. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.

The Declarant, for each unit owned within the property, hereby covenants, and each owner of any unit by acceptance of a deed therefor, whether of not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual assessments or common charges to be established and collected as herein provided. All units will be allocated full assessments no later than sixty days after the first unit is conveyed except for unsold or unoccupied units owned by the Declarant which shall be assessed at a rate of 25% of a full assessment until such time that they shall be either sold or occupied.

The annual and special assessments, together with the interest, and costs and reasonable attorney=s fees incurred in the collection thereof, shall be a charge on the unit and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs and reasonable attorney=s fees incurred in the collection thereof, shall also be the personal obligation of the person (or persons) who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The assessments levied by the Association shall be used exclusively to promote and protect the recreation, health, safety, and welfare of the residents, for the improvement and maintenance of the common area, and of the building and improvements situated upon the Property, and to pay ad valorem taxes, public improvement assessments and governmental liens levied against the common areas.

Any lien for delinquent common expense assessments or other charges that the Association has on a unit will be subordinate to a first mortgage on the unit, if the mortgage was recorded before the delinquent assessment was due. Any such lien for a common expense assessment will not be affected by the sale or transfer of the unit estate, unless a foreclosure of a first mortgage is involved,

in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent unit owner from paying further assessments.

#### 10. WORKING CAPITAL FUND.

A working capital fund shall be established by the Declarant in order to meet unforeseen expenditures or to purchase any additional equipment or services. The working capital fund shall be initially funded by the Declarant in an amount equal to two months of the estimated common charges for each unit. The Declarant is expressly prohibited from using the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. Each unit's share of the working capital fund shall be collected at the time the sale of the unit is closed. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. At such time that each unit's share of the working capital fund is paid in by a Unit Owner as provided herein, the Declarant shall be reimbursed out of the working capital fund for that amount previously paid by the Declarant to the working capital fund on behalf of the unit. The working capital fund shall be transferred to the Association for the deposit to a segregated fund when control of the Association is transferred to the Unit Owners by the Declarant.

#### 11. AMOUNT OF LIEN.

The lien for each unit as described in Paragraph 9 above shall be based on the percentage share in common areas as described in Paragraph 8 above. Said lien shall be perfected upon filing in the Office of the Clerk of Superior Court, Buncombe County, North Carolina.

The Grantee of a unit shall be jointly and severally liable with the Grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the manager or Board of Directors, as the case may be, setting forth the amount of the unpaid assessments against the Grantor and such Grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessment in excess of the amount therein set forth.

#### 12. USE OF BUILDING.

- (a) The building and each of the units shall be used for residential purposes only. The use of the building and units are further restricted by the By-Laws and Rules and Regulations of the Association. No unit may be subdivided into smaller units or any portions thereof sold or otherwise transferred without first amending the By-Laws to show the changes in the units to be effected thereby.
- (b) No more than two persons over the age of eighteen unrelated by blood or marriage shall reside in any single unit for more than thirty consecutive days in any one calendar year.

- (c) The common areas and facilities shall be used only for the purposes for which they are intended and the furnishing of services for the enjoyment of the units.
- (d) No noxious or offensive activity shall be conducted upon any unit nor shall anything be done thereon which may be or may become an annoyance or nuisance or shall interfere with the peaceful possession of property by Unit Owners.
- (e) No animals, livestock or poultry of any kind shall be kept or maintained on any unit or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. All household pets shall be kept on a leash at all times when outside the units.
- (f) No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any unit unless and until permission for the same has been granted by the Association.
- (g) No signs shall be permitted on or about the units.
- (h) All window coverings (i.e., curtains, blinds, draperies, shades, etc.) shall be installed and maintained in accordance with provisions of the Association.
- (i) Unit Owners shall not park or store any motorcycle, camper, trailer, trailer vehicle, or similar anywhere on the premises. No trucks shall be permitted except for standard 2-ton or less pickup trucks or smaller sized trucks.
- (j) Any lease or rental agreements involving the units shall be in writing and shall be subject to the requirements of the Association documents and Association Rules and Regulations governing same.

#### 13. PERSON TO RECEIVE SERVICE OF PROCESS.

Dean Pistor is hereby designated to receive service of process in any action which may be brought against or in relation to this condominium. The address of such person is: 6 Chestnut Street, Asheville, NC 28801, which is located within the city and county where the building is located. The person so designated to receive service of process may be changed by the Board of Directors.

#### 14. EASEMENTS.

Each Unit Owner shall have an easement in common with all other owners over all other units to use all pipes, wires, ducts, cables, conduits, public utilities and other common facilities located in any of the other units and serving each unit. Furthermore, the Declarant hereby conveys to each Unit Owner an easement and right of access to any and all common areas, open spaces, yards and parking areas for the common use of all owners. The Association shall have the right to

establish the rules and regulations pursuant to which the owner of any unit, and family, guests and invites may be entitled to use the common areas.

Each unit shall be subject to an easement in favor of the other owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving other units located in such unit. The Board of Directors shall have the right of access to each unit to inspect the same, to remove violations therefrom and maintain, repair, or replace facilities contained therein or which serve other units in the building. Each Unit Owner shall specifically have an easement to maintain all components of the heating and air conditioning system serving his unit in their present location as shown in the plan attached hereto.

The Board of Directors may hereafter agree that easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, telephone wires and electrical conduits, wires over, under and along any portion of the common areas in each unit are necessary. Each Unit Owner hereby grants the Board of Directors irrevocable power of attorney to execute, acknowledge, and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing. An easement is hereby established over all common areas for the benefit of applicable governmental agencies for the setting, removing, and reading of water meters, maintaining and replacing water, drainage and drainage facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

#### 15. DISCLAIMER BY CITY OF ASHEVILLE.

Pursuant to the code of the City of Asheville, the City of Asheville refuses to be responsible for failing to provide any emergency or regular public service to this project or its occupants when such failure is due to the lack of access to certain roads or streets that are not public due to inadequate design or construction, blocking of access routes or any other factor within the control of the Declarant, Association, or occupants.

Accordingly, the Board of Directors is hereby empowered to make all efforts to assure that there is adequate access to all units and shall not allow any blocking of access or defects in access to remain uncorrected.

Further, the City of Asheville and all other governmental agencies are hereby absolved of both liability and responsibility for maintenance of private streets within the Property.

#### 16. PARTITIONING.

The common areas and facilities shall not be divided nor shall any right to a partition thereof exist. Nothing herein contained ever shall be deemed to prevent ownership of a condominium unit by the entireties, jointly or in common or in other form permitted by law.

