

NORTH CAROLINA DARE COUNTY

DECLARATION OF CONDOMINIUM of SHALLOWBAG BAY CLUB CONDOMINIUM PHASE 1  
Buildings 1 through \_\_

RECORDED CONDOMINIUM PLATS AND PLANS OF PHASE 1:  
UNIT OWNERSHIP FILE 5 , PAGE 241  
DARE COUNTY REGISTRY (the "Condominium Plans")

THIS DECLARATION, made this the 27th day of August 2001 by  
SHALLOWBAG BAY CLUB, L.L.C., a North Carolina Limited Liability Company ("Declarant"), pursuant  
to the provisions of the North Carolina Condominium Act, Chapter 47C, General Statutes of North Carolina.

WITNESSETH:

WHEREAS, Declarant is the Owner in fee simple of certain real estate situated in the Town  
of Manteo, State of North Carolina, legally described in Exhibit A, together with all buildings and  
improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and  
appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Declarant desires to submit all of said property to the Condominium Act.

NOW THEREFORE, Declarant, as the Owner of said property, hereby declares as follows:

ARTICLE 1     Definitions

The tenus defined in Section 47C-1-1 03 of the Condominium Act shall be deemed to have the  
meanings therein specified whenever they appear in the Condominium Instruments unless the context  
otherwise requires and except to the extent, if any, that such definitions are changed below. In addition, the  
other terms defined below shall be deemed to have the meanings specified whenever they appear in the  
Condominium Instruments unless the context otherwise requires. These definitions shall apply whether or not  
the defined tenus are capitalized.

1.1 Act. The North Carolina Condominium Act, Chapter 47C, General Statutes of the State of North  
Carolina, as amended.

1.2

Assessment. The share of the common expenses from time to time assessed against

NORTH CAROLINA DARE COUNTY

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ARTICLE 1 Definitions

The terms defined in Section 47C-1\_103 of the Condominium Act shall be deemed to have the  
meanings therein specified whenever they appear in the Condominium Instruments unless the context  
otherwise requires and except to the extent, if any, that such definitions are changed below. In addition, the  
other terms defined below shall be deemed to have the meanings specified whenever they appear in the  
Condominium Instruments unless the context otherwise requires. These definitions shall apply whether or not  
the defined terms are capitalized.

1.1 Act. The North Carolina Condominium Act, Chapter 47C, General Statutes of the State of North  
Carolina, as amended.

1.2

Assessment. The share of the common expenses from time to time assessed against a Condominium Unit and  
its Owner by the Association in the manner herein provided.

1.3 Association. Shallowbag Bay Club Owners Association, Inc., a North Carolina nonprofit  
corporation, its successors and/or assigns.

1.4

Board. The Board of Directors of the Association.

1.5

Building Unit. Any Unit which is a Residential Unit or Commercial Unit.

1.6

Bylaws. The Bylaws of the Association.

1.7 Commercial Unit. Any Unit in the Condominium not restricted to single family residential use, except for Marina Units.

1.8 Common Elements. All portions of the Condominium except the Units. Limited Common Elements are Common Elements.

1.9 Common Expenses. All sums lawfully assessed against Unit Owners by the Association; expenses of administration, maintenance, repair or replacement of the Common Elements (including Limited Common Elements); expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of the Act, this Declaration or the Bylaws; insurance premiums; together with any allocation to reserves.

1.10

Condominium. The Condominium created by this Declaration.

1.11 Condominium Instruments. This Declaration, the Bylaws, the Plat and the Plans, including any and all exhibits, schedules, certifications and amendments thereto: as they may exist from time to time, made and recorded pursuant to the Act.

1.12 Condominium Plans. The recorded Condominium Plans of the Condominium as described at the top of Page One of this Declaration.

1.13 Declarant or Developer. Shallowbag Bay Club, L.L.C. a North Carolina Limited Liability Company, and any person who or entity that is specifically assigned the rights and interests of Declarant hereunder. Declarant and Developer are used interchangeably.