## 17. DAMAGE, DESTRUCTION AND CONDEMNATION.

Except as herein provided, damage or destruction of the building shall be promptly repaired and restored by the Board of Directors. The Unit Owners shall be liable for assessment of any deficiency, provided however, that if the building be more than two-thirds destroyed by fire or any other casualty or the same taken by condemnation and the owners of 67% of the units and 51% of the votes of units estates that are subject to mortgages held by eligible holders resolve not to proceed with reconstruction or restoration, then in that event, the property shall be deemed to be owned as tenants in common by the Unit Owners and subject to the provisions of North Carolina General Statutes Section 47C-2-118 as the same exists as of the date hereof.

Implied approval by an eligible mortgage holder shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified mail or registered mail with a return receipt requested.

In any related proceedings, negotiations, settlements or agreements, the Association shall be designated to represent the Unit Owners. In such event, each Unit Owner shall appoint the Association as an attorney-in-fact for this purpose. The Association shall appoint an Insurance Trustee to act on behalf of the Unit Owners in connection with the settlement of any condemnation awards or insurance claims and to administer the allocation of proceeds among the various interested parties.

Any losses, awards or proceeds from the condemnation, destruction or liquidation of all or part of the property shall be payable to the Association's Insurance Trustee for the benefit of the Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of the project shall be made based on the relative value of each unit and in accordance with the formula that is used to determine the Unit Owner's individual interest in the common elements.

Any reconstruction or repair shall be in accordance with the plans and specifications of the original building.

## 18. INSURANCE.

Any insurance which shall be carried upon the property shall be governed by the following provisions:

(i) Casualty or physical damage insurance shall be carried in an amount equal to the full replacement value (i.e., 100% of full replacement cost) of all buildings and all improvements on the Property owned either by the Association or unit owners and all personal property included within the Property described in Exhibit AA hereto, except such personal property as may be owned by the unit owners with a replacement cost endorsement and an inflation guard endorsement, without deduction or allowance for depreciation (as determined annually by the Board of Directors

with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following:

- (a) loss or damage by fire or other hazards covered by the standard coverage endorsement together with coverage for common expenses with respect to condominium units during any period of repair or reconstruction; and
- (b) such other risks as from time to time customarily shall be covered with respect to buildings similar to the buildings in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts not in excess of One Thousand Dollars (\$1,000.00) as the Board of Directors shall determine. All Casualty Insurance policies shall be purchased by the Association for the benefit of the Association, the Unit Owners and their respective mortgages, as their interests may appear and shall provide (a) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Units, if any, and (b) that the insurer waives its rights of subrogation against the Unit Owners, Occupants and the Unit Owners Association. All casualty insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Board of Directors as trustees, for each of the Unit Owners in the percentages established in this Declaration for the purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners, and their respective mortgagees as their interests may appear.

(ii) The Association shall insure itself, the members of the Board, the Unit Owners, and the Occupants against liability for personal injury or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Condominium Project or any portion thereof, including, without limitation, water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverage, such insurance to afford protection in such amount and with such coverage as shall be deemed necessary by the Association. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner. In the event the insurance effected by the Association on behalf of the Unit Owners and Occupants against liability for personal injury or property damage arising from or relating to this Condominium Project shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common expense to the Unit Owners, and any Unit Owners who shall have paid all or any portion of such deficiency in an amount exceeding his proportionate share thereof based on his percentage of interest in the common areas shall have a right of contribution from the other Unit Owners according to their respective percentage of interest in the common areas.

(iii) Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common expenses.

(iv) All insurance policies shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of AA+@ or better in Best's Insurance

Guide.

(v) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative.

(vi) In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by the Owners of the condominium units or their mortgages, as herein permitted, and any other insurance or similar clause in any policy obtained by the Unit Owners Association pursuant to the requirements hereof shall exclude such policies from consideration.

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

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

(ix) All policies of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors thereof, the Owners of any condominium unit and/or their respective agents, employees or invitees, and any defenses based upon co-insurance or invalidity arising from the acts of the insureds.

## 19. UNIT OWNERS POLICIES OF INSURANCE.

The Owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a Condominium Unit Owner's Endorsement for improvements and betterments to the condominium unit made or acquired at the expense of the owner) at his own expense. Such insurance shall be written by the same carrier as that purchased by the Board of Directors pursuant to the provisions hereof or shall provide that it shall be without contribution as against the same. The Grantor recommends that each owner of a Condominium Unit in the project obtain, in addition to the insurance herein above provided to be obtained by the Unit Owners Association, a Tenant's Homeowners Policy, or equivalent, to insure against loss or damage to personal property used in or incidental to the occupancy of the Condominium Unit, additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a Condominium Unit Owner's Endorsement: covering losses to improvements and betterments to the condominium unit made or acquired at the expense of the Unit Owner.

## 20. UNITS SUBJECT TO DECLARATION.

All present and future owners, tenants, occupants of units and employees of owners and tenants shall be subject to, benefitted by and shall comply with the provisions of this Declaration, by the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws. In accordance herewith, the Declaration, By-Laws and rules and regulations may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, By-Laws, and any rules and regulations which may be adopted are accepted and ratified by such owner, tenant, or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though provisions were made a part of each and every deed, conveyance or lease. When there are unsold units in the project, the Declarant also shall enjoy the same rights and assume the same duties under this Declaration as they relate to each unsold unit but for the payment of assessments on unsold or unoccupied units (see Paragraph 9).

## 21. CONSTRUCTION.

In interpreting any and all provisions of this instrument, the Exhibits attached hereto and subsequent deeds and deeds of trust covering individual units, the actual location of the unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally or vertically, from the locations indicated in Condominium File No.\_\_\_\_, Buncombe County Registry or in minor variations in the description of the unit contained herein. to the extent that such minor deviations in location do or shall exist, a valid easement therefor and for the maintenance thereof does and shall exist.

## 22. AMENDMENT.

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. For a period no longer than twenty four (24) months after the initial filing of this Declaration in the Buncombe County Registry, the Declarant may unilaterally amend this Declaration without the consent or approval of other Unit Owners or eligible mortgage holders provided such amendments shall be exclusively for the purpose of (1.) correcting clerical errors, or (2.) making changes in order to comply with Federal National Mortgage Association requirements. Otherwise, this Declaration may be amended during the first twenty-year period by an instrument signed by not less than eighty percent (80%) of the Unit Owners. Any amendment must be recorded.

Amendments of a material nature shall be agreed to by Unit Owners who represent at least 80% of the total allocated votes in the Association and by eligible mortgage holders who represent at least 51% of the votes of unit estates that are subject to mortgages held by eligible holders. Unit Owner votes may be cast in person or by proxy at a meeting held in accordance with the provisions of the By-Laws. No such amendment shall be effective until set forth in an amended declaration and duly recorded in the Office of the Register of Deeds in Buncombe County, North Carolina. Upon recording, all the Unit Owners and their successors and assigns, shall be bound by said amendments.