1.14 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date three (3) years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant, or (ii) the date upon which Declarant surrenders control of the Condominium, or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five (75%) percent of the Units (including Units that may be created under a Development Right) to Unit Owners other than a Declarant.

2

1.15 Declaration. The instrument, duly recorded, by which the property is submitted to the provisions of the Act, as hereinafter provided, and as such declaration from time to time may be lawfully amended.

1.16 First Mortgage A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units described therein.

1.17 First Mortgagee. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the office in which the First Mortgage is recorded, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws. As used herein, a Mortgagee shall mean any beneficiary or their successors of a recorded mortgage or deed of trust.

1.18 Foreclosure. Includes without limitation, the judicial foreclosure of a mortgage or the exercise of a power of sale contained in any Mortgage.

1.19 Lease. Any lease, contract, tenancy, sublease, rental contract or other occupancy agreement whether oral or written.

1.20 Limited Common Elements. Those portions of the Common Elements allocated by operation of Section 47C-2-102(2) and (4) of the Act for the exclusive use of one or more but fewer than all of the Units and also Limited Common Elements specifically allocated in this Declaration.

1.21 Majority. Unless a different percentage is expressly required, it shall mean at least fifty-one percent (51 %) in any context.

1.22 Marina Unit. A portion of the riparian and littoral rights described in the Declaration, located within the boundaries shown on the Condominium Plans of the Condominium. The riparian rights conveyed as a Marina Unit do not include the fee simple ownership of the waters or the lands beneath the waters.

1.23 Occupant. Any person or persons in possession of a Unit, including Unit Owners, employees, agents, tenants and invitees, including all customers or clients.

1.24

Officer. An officer of the Association.

1.25

Owner. Same as a Unit Owner.

1.26 Person. A natural person, corporation, partnership, trust or other entity, or any combination thereof.

1.27

Pro\_. The real estate described in Exhibit A.

1.28 Residential Unit. A Unit which is restricted to single family residential use, except for Marina Units.

1.29 Riparian Rights. The right to wharf out and to tie up a boat, together with the right to maintain a channel to the navigable waterways, and other rights of access to the waterways given to an owner of land abutting a waterway.

1.30 Schedule of Unit Information. The schedule attached hereto as Exhibit B, which schedule shows for each Condominium Unit its Identifying Number, Membership Class, floor plan, square footage, undivided interest in the Common Elements and Limited Common Elements, share of liability for Common Expenses and Limited Common Expenses, and number of Votes in the Association. The referenced schedule is based on this declaration of thirty (30) Units in Phase 1. Unit percentages shown in Exhibit B will decrease as future Units are completed and declared.

1.31 Security for an Obligation. The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

1.32

Security Holder. Any person owning a Security for an Obligation in a Unit.

1.33 Size. The number of square feet of heated, enclosed floor space in a Residential Unit or Commercial Unit as computed by reference to the Plat and Plans and rounded off to a whole number. Exterior walkways and breezeways are not included. Enclosed and heated stairways are counted, but only on one level.

1.34 Special Declarant Rights. The rights reserved herein and in the By laws for the benefit of a Declarant, as follows: to complete the improvements indicated on the Condominium Plans; to maintain sales offices, management offices, models and signs advertising the Condominium; to use easements through the Common Elements; to exercise Development Rights as set forth herein; to retain all personal property and equipment (including fixtures) used in the sales, management, construction, and maintenance of the Property, that has not been represented as property of the Association; and to elect, appoint or remove members of the Board during the Declarant Control Period.

1.35 Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit B . Each Unit is designated and delineated on the Condominium Plans, and is intended for independent ownership and use. The term "Unit" includes Residential Units, Commercial Units, and Marina Units.

1.36 simple.

Unit Owner. The person or persons, including the Declarant, owning a Unit in fee

1.37 Unit Plat. The plat of survey for the Condominium recorded as a part of the Condominium Plans.

1.38

Unsold. Shall mean unconveyed, even if under contract to sell.

## ARTICLE 2 Creation of the Condominium

2.1 Submission. Developer hereby submits the Property to the Act. The Property and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged and deeded in trust subject to the Act and the Condominium Instruments. Every person acquiring or having any interest in the Property, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed to in writing, shall take such interest subject to the Act and to the Condominium Instruments and shall be deemed to have agreed to the same.

2.2 Name and Location. The Property shall hereafter be known as Shallowbag Bay Club Condominium. The Condominium is located in Dare County, North Carolina, along U.S. Highway 64/264 in the Town of Manteo.

2.3 Governing Provisions. The Condominium, the Association and each Unit Owner shall be governed by the Act, the Condominium Instruments and any rules and regulations adopted by the Association pursuant to the Condominium Instruments, and by the Bylaws of the Association.

2.4 The Property. The submitted Property is described in Exhibit A and shown on the Plat, and it includes all improvements thereon and all rights and easements appurtenant thereto.

2.5 Creation of Units. Declarant does hereby establish within the Property thirty (30) Residential Units, as described as PHASE 1 on the attached Exhibit B and on the Condominium Plans, and does hereby designate all such Units for separate Ownership. Each Condominium Unit shall constitute for all purposes a separate parcel of real property which may be owned in fee simple and which, subject to the provisions of the Act and the Condominium Instruments, may be conveyed and encumbered like any other property. The Table of Interests shown in Exhibit B sets forth percentages of Unit ownership interest in the Common Elements. Unit percentages shown in Exhibit B will decrease as future Units are completed and declared. The undivided interest in the Common Elements for each Condominium Unit shall not be altered except as expressly provided by the Act and this Declaration. Such undivided interest shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit

2.9 Alterations of Condominium Units. A Condominium Unit may not be further subdivided. If an Owner acquires an adjoining Unit, thereby becoming the common Owner of adjoining Units, such Owner shall not remove all or any part of any intervening partition or create doorways or other apertures therein, which partition may, in whole or in part, be part of the Common Elements, without prior written approval of the Association and the Mortgagees of the Units involved. Such approval shall not be given in the event that any portion of any load bearing wall or column is materially weakened or removed or any portion of any Common Elements, other than that partition of any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium, might be damaged, destroyed or endangered. The alterations permitted by the preceding sentence shall not be deemed an alteration or relocation of boundaries between adjoining units, nor an alteration of the allocated interest in the Common Elements, vote assigned to each unit, share of liability for common expense assessments or other appurtenant rights or interests as such appears on the Schedule of Unit Information attached as Exhibit B.

2.10 Common Elements. The Common Elements consist of all portions of the Condominium other than Units. Certain portions of the Common Elements are Limited Common Elements, as set out in Section 2.11. The Association and the owners further agree that the Common Elements shall not be subject to partition or division except as set out as follows:

2.10.1 Notwithstanding any provisions herein to the contrary, it is expressly provided that the Association may convey to the Declarant any portion of the Common Elements theretofore conveyed to the Association, in exchange for other portions of the properties conveyed by the Declarant to the Association provided that all conveyances are approved by the appropriate governmental authority or in their failure to act timely, by the Board of Directors of the Association. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be Common Element and shall cease to be subject to the provisions of these covenants relating to the Common Elements, but the area thus conveyed to the Association shall become Common Elements and subject to the provisions of this Declaration relating to Common Elements.

2.10.2 Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the Unit to which that interest is allocated is void, except as outlined in Section 2.10.1 above.

2.11 Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Article 1, Limited Common Elements include those set forth in Exhibit C. The Board of Directors of the Association shall have the ultimate power and responsibility for determining whether Limited Common Elements in need of repairs are to be the obligation of the entire Association or the obligation of the Owners of the Units which those Limited Common Elements serve. The Board may, by majority vote, determine the amount and levy any special assessments for repairs of limited common elements consistent with its determination pursuant to this paragraph. The Board has the unilateral right to reallocate or reassign any Limited Common Element, to designate a Limited Common Element to be a Common Element. or to designate a Common Element to be a Limited Common Element.