A material change shall be considered as one which changes any of the following:

- § voting rights;
- § increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- § reductions in reserves for maintenance, repair, and replacement of common elements;
- § responsibility for maintenance and repairs;
- § reallocation of interests in the general or limited common elements or rights to their use;
- § redefinition of any unit boundaries;
- § convertibility of units into common elements or vice versa;
- § expansion or contraction of the project, or the addition, annexations, or withdrawal of property to or from the project;
- § hazard or fidelity insurance requirements;
- § imposition of any restrictions on the leasing of units;
- § imposition of any restrictions on a Unit Owner=s right to sell or transfer his or her unit;
- § a decision by the Association to establish self-management if professional management had been required previously by Association documents or by an eligible mortgage holder;
- § restoration or repair of the project (after damage or partial destruction) in a manner other than that specified in the documents; or
- § any provisions that expressly benefit mortgage holders, insurers or guarantors.

Implied approval by an eligible mortgage holder shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified mail or registered mail with a Return receipt@ requested.

This Declaration may further be unilaterally amended by the Declarant for the purpose of recording a verified statement of a registered architect or licensed professional engineer certifying that the plans heretofore filed or being filed simultaneously with such amendment fully depict the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built.

## 23. RIGHTS OF CONDOMINIUM MORTGAGE HOLDERS, INSURERS OR GUARANTORS

Upon receipt of written request by a holder, insurer or guarantor of a mortgage on any unit in the project, the Association shall furnish timely written notice regarding the following:

- § Any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage;
- § any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of any unit on which it holds the mortgage;
- § a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- § any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

Any interested mortgage holder, insurer or guarantor shall send a written request to the Association stating both its name and address and the unit number or address of the unit on which it has (or insurers or guarantees) the mortgage.

## 24. SEVERABILITY.

The invalidity of any provisions of the Declaration shall not be deemed to impair or affect in any manner the validity and enforceability or effect the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provisions had never been included herein.

## 25. WAIVER.

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

## 26. GOVERNING LAW.

This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

27. DEFINITION.

Any terms used herein which are defined in the North Carolina Condominium Act shall have the meaning specified in the Act unless a contrary intention fairly appears.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal this the day and year first above written.

ASHEVILLE BEAUX CATCHER VASS, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

NORTH CAROLINA

BUNCOMBE COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ came before me this day and acknowledged that he is the Manager of Asheville Beaux Catcher VASS LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its manager.

WITNESS my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2005.

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

My commission expires:

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Declaration of Condominium  
Exhibit AA@

Legal Description

**SCHEDULE OF UNITS AND PERCENTAGE INTERESTS**

<b>Unit Number</b>	<b>Heated Square Footage</b>	<b>Percentage Interest</b>
101	1708	9.06004
102	1708	9.06004
103	1708	9.06004
104	1708	9.06004
201	1481	7.85593
202	1524	8.08402
203	1524	8.08402
204	1481	7.85593
205	1481	7.85593
206	1524	8.08402
207	1524	8.08402
208	1481	7.85593
<b>Total</b>	<b>18852</b>	<b>100</b>

**EXHIBIT C**

**ASSOCIATION=S ARTICLES OF INCORPORATION**

[Attached]

ARTICLES OF INCORPORATION

OF

ARBORS OF BEAUX CATCHER MOUNTAIN CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of Chapter 55A of the North Carolina General Statutes, the undersigned, a natural person of full age, has this day executed these Articles of Incorporation for the purpose of forming a non-profit corporation and hereby certifies:

ARTICLE 1

Name

The name of the corporation is ARBORS OF BEAUX CATCHER MOUNTAIN CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., hereinafter called the Association.

ARTICLE II

Office

The principal office of the Association is located at 227 E. Front Street, Craven County, New Bern, North Carolina, 28560.

ARTICLE III

Registered Agent

Dean Pistor, whose address is 6 East Chestnut Street, Buncombe County, Asheville, North Carolina, 28801, is hereby appointed Registered Agent of this Association.

## ARTICLE IV

### Purposes

This Association does not contemplate pecuniary gain or profit to the members thereof and no part of the Association's net income shall inure to the benefit of any of its officers, directors or members or any other private individual. The purposes and objects of the Association shall be to operate and manage Arbors of Beaux Catcher Mountain Condominiums, an twelve (12) unit residential condominium project, to be constructed in accordance with the laws of the State of North Carolina upon the property situated, lying and being near Asheville, North Carolina, and described in Exhibit AA@ attached to Arbors of Beaux Catcher Mountain Condominium Declaration recorded or to be recorded in the Buncombe County Registry.

Such purposes shall include but not be limited to the following:

- (a) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Condominium, hereinafter called the ADeclaration@applicable to the property and recorded or to be recorded in the Office of the Buncombe County Register of Deeds and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- (b) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
- (c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) To borrow money, and with the assent of Unit Owners owning in the aggregate of at least 80% undivided interest in the common areas and facilities, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) To dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been

signed by Unit Owners owning in the aggregate at least a 80% undivided interest in the common areas and facilities.

- (f) To participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and common area, provided that any such merger, consolidation or annexation shall have the assent of Unit Owners owning in the aggregate at least a 80% undivided interest in the common areas and facilities.
- (g) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise;
- (h) To contract for the management of the condominium and to delegate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration to have approval of the membership.

## ARTICLE V

### Membership

There shall be only one class of members in the Association. Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association.

## ARTICLE VI

### Voting Rights

The members of the Association shall have the right to vote for the election and removal of Directors and upon such other matters with respect to which the right to vote is given to members under the Declaration or under the provisions of chapter 55A of the General Statutes of North Carolina, the voting rights of the members being more particularly described in the Declaration and the By-Laws attached thereto; provided, however, that certain rights are reserved to Declarant in the Declaration and By-Laws of the Association with respect to the election of the initial Board of Directors and amendment of the Declaration of the By-Laws.

## ARTICLE VII

### Board of Directors

The affairs of this Association shall be managed by a Board of Directors consisting of not more than five (5) nor less than three (3) Directors, and the initial Board of Directors shall consist of three (3) persons, who shall serve until the first annual meeting of the membership of the Association. Directors need not be members of the Association. The names and addresses of the three persons who are to serve as Directors until the organizational meeting of the membership of the Association, or until their successors are elected and qualified are:

R. Edwin Coleman, Jr.  
304 Glenwood Avenue  
Asheville, NC 27603

Hubert G. Tolson III  
227 E. Front Street  
New Bern, NC 28560

Dean Pistor  
6 East Chestnut Street  
Asheville, NC 28801

Each director shall hold office for a one year term.

The Directors shall elect such officers of the Association as shall be provided in the By-Laws.

## ARTICLE VIII

### Dissolution

The Association may be dissolved with the assent given in writing and signed by Unit Owners owning in the aggregate at least a 80% undivided interest in the common areas and facilities.

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE IX

Duration

The corporation shall exist perpetually.

ARTICLE X

Amendments

Amendment of these Articles shall require the assent of 80% of the entire membership.

ARTICLE XI

Incorporation

The name and address of the incorporator is as follows:

Andrew S. Martin  
1026 Washington Street  
Raleigh, NC 27605

IN WITNESS WHEREOF, for the purposes of forming this corporation under the laws of the State of North Carolina, the undersigned, constituting the incorporator of this Association, has executed these Articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Andrew S. Martin, Incorporated

NORTH CAROLINA

BUNCOMBE COUNTY

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public, personally appeared, Andrew S. Martin, who I am satisfied is the person named in and who executed the foregoing Articles of Incorporation, and I having first made known to him the contents thereof, he did acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposed therein expressed.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my official seal, this \_\_\_\_ day of \_\_\_\_\_, 2005.

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

My commission expires:

\_\_\_\_\_

**EXHIBIT D**

**BYLAWS**

[Attached]

BY-LAWS  
OF  
ARBORS OF BEAUX CATCHER MOUNTAIN CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Offices

Article 1. Plan of Unit Ownership. The property located in Buncombe County, North Carolina, and more particularly described in the Declaration the which By-Laws are attached (hereinafter ADeclaration@) has been submitted to the provisions of Chapter 47C of the North Carolina General Statutes entitled ANorth Carolina Condominium Act.@ The Declaration is being recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the property of the condominium and to the use and occupancy thereof. The term Aproperty@ as herein used shall include the land, the building and all other improvements and structures thereon and all easements, rights and appurtenances belonging thereto, all of which are intended to be submitted to the provisions of Chapter 47C of the North Carolina General Statutes.

Section 3. Application. All present and future owners, mortgagees, lessees, occupants of units and employees of owners and tenants and their families and any other persons who may use the facilities of the property in any manner are subject to the Declaration, these By-Laws and rules and regulations made pursuant hereto and any duly passed and recorded amendments thereto.

The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that these By-Laws and provisions of the Declaration as they may be amended from time to time, are accepted, ratified, and will be compiled with.

## ARTICLE II

### Unit Owners

Section 1. Organizational Meeting. If not held before, the initial meeting of the Association shall be held on the first Tuesday in December, 2005.

Section 2. Annual Meetings. The annual meeting of the Unit Owners for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at 10 o'clock, a.m., on the first Tuesday in December in each year, commencing with the year 2005, if not a legal holiday, and if a legal holiday, then on the next secular day following. Unless otherwise scheduled, the Unit Owners shall vote at each annual meeting to ratify the proposed annual budget for the Association for the following year.

Section 3. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by these By-Laws, a substitute annual meeting may be called in the manner provided for the call of a special meeting in accordance with the provisions of Section 4 of this Article II and a substitute annual meeting so called shall be designated as and shall be treated, for all purposes, as the annual meeting.

Section 4. Special Meetings. Special meetings of the Unit Owners may be called at any time by a majority of the members of the Board of Directors, or upon the written request of Unit Owners having at least 20% of the votes in the Association.

Section 5. Place of Meetings. All meetings of Unit Owners shall be held at Arbors of Beaux Catcher Mountain Condominiums, Asheville, North Carolina or such other place within the City of Asheville as may be designated in the Notice of Meeting.

Section 6. Notice of Meetings. Written or printed notices stating the time and place of a meeting of Unit Owners shall be delivered or mailed not less than ten (10) or more than thirty (30) days prior to the date of such meeting to each person entitled to vote at such meeting.

In case of a substitute annual meeting, notice of the meeting need not specifically state the business to be transacted thereat unless it is a matter other than the election of the Board of Directors on which the vote of the Unit Owners is expressly required by the provisions of the North Carolina Condominium Act. In the case of a special meeting, the notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 7. Quorum. A quorum shall be deemed present throughout any meeting of the Unit Owners until adjourned if the Unit Owners, in person or by proxy, entitled to cast more than one-half of the votes are present at the beginning of such meeting.

Section 8. Voting Rights. There shall be one person with respect of each Unit who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known hereafter referred to

as a Voting Member. Such Voting Member may be the Unit Owner or some other person designated by such Unit Owner to act as proxy on his or their behalf and who need not be a Unit Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or Owners. The total number of votes of all Voting Members shall be eight (8) and the Unit Owner of each Unit shall possess one vote. An owner of more than one Unit shall possess one vote for each Unit owned.

Section 9. Unit Owners. A Unit Owners shall mean and refer to those persons who own units in the property subject to the Declaration and are entitled to membership as provided in the Declaration.

Section 10. Voting. In all elections for members of the Board of Directors, each Voting Member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the offices to be filed shall be deemed to be elected.

Section 11. Proxies. The votes pertaining to any condominium unit may (and shall in the case of any Unit Owner not a natural person or persons) be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except as written notice delivered to the Association by the Unit Owner or by any other such person. Any proxy shall be void if it is not dated or if it purports to be revocable without notice as aforesaid.

Section 12. Presiding Officer. The President, or in his absence, the Vice-President, shall serve as a chairman of every Unit Owners meeting unless some other person is elected to serve as Chairman by a majority vote of the votes represented at the meeting. The Chairman shall appoint such persons as he deems required to assist with the meeting.

Section 13. Adjournments. Any meeting of the Unit Owners, whether or not a quorum is present, may be adjourned by the holders of a majority of the votes represented at the meeting to reconvene at a specified time or place. It shall not be necessary to give any notice of the reconvened meeting or of the business to be transacted, if the time and place of the reconvened meeting are announced at the meeting which was adjourned. At any such reconvened meeting at which a quorum is represented or present, any business may be transacted which could have been transacted at the meeting which it was adjourned.

Section 14. Action of Unit Owners Without a Meeting. Any action which may be taken at a meeting of the Unit Owners may be taken without a meeting if written approval and consent, setting forth the action authorized, shall be signed by a majority of the Unit Owners entitled to vote on the date on which the last Unit Owners signed such approval and upon the filing of such approval and consent with the Secretary of the Association. Such approval and consent so filed shall have the same effect as a unanimous vote of the Unit Owners at a special meeting called for the purpose of considering the action authorized, except in those specific matters for which a vote greater than a majority vote is required by the North Carolina Condominium Act.

Section 15. Availability of Project Documents. The Association shall assure that current copies of the Declaration, Articles of Incorporation, By-Laws, and other rules concerning the project as well as its own books, records, and financial statements are readily available for inspection by Unit Owners or by holders, insurers, and guarantors of first mortgages that are secured by units in the project. These documents will be available during normal business hours.