2.12 Unit Allocations. The allocations to each Unit in Phase 1 of a percentage of undivided interest in the Common Elements. of votes in the Association, and of a percentage of the Common Expenses, are as stated on Exhibit B. The allocation of undivided interest in the Common Elements and of the Common Expenses is as follows: Assuming that the maximum of 84 Building Units are created, 67% of the total undivided interests in the Common Elements and of the share of the Common Expenses are allocated to the Building Units, divided between each Building Unit per capita without regard to the size of each Building Unit. Assuming that the maximum of 84 Marina Units are created, 33% of the total undivided interests in the Common Elements and of the share of the Common Expenses are allocated

to the Marina Units, divided between each Marina Unit per capita without regard to the size of each Marina Unit. For per- Unit percentages in Phase 1, see Table of Interests in Exhibit B.

2.13 Condominium Ordinances. The Condominium is not subject to any code, real estate law, ordinance, charter provision or regulation (i) prohibiting the condominium form of Ownership, or (ii) imposing conditions or requirements upon a condominium which are not imposed upon physically similar developments under a different form of Ownership. This statement is made pursuant to Section 4 7C-1-1 06 of the Act for the purpose of providing marketable title to the Units in the Condominium.

2.14

Reservation of Special Declarant Rights.

2.14.1 Declarant hereby reserves all Special Declarant Rights as defined in Article 1 and as further set out in the Bylaws. These Special Declarant Rights shall terminate on the date seven (7) years from the date of recordation of this Declaration unless sooner terminated as provided herein or by written notice of termination filed by Declarant in the Dare County Registry.

2.14.2 The Declarant reserves as a Development Right the right and option to create additional Units as set forth in Section 2.6 of this Declaration. Such additional Units will be built, if at all, within seven (7) years after the recordation date of this Declaration. The Development Rights herein reserved may be exercised with respect to different portions of the Property submitted herein at different times. No assurances are made as to the boundaries of those portions or the order in which those portions may be subjected to the exercise of each Development Right. No assurances are given that if a Development Right is exercised with regard to one portion of the submitted Property subject to Development Rights, that Development Rights will be exercised in all or in any other portion of the remainder of the submitted Property.

2.14.3 With regard to those units and improvements shown on the Condominium Plans which have not been completed as of the date of filing for record of this Declaration, they **MUST BE BUILT**; however, the Declarant hereby reserves the right to modify floor plans, site configuration and uses.

2.14.4 The Declarant hereby reserves unto itself, its agents, employees, successors and/or assigns, as a Development Right, the right, license, privilege and easement to construct docks, piers, and bulkheads and other related improvements on the Property. The docks, piers and related improvements shall be a part of the Common Elements of the Condominium.

### ARTICLE 3 Easements

3.1 Reservation of Easements by Declarant. The Declarant reserves unto itself, its agents, employees, successors and assigns any and all easements necessary over and through the Property and any adjoining lands for the building, developing and completion of the Condominium, according to its Master Plan, which may be amended at Declarant's sole option. The Declarant hereby reserves the right to develop and improve land and properties in the Condominium as it, in its sole discretion, shall deem proper. The plans of the Declarant are to build certain amenities including a pool and pool house, guest parking, a restaurant, and shops. The Declarant reserves the right to add, subtract, alter or modify such amenities to the Condominium in the Declarant's sole discretion. To the extent any additional Units or amenities are completed or developed, they will be added to the Condominium, and the Owners thereof will be obligated to pay their pro rata share of the common expenses of the Association. A portion of the common elements is currently subject to a third party easement for access and parking as depicted on the Condominium Plat. The Declarant reserves the unilateral right to remove from the common elements any improvements which encumber said easements,



including but not limited to guest parking which currently encumbers said third party easement. The Declarant further reserves the unilateral right to enter into agreements with third parties to relocate or remove such third party easements. Declarant shall not be required to amend the Declaration should he file an amended plat reflecting relocation or removal of third party easements.