Section 16. Availability of Audited Financial Statements. Once the Association has been established for a minimum of one full fiscal year, the Association shall provide for the availability of an audited statement for the preceding fiscal year to the holder, insurer, or guarantor of any first mortgage that is secured by a unit in the project on submission of a written request for it.

Section 17. Termination of Legal Status. Following substantial destruction or condemnation of the property, any action by the Association to terminate the legal status of the project shall be agreed to by Unit Owners who represent at least 80% of the total allocated votes in the Association and by eligible mortgage holders who represent at least 51% of the votes of unit estates that are subject to mortgages held by eligible holders.

Any action by the Association to terminate the legal status of the project for reasons other than substantial destruction or condemnation of the property shall be agreed to by Unit Owners who represent at least 80% of the total allocated votes in the Association and by eligible mortgage holders who represent at least 67% of the votes of unit estates that are subject to mortgages held by eligible holders.

Implied approval by an eligible mortgage holder shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provide the notice was delivered by certified mail or registered mail with a Return receipt@ requested.

Section 18. Rights of Action. The Association, and any aggrieved Unit Owners, shall have the right of action against Unit Owners who fail to comply with the provisions of the project Declaration, By-Laws, Articles of Incorporation and other rules properly enacted by the Association. Unit estate owners shall also be granted similar rights of action against the Association.

Section 19. Rights of Condominium Mortgage Holders, Insurers or Guarantors. Upon receipt of written request by a holder, insurer or guarantor of a mortgage on any unit in the project, the Association shall furnish timely written notice regarding the following:

- (i) any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage;
- (j) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of any unit on which it holds the mortgage;

- (k) a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- (l) any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

Any interested mortgage holder, insurer, or guarantor shall send a written request to the Association stating both its name and address and the unit number or address of the unit on which it has (or insurers or guarantees) the mortgage.

### ARTICLE III

#### Board of Directors

Section 1. General Powers. The property, affairs and business of the Association shall be managed by the Board of Directors.

Section 2. Number, Term of Office and Qualifications. The number of directors shall be no more than five (5) nor less than three (3), to be elected by the Unit Owners at their initial meeting. Each director shall hold office for one year or until his death, resignation, retirement, removal or disqualification or his successor is elected and qualifies.

Section 3. Election of Directors. Except as provided in Section 2 of this Article, the directors shall be elected at the annual meeting of Unit Owners and the persons who shall receive the highest number of votes shall be the elected directors.

Section 4. Removal of Directors. The Board of Directors or any individual director may be removed from office with or without cause by a vote of sixty-seven percent (67%) of the Unit Owners at a meeting in which a quorum is present. If any such directors are so removed, new directors are so removed, new directors may be elected at the same meeting.

Section 5. Vacancies. A vacancy in the Board of Directors created by reason of the removal of a director may be filled for the unexpired term, and until the Unit Owners shall have elected a successor, by affirmative vote of a majority of the directors remaining in office.

Section 6. Compensation of Directors. Directors shall not receive compensation for their services as directors. A director may serve the Association in a capacity other than that of director and receive compensation as determined by the Board of Directors for services rendered in that other capacity.

Section 7. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the condominium and may do all such acts and things except such acts as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Directors, but not be limited to the following:

- (a) Operation, care, upkeep and maintenance of the common areas and facilities.
- (b) Determination of the common expenses required for the affairs of the condominium, including without limitation, the operation and maintenance of the property.
- (c) Levying and collection of the common charges from Unit Owners.
- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the common areas and facilities.
- (e) The adoption and amendment of such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the property, and for the health, comfort, safety and general welfare of the owners and occupants of the property. Written notice of such rules and regulations shall be given to all owners and occupants and the entire property shall at all times be maintained subject to such rules and regulations.
- (f) Opening of bank accounts on behalf of the Association and designated signatories required therefore.
- (g) Making of repairs, additions, improvements to or alterations to the property and repairs to and restoration of the property in accordance with the other provisions of these By-laws and the Declaration, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (h) Procure insurance as required by the Declaration.
- (i) Pay ad valorem taxes and public assessments levied against the common areas and facilities.

Section 8. Managing Agent. The Board of Directors for the Association may engage the services of any person, firm, or corporation to act as managing agent at compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board may delegate to the Managing Agent all of the powers granted to the Board of Directors by these By-Laws other than the powers in section 7(d) and Section 7(e) of this Article.

## ARTICLE IV

### Meeting of Directors

Section 1. Regular Meetings. A regular meeting of the Board of Directors may be held immediately after the annual meeting of Unit Owners and if not then shall be held within a reasonable time thereafter.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) directors.

Section 3. Place of Meetings. All meetings of the Board of Directors shall be held at any place within the State of North Carolina as the Board of Directors may from time to time be established for regular meetings or as set forth in a duly executed waiver of notice of such meeting or as may be otherwise agreed upon in advance of the meeting by a majority of the directors.

Section 4. Place of Meetings. Regular meetings of the Board of Directors may be held without notice. Special meetings shall be called on not less than five (5) days prior to notice. Notice of a special meeting need not state the purpose thereof and such notice shall be directed to each director at his residence or usual place of business by mail, email, cable, telegram, facsimile or may be delivered personally. The presence of a director at a meeting shall constitute a waiver of notice of that meeting except only when such director attends the meeting solely for the purpose of objecting to the transaction of any business thereat, on the ground that the meeting has not been lawfully called, and does not otherwise participate in such meeting.

Section 5. Quorum and Manner of Acting. A quorum shall be deemed present throughout any meeting of the Board of Directors if persons entitled to cast one-half of the votes in that body are present at the beginning of the meeting.

Section 6. Vote Required for Action. Except as otherwise provided in this section, the act of a majority of the directors present at the meeting at which a quorum is present at the time shall be the act of the Board of Directors. Vacancies in the Board of Directors may be filled as required in Article III, Section 6 of these By-Laws.

Section 7. Action by Directors Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a written consent thereto shall be signed by all the same force and effect as a unanimous vote of the Board of Directors.

Section 8. Adjournments. A meeting of the Board of Directors without a quorum present may be adjourned by majority of the directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting which was adjourned.

Section 9. Minutes. The Board shall keep written minutes of its proceedings.

Section 10. Liability. The members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgement, negligence, or otherwise except for their own individual willful misconduct or bad faith. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent they are Unit Owners. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the

members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the common areas and facilities. Every agreement made by the Board or by the managing agent of behalf of the Association shall incorporate by reference all of the terms and provisions of the said Declaration and these By-Laws. Each Unit Owner=s liability thereunder shall be limited to such proportion of the total liability thereunder as his interest is the common areas and facilities bears to the interest of all Unit Owners in the common areas and facilities.