3.2 Perpetual Non-Exclusive Easement in Condominium Common Areas. The Common Elements or areas of the Condominium shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement of enjoyment which easement is hereby created in favor of all of the Unit Owners in the Condominium for their use and for the use of their employees, guests, invitees, and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Developer, the Association, and all Unit Owners, and may be used for ingress and egress for the providing of electric power, telephone, sewer, water, and other utility services and lighting facilities, including but not limited to television transmission facilities, security services, and facilities connected therewith. The Declarant, its successors and assigns, and the Association herein described, reserve the right to impose upon the Common Elements henceforth and from time to time such easements and cross-easements for any of the foregoing purposes as they deem to be in the best interest of and necessary and proper for, the Owners of Units.

3.3

Limitations Upon a Unit Owner's Rights to Use Common Elements. The right of a Unit Owner to use and enjoy the Owner's respective Common Elements is subject to the following provisions and limitations:

3.3.1 The right of the Association to control the use and enjoyment thereof as provided by the terms of this Declaration, which shall include, but not be limited to, the right of the Association to limit the use and enjoyment thereof to the Owners and their respective Occupants, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner and his Occupants.

3.3.2 The right of the Association to limit the number of the guests of Owners.

3.3.3 The right of Owners to the exclusive use of the Limited Common Elements appurtenant to their respective Units.

3.3.4 The right of the Association to suspend an Owner's voting privileges and rights and the right to use any recreational facilities of the Condominium by the Owner, his Occupants, invitees and guests, and Common Elements appurtenant thereto for any period of time during which an Assessment against his Unit remains unpaid or for reasonable time for infractions of any provisions of the Condominium Instruments or rules and regulations.

3.4 Easement for Construction. There is retained, by the Declarant, and their successors, heirs, and assigns, a construction easement over, upon, and across the Common Elements of the Condominium and also over, upon, and across the Property, for the purposes of construction improvements on the properties now owned or hereafter acquired by the Declarant, said easement to run in favor of the Declarant, its successors, and assigns, their contractors and subcontractors, agents, employees, laborers, and materialmen. This easement shall expire and become null and void upon the completion of all of the permanent improvements which are to be constructed upon said properties.

3.5 Easement for Utilities, Sewerage, Waste Treatment Facilities. There is hereby conveyed an easement of right of way in and to the Property for use by utility service personnel for the

construction, operation, and maintenance of all utility lines, including but not limited to cable and satellite television, telephone and power, and water mains and pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines and facilities related thereto, which said easement shall be for the benefit of the Unit Owners and the Association, also inure to the benefit of the Declarant. Said easement is reserved to provide ingress, egress, regress and such access as shall be necessary for such construction, operation, and maintenance.

3.5.1 A non-exclusive easement to provide ingress, egress, regress and such access as shall be necessary for such construction, operation, inspection and maintenance of water mains, pipes and meters is hereby reserved for the Town of Manteo, North Carolina, and its service personnel.

3.5.2 A non-exclusive easement is hereby reserved for Carolina Telephone and Telegraph Company, its successors and/or assigns to provide ingress, egress, regress and such access as shall be necessary for such construction, operation, inspection and maintenance of telephone lines and equipment and for a utility building located in an area designated as "Reserved Real Estate - Sprint Utility Building" on the plat of Shallow bag Bay Club Condominium - Phase 1, recorded in Unit Ownership File -' Page -; subject to the limitation that the above-described building shall be used for the express limited purpose of housing communication equipment.

3.5.3 Declarant reserves the right to subject the Property to a contract with a power company supplying electrical power to the Condominium ("Power Company") for the installation of underground electrical cables and the installation of street lighting, either or both of which may require continuous monthly charges to each Unit Owner. Upon acceptance of a deed to a Condominium Unit, each Owner agrees to pay to the Power Company the continuing monthly payment therefor as approved by the North Carolina Utilities Commission, or other appropriate governmental authorities. Declarant reserves the right to contract, on behalf of each Unit Owner and the Association, with the Power Company, or its successors and assigns, for street lighting service.

3.5.4 Declarant, for itself and for any successors or assignees, further reserves the right to collect to each Condominium Unit necessary water and sewer service which may require a continuous monthly charge to the Unit Owner. Upon acceptance of a deed to a Unit, each owner agrees to pay said continuing monthly charge, if any.

3.6 Easement for Pipes. Wires. Flues. Ducts. Cables. Conduits. Public Utility Lines and Other Common Elements Located Inside of Units. Each Unit Owner shall have an easement in common with the Owners of all other Units to use any and all pipes, wires, ducts, flues, cables, conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, wires, ducts, flues, cables, conduits, public utility lines, and other common elements serving such other Units and located in such Units. The Board of Directors and their authorized agent of the Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common elements contained therein, if any, or elsewhere in the building.

3.7 Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of any Unit now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and

enjoyment of the Common Elements or Units so encroached upon.

3.8 Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Building Units, whether or not such walls lie in whole or in part within the boundaries of any Building Unit.

3.9 Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other authorized person, is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, or to dredge or maintain the waterway in the case of a Marina Unit, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

3.10 Easement Associated with Marina Units. Each Marina Unit shall have a nonexclusive easement over and across the dock or pier immediately adjacent to the Marina Unit. The use of such easement may be in conjunction with use by one or more Owners of other Marina Units adjacent to such dock or pier as the case may be.

3.11 Declarant's Easements. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium which easements shall exist as long as reasonably necessary for such purposes.

3.12. Other Easements. The common elements are cUITently subject to easements reserved by Jack R. BUITUS and Shallowbag Bay Marina, Inc., exclusively for the use and benefit of Jack R. Burrus and Shallowbag Bay Marina, Inc., their heirs and assigns for access and parking as shown on the Condominium Plat. As provided in paragraph 3.1 above, the Declarant reserves the unilateral right to remove from the common elements any improvements which encumber said easements, including but not limited to guest parking which currently encumbers said third party easement. The Declarant further reserves the unilateral right to enter into agreements with third parties to relocate or remove such third party easements. Declarant shall not be required to amend the Declaration should he file an amended plat reflecting relocation or removal of third party easements.

3.13 Easements To Run With Land. All easements and rights described in this Article are appurtenant easements running with the land, and except as otherwise expressly provided in this Article 3 shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the Condominium Of any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article, whether or not specifically mentioned in any such conveyance or encumbrance.

#### ARTICLE 4 Membership and Voting Rights

4.1 The Declarant, for so long as it shall be an Owner, and every Owner of a Unit which is subject to a lien for Assessments shall be a Member of the Association. An Owner may assign in writing its membership and voting rights to a tenant of said Owner's Unit upon such terms as the Association may prescribe. Otherwise, membership and voting rights shall be appurtenant to, and may not be separated from, ownership of any Unit which is subject to Assessments; provided, however, that no such assignment shall affect the obligation of the Owner to pay the Assessments described in this Declaration. The Board may make

reasonable rules relating to the proof of ownership of a Unit to qualify as a Member.

4.2

The Association shall have four (4) classes of voting Members:

*Class A.* Class A Members shall be all Owners of Residential Units in Buildings 1, 2,3, 4 and 5, and proposed Buildings 6, 7, 8, 9 and 10. Class A Members shall be entitled to two (2) votes *for* each Unit owned.

*Class B.* Class B Members shall be all Owners of Residential and/or Commercial Building Units located in the proposed Building 11. Class B Members shall be entitled to two (2) votes for each Unit owned.

*Class C.* Class C Members shall be all Owners of Commercial Units located in the proposed Club House. Class C Members shall be entitled to two (2) votes for each unit owned.

*Class D.* Class D Members shall be all Owners of Marina Units. Class D Members shall be entitled to one (1) vote *for* each Unit owned.

4.3 When *more* than one person is an Owner of a Unit, all such persons shall be Members. The votes for such Units shall be exercised as they among themselves determine, but in no event shall multiple Owners of a Unit be entitled to cast more than two (2) votes allocated to that Unit. No fractional votes shall be permitted.

4.4 Notwithstanding anything to the contrary herein, Declarant shall have the right to designate and select a majority of the Board as outlined in the Bylaws for the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on the Board, the manner in which such person or persons shall be designated shall be as provided in the Bylaws of the Association. Declarant shall have the unilateral right to remove any person or persons selected by it to act and serve on the Board and to replace such person or persons with another person or person to act and serve in the place of any director or directors so removed. Any director designated and selected by the Declarant need not be a Unit Owner. Any representative of the Declarant serving on the Board shall not be required to disqualify himself from any vote upon contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest.