## ARTICLE V

### Officers

Section 1. Number of Officers. The Association=s officers shall be a President, Vice-President, Secretary and Treasurer, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. Any two (2) offices or more may be held by one (1) person, except the offices of President and Secretary, but no officer shall sign or execute any document in more than one (1) capacity.

Section 2. Election, Term of Office and Qualifications. Each officer shall be chosen by the Board of Directors and shall hold office at the will of the Board of Directors until their successors have been elected and have been qualified or until their early death, resignation, removal, retirement or disqualification. The officers need not be Unit Owners.

Section 3. Removal. Any officer may be removed, either with or without cause, by vote of a majority of the whole Board of Directors at any meeting with respect to which notice of such purpose has been given to the members thereof.

Section 4. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the Association=s President or Secretary. Any such resignation shall take effect upon its being accepted by the Board of Directors.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal or disqualification, or any other cause, shall be filled for the unexpired portion of the term in the manner prescribed by these By-Laws for regular appointments or elections to such offices.

Section 6. President. The President shall be the chief executive officer and subject to the instructions of the Board of Directors, shall have general charge of the Association=s business, affairs and property and control over its other officers, agents and employees. He shall preside at all meetings of the Unit Owners and of the Board of Directors at which he may be present. The President shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors.

Section 7. Vice President. At the request of the President, or in his absence or disability, the Vice-President shall perform all the duties of the President and when so acting shall have all the powers of and be subject to all restrictions upon the President. The Vice-President shall perform

such other duties and have such other authority as from time to time may be assigned to him by the Board of Directors.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of Unit Owners and the Board of Directors, and shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by the provisions of N.C.G.S. Chapter 47C. He shall be custodian of the Association=s records, books, reports, statements, certificates and other documents and of the Association=s seal, and record amendments to the Declaration on behalf of the Association. In general, he shall perform all duties and possess all authority as from time to time may be assigned to him by the Board of Directors.

Section 9. Assistant Secretary. The Assistant Secretary, if such an officer is appointed by the Board of Directors, shall be authorized to attest to all documents on behalf of the Association and affix the Association=s seal thereto. His duties shall be ministerial only and limited to executing all documents in proper corporate form as from time to time may be necessary.

Section 10. Treasurer. The Treasurer shall have supervision over the Association=s funds, receipts and disbursements of the Association. He shall keep full and accurate accounts of the Association=s finances in accordance with generally accepted accounting principles and in accordance with the provisions of N.C.G.S. Chapter 47C. The Treasurer shall make reports of same to the Board of Directors upon request. The Treasurer shall perform all duties that may be assigned to him from time to time by the Board of Directors. The reports and records of the Association shall be available for inspection by the Unit Owners and duly authorized agents or attorneys of Unit Owners at convenient hours of working days. The Treasurer shall require that an outside audit be conducted at least once a year on the books and records of the Association.

Section 11. Duties of Officers May Be Delegated. In case of the absence of any officer of the Association or for any other reason that the Board may deem sufficient, the Board may delegate the powers or duties of such officer to any other officer or to any director for the time being provided a majority of the entire Board of Directors concurs therein.

Section 12. Salaries of Officers. The compensation of all officers of the Association shall be fixed by the Board of Directors, providing however, that no officers appointed by Declarant shall receive any compensation from the Association.

## ARTICLE VI

### Fiscal Management

Section 1. Determination of Common Expenses and Fixing of Common Charge. The Board of Directors shall, from time to time and at least annually, prepare a budget for the Association and determine the amount of the common charges payable by the Unit Owners to meet common expenses of the condominium and allocate and assess such common charges among the Unit Owners according to their respective common interests. A common expense shall include among other things, the cost of all insurance premiums and all policies of insurance required to be or which have

been obtained by the Board of Directors, ad valorem taxes, sewer charges, and assessments for public improvements. The common expenses may also include such amounts as the Board of Directors may deem proper for the operation and maintenance of the property, for the condominium, and for a general operating reserve, for reserve fund replacements, and to make up any deficit in the common expenses for any prior year. Any increase in the monthly common charge that exceeds 10% per annum will require the consent of a majority of all Unit Owners.

The Board of Directors shall advise all Unit Owners promptly in writing of the amount of common charges payable by each of them respectively as determined by the Board of Directors and shall furnish copies of each budget on which such common charges are based, to all Unit Owners.

Section 2. Payment of Common Charges. All Unit Owners shall be obligated to pay the common charges assessed by the Board of Directors pursuant to the purpose of Section 1 of Article VI at such time or times as the Board shall determine.

Section 3. Collection of Assessments. The Board of Directors shall assess the common charges against the Unit Owners from time to time and shall take prompt action to collect any common charge due for any Unit Owner which remains unpaid for more than thirty days from the date due.

Section 4. Default in Payment of Common Charges. In the event of default by any Unit Owner in paying to the Board of Directors the common charges as determined by the Board, each Unit Owner shall be obligated to pay interest at the legal rate on such common charges from the date due thereof together with all expenses, including attorney's fees incurred by the Board in any proceeding to collect such unpaid common charges.

In any action brought by the Board to foreclose on a unit because of unpaid common charges, the Unit Owner shall be required to pay a reasonable rental for the use of such unit and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Board acting on behalf of all Unit Owners, or on behalf of one or more individual owners, shall have the power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage, convey or otherwise deal with same, subject to applicable restrictions of record.

Section 5. Maintenance and Repair. All maintenance and repair to any unit, structural or nonstructural, ordinary or extraordinary, and maintenance of and repairs and replacements to the common areas and facilities contained therein shall be made by the Board and charged to all Unit Owners as a common expense.

Section 6. Utility Expense. The Board shall own and be responsible for the repair, maintenance, and upkeep of all equipment such as the elevator and heating and air conditioning equipment which serve the common areas. Unit Owners shall be individually responsible for the repair, maintenance and upkeep of all equipment such as hot water heaters and heating and air conditioning equipment which exclusively serves their unit.

Section 7. Additions and Alterations. No Unit Owner shall make any structural addition, alteration or improvement in or to his unit without the prior written consent by the Board. The Board shall have the obligation to answer any written request by a Unit Owner for the consideration of a proposed structural addition, alteration or improvement brought by a Unit Owner. Failure to do so within forty-five days from the day on which the written request shall first have been made to the Board shall constitute a consent by the Board to the proposed addition, alteration or improvement.

Section 8. Use of the Units and Common Areas. The use of the property of the condominium shall be in accordance with the following provisions:

- (a) The building and each of the units shall be used for residential purposes only. The use of the building and units are further restricted by these By-Laws of the Association. No unit may be subdivided into smaller units or any portions thereof, sold or otherwise transferred without first amending these By-Laws to show the changes in the units to be effected thereby.
- (b) No more than two persons over the age of eighteen unrelated by blood or marriage shall reside in any single unit for more than thirty consecutive days in any one calendar year.
- (c) The common areas and facilities shall be used only for the purposes for which they are intended and the furnishing of services for the enjoyment of the units.
- (d) No noxious or offensive activity shall be conducted upon any unit nor shall anything be done thereon which may be or may become an annoyance or nuisance or shall interfere with peaceful possession of property by Unit Owners.
- (e) No animals, livestock or poultry of any kind shall be kept or maintained on any unit or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. All household pets shall be kept on a leash at all times when outside the units.
- (f) No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any unit unless and until permission for the same has been granted by the Association.
- (g) No signs shall be permitted on or about the units.
- (h) All window coverings (i.e., curtains, blinds, draperies, shades, etc.) shall be installed and maintained in accordance with provisions of the Association.
- (i) Unit Owners shall not park or store any motorcycle, camper, trailer, trailer vehicle, or similar vehicle anywhere on the premises. No trucks shall be permitted except for standard 2-ton or less pickup trucks or smaller sized trucks.

- (j) Any lease or rental agreements involving the units shall be in writing and shall be subject to the requirements of the Association documents and Association documents and Association rules and regulations governing same.

Section 9. Right of Access. All Unit Owners shall grant a right of access to his unit to the Board or their designee for the purpose of making inspections or for the purpose of correcting any condition originating in his unit and threatening another unit or common area or facility, or for the purpose of performing installations, alterations, replacement, or repairs to common areas and facilities in the unit or elsewhere in the building. In case of emergencies such right of entry shall be immediate whether the Unit Owner is present at the time or not.

Section 10. Rules of Conduct. Rules and regulations concerning the use of the units and the common areas and facilities may be promulgated by and amended by the Board with approval of eighty (80%) of the Unit Owners. Copies of such rules and regulations shall be furnished by the Board to each Unit Owner on request.

Section 11. Annual Audit. Within one hundred twenty (120) days or less following the end of each fiscal year, the Association shall provide an annual audit prepared by and independent accountant available for inspection by Unit Owners or others as provided by Article II, Section 16 of these By-Laws.

Section 12. Working Capital Fund. The Association shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. The working capital fund shall be funded initially by the payment by each Unit Owner of an initial payment to the Association of two months estimated monthly assessment for each unit. Any amounts paid into this fund shall not be considered advance payments of regular assessments.

## ARTICLE VII

### Amendment of By-Laws

Section 1. For a period no longer than twenty four (24) months after the initial filing of these By-Laws in the Buncombe County Registry, the Declarant may unilaterally amend these By-Laws without the consent or approval of other Unit Owners or eligible mortgage holders provided such amendment shall be exclusively for the purpose of correcting clerical error or making changes other than material changes, as defined below, to these By-Laws. Otherwise, these By-Laws may be amended by a vote of Unit Owners owning in the aggregate at least a 80% undivided interest in the Common areas and facilities cast in person or by proxy at a meeting held in accordance with the provisions of the By-Laws. No such amendment shall be effective until set forth in an amended declaration and duly recorded in the Office of the Register of Deeds in Buncombe County, North Carolina. Upon recording, all the Unit Owners and their successors and assigns, shall be bound by said amendments.

Section 2. Amendments of a Material Nature to By-Laws. Amendments of a material nature

shall be agreed to by Unit Owners who represent at least 80% of the total allocated votes in the Association and by eligible mortgage holders who represent at least 51% of the votes of unit estates that are subject to mortgages held by eligible holders. Unit Owner votes may be cast in person or by proxy at a meeting held in accordance with the provisions of the By-Laws. No such amendment shall be effective until set forth in an amended declaration and duly recorded in the Office of the Register of Deeds in Buncombe County, North Carolina. Upon recording, all the Unit Owners and their successors and assigns, shall be bound by said amendments.

A material change shall be considered as one which changes any of the following:

- § voting rights;
- § increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- § reductions in reserves for maintenance, repair, and replacement of common elements;
- § responsibility for maintenance and repairs;
- § reallocation of interests in the general or limited common elements or rights to their use;
- § redefinition of any unit boundaries;
- § convertibility of units into common elements or vice versa;
- § expansion or contraction of the project, or the addition . annexations, or withdrawal of property to or from the project;
- § hazard or fidelity insurance requirements;
- § imposition of any restrictions on the leasing of units;
- § imposition of any restrictions on a Unit Owner=s right to sell or transfer his or her unit;
- § a decision by the Association to establish self-management if professional management had been required previously by Association documents or by an eligible mortgage holder;
- § restoration or repair of the project (after damage or partial destruction) in a manner other than that specified in the documents; or
- § any provisions that expressly benefit mortgage holders, insurers or guarantors.

Implied approval by an eligible mortgage holder shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days

after it receives proper notice of the proposal, provided the notice was delivered by certified mail or registered mail with a Return receipt@ requested.

ARTICLE VIII

Compliance

Section 1. These by-Laws are set forth to comply with the requirements of the Unit Ownership Act, Chapter 47C of the General Statutes of the State of North Carolina. In the event that any of these By-Laws conflict with the provisions of said statute, it is hereby agreed and accepted that the provisions of the statute will apply.

The foregoing were adopted as the By-Laws of ARBORS OF BEAUX CATCHER MOUNTAIN CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., at the first meeting of the Board of Directors on \_\_\_\_\_, 2005.

APPROVED:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

**EXHIBIT E**  
**RULES AND REGULATIONS**

[Attached]

**RULES AND REGULATIONS**

**OF**  
**ARBORS OF BEAUX CATCHER MOUNTAIN CONDOMINIUM**

1. No Obstructions. The sidewalks, entrance passages, public halls, vestibules, corridors, and stairways of or appurtenant to the Buildings shall not be obstructed or used for any purpose other than ingress to and egress from the Units. No baby carriages, bicycles, scooters, or similar vehicles shall be allowed to stand in the public halls, passageways, or other public areas of the Buildings. No article (including, but not limited to, garbage cans, bottles, or mats) shall be placed or stored in any of the halls or on any of the staircases of the Buildings.

2. Windows and Doors. Nothing shall be hung or shaken from any doors or windows, or placed upon the window sills, or the Buildings, and no Unit Owner shall sweep or throw, or permit to be swept or thrown, any dirt, debris, or other substance therefrom. The Condominium Board or the Managing Agent shall have the authority to regulate the exterior appearance of the window coverings and treatments installed on all Unit windows. In no event shall any exterior glass surface of any windows at the Property be colored or painted.

3. Grills. No cooking grills shall be stored or used on the exterior portions of the Units in violation of applicable governmental laws and ordinances.

4. Playing and Lounging. There shall be no playing or lounging in the entrances, passages, public halls, vestibules, corridors, or stairways of the Buildings, except in recreational areas or other areas designated as such in the Declaration or by the Condominium Board.

5. Control of Common Elements. The Condominium Board or the Managing Agent may, from time to time, curtail or relocate any portion of the Common Elements devoted to storage, recreation, or service purposes in the Buildings.

6. Insurance and Compliance with Law. Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance for the Buildings or the contents thereof. No Unit Owner shall permit anything to be done or kept in its Unit or in the Common Elements that will result in the cancellation of insurance on the Buildings or the contents thereof, or that would be in violation of any Law. No Unit Owner or any of its Family Members, agents, servants, employees, licensees, or visitors shall, at any time, bring into or keep in its Unit any inflammable, combustible, or explosive fluid, material, chemical, or substance, except as shall be necessary and appropriate for the permitted uses of such Unit, and in compliance with all applicable Laws.

7. No Nuisance. No Unit Owner shall make, cause, or permit any unusual, disturbing, or objectionable noises or odors to be produced upon or to emanate from its Unit or permit anything to be done therein that will interfere with the rights, comforts, or conveniences of the other Unit Owners. No Unit Owner shall play upon or suffer to be played upon any musical instrument, or shall operate or permit to be operated a phonograph, radio, television set, or other loudspeaker in such

Unit Owner=s Unit between midnight and the following 8:00 A.M., if the same shall disturb or annoy other Occupants of the Buildings, and in no event shall any Unit Owner practice or suffer to be practiced either vocal or instrumental music between the hours of 10:00 P.M. and the following 9:00 A.M., after completion of the Buildings. No construction, repair work, or other installation involving noise shall be conducted in any Unit, except on weekdays (not including legal holidays) and only between the hours of 8:00 A.M. and 5 P.M., unless such construction or repair work is necessitated by an emergency.

8. Home Business. If a Unit is used for home business purposes in conformance with the Condominium Documents and all applicable Laws, no patients, clients, or other invitees shall be permitted to wait in any of the public areas of the Buildings.

9. Noise Reduction. Each Unit Owner shall take all reasonable measures to reduce and/or eliminate sound transmission(s) between adjacent Units.

10. Air Conditioning and Ventilation. No ventilator or air conditioning device shall be installed in any Unit without the prior written approval of the Condominium Board, which approval may be granted or refused in the sole discretion of the Condominium Board.

11. Antennas, Satellite Dishes and Signs. No radio or television antennas, nor any satellite dishes, shall be attached to or hung from the exterior of the Buildings, and no sign, notice, advertisement, or illumination (including, without limitation, AFor Sale,@ AFor Lease,@ or AFor Rent@ signs) shall be inscribed or exposed on or at any window or other part of the Buildings, except such as are permitted pursuant to the terms of Condominium Documents or shall have been approved in writing by the Condominium Board or the Managing Agent. Nothing shall be projected from any window of a Unit without similar approval.

12. Electrical Equipment. All radio, television, or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements, or recommendations of the North Carolina Board of Fire Underwriters and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television, or other electrical equipment, specifically including, but not limited to, the use of clothes dryers, with adequate ventilation capacity, as may be prescribed by (a) any state or local laws, codes, statutes or ordinances; and/or (b) the Condominium Board.

13. Water Apparatus. Water closets and other water apparatus in the Buildings shall not be used for any purpose other than those of which they were designed, and no sweepings, rubbish, rags, or any other article shall be thrown into the same. Any damage resulting from misuse of any water closets or other water apparatus in a Unit shall be repaired and paid for by the owner of such Unit. The owners of Units with water spouts located on the balconies shall not permit excessive amounts of water from the spouts to drain off their balconies.

14. Maintenance of Units. Each Unit Owner shall keep his/her Unit in good state of preservation, condition, repair, and cleanliness in accordance with the terms of the Condominium Documents.

15. Pest Inspection and Control. The agents of the Condominium Board or the Managing Agent, and any contractor or workman authorized by the Condominium Board or the Managing Agent, may enter any room or Unit at any reasonable hour of the day, on at least one day prior notice to the Unit Owner, for the purpose of inspecting such Unit for the presence of any vermin, insects, or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects, or other pests; provided, however, such entry, inspection, and extermination shall be done in a reasonable manner so as not to unreasonably interfere with the use of such Unit for its permitted purposes.

16. Access to Units. The Condominium Board or the Managing Agent may retain a passkey to each Unit. If any lock is altered or a new lock is installed, the Condominium Board or the Managing Agent shall be provided with a key thereto immediately upon such alteration or installation. If the Unit Owner is not personally present to open and permit any entry to his/her Unit at any time when an entry therein is necessary or permissible, then the Condominium Board or Managing Agent may forcibly enter such Unit without liability for damages or trespass by reason thereof (if, during such entry, reasonable care is given to such Unit Owner=s property).

17. No Use of Association Employees or Agents for Private Business. No Occupant of the Buildings shall send any employee of either the Association or the Managing Agent out of the Buildings on any private business.

18. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property or in the Units, except that a maximum of two (2) small domesticated household pets weighing no more than 50 pounds total (e.g., either one pet weighing 50 lbs. or two pets weighing 25 lbs. each) may be kept in any one (1) Unit, provided that they are not maintained for commercial purposes. Notwithstanding the foregoing, reptiles and rodents shall be expressly prohibited. No pet shall be permitted upon the Common Elements unless carried or leashed by a person who can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud or excessive barking) on the Property. Pet owners shall immediately clean up any waste on the Property from his/her pet.

19. Vehicles. Other than the garages and covered attached carports assigned to a Unit, parking shall be permitted in designated parking areas only. Unit Owners shall park their vehicles in their assigned spaces. Unit Owners shall not park or store any boat, boat trailer, motor home, travel trailer, camper, trailer, trailer vehicle, or similar vehicle anywhere on the Property, except the Unit Owners to whose Units a garage is assigned may store any of the same within their closed garage. No trucks shall be permitted except for standard 2-ton or less pickup trucks or smaller sized trucks.

20. Approval of Condominium Board. Any consent or approval given under these Rules and Regulations may be amended, modified, added to, or repealed at any time by resolution of the Condominium Board. In addition, any such consent or approval may, in the discretion of the Condominium Board or the Managing Agent, be conditional in nature.

21. Service Complaints. Complaints regarding the service of the Condominium shall be made in writing to the Condominium Board or to the Managing Agent.

22. No Solicitation. No solicitation shall be permitted on the Property without the prior written consent of the Condominium Board or the Managing Agent in each instance.

**EXHIBIT F**

**PROJECTED INITIAL ANNUAL BUDGET**

[Attached]