## ARTICLE 5

### Architectural Control. Use Restrictions. Conditions and Covenants

To assure a community of congenial Owners and thus protect the value of the Condominium Units, the Property shall be subject to the restrictions set forth in this Declaration and in the rules and regulations of the Association.

5.1 Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, any aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

5.2 Administration of Condominium. The Condominium shall be administered in accordance with the provision of the Act, this Declaration and the Bylaws.

5.3 Approval Required for Changes. To preserve the architectural appearance of the Condominium, no construction, painting or other changes of any nature whatsoever shall be commenced or maintained by any Unit Owner other than the Declarant with respect to the exterior of any Unit or any other portion of the Condominium, including any Limited Common Elements appurtenant thereto, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. An Owner may make improvements and alterations within his Unit; provided, however, that no Owner shall make any structural alterations in a Unit or remove any portion thereof or make any additions thereto or do anything which would jeopardize or impair the safety, soundness or structural integrity of that Unit or any other Unit or otherwise materially lessen the support any portion of the Condominium. No Owner shall impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists. Any alteration or impairment of the easements granted to or reserved by the Declarant shall first have the approval of the beneficiary of such easement.

5.4 Lighting. The design, type, location, size, intensity and color of all exterior lights (including both those mounted as part of the original design of the Property or otherwise in place at the time of the conveyance of a Unit to an Owner and those mounted with the consent of the Board) shall be subject to the prior written approval of the Board.

5.5

#### Use Restriction

5.5.1 All Residential Units shall be occupied and used by Unit Owners and Occupants for single family residential purposes only. Notwithstanding the foregoing, however, Residential Units may be leased as a Vacation Rental (as defined by Chapter 42A of the North Carolina General Statutes) to more than one family at a time.

5.5.2 No "For Sale" or "For Rent" sign or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board.

5.5.3 The foregoing provisions of the Section or any other provisions of this Declaration or the Bylaws notwithstanding, Declarant may maintain sales offices for sales of Units in the Condominium and models. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium until all of the Units have been conveyed to a Unit Owner other than the Declarant, anyone or more of such offices or models. Declarant shall also have the right to change the use or combination of uses of such offices or models. The total number of such offices or models maintained at any time by Declarant shall not exceed the number set out above, and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.

5.5.4 Declarant may also maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

5.6 Time shares. No Unit may be subdivided to permit the creation of a time share or time shares as same is defined by Chapter 93A, Article 4 of the North Carolina General Statutes, or any subsequent

legislation affecting time shares

5.7 Pets. No animals or birds, other than two (2) generally recognized house pets (excluding pet fish in an aquarium) shall be kept or maintained on any portion of the Property and then only if they are kept or maintained solely as domestic pets and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Elements or Limited Common Elements. Pets shall be under leash when walked or exercised in any portion of the Common Elements. No pet shall be permitted to leave its droppings on any portion of the Common Elements and the Owner of such pet shall immediately remove the droppings. Upon written request of any Owners, the Board may conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular pet is permitted or such pet is a nuisance and shall have the right to require the Owner of a particular pet to remove such pet from the Condominium if such pet is found to be a nuisance or to be in violation of these restrictions. The Board may allow for a third pet in a particular instance and at its sole discretion, but such shall not be deemed a waiver of the 2-pet limit herein established. No pets may be kept and maintained outside of the Unit. No horses, goats, or other livestock are allowed.

5.8

Vehicle Restrictions.

5.8.1 Prohibited Vehicles. No trailer, recreational vehicle, camper, camper shell alone or when on a vehicle and it is higher than the cab or longer than the factory bed of that vehicle, bus, truck over 1/2 ton, all-terrain vehicle (ATV), boat trailers, commercial vehicles (except as described in Permitted Vehicles II below), permanent tent or similar equipment shall be permitted to remain upon any area within the Condominium other than temporarily for purposes of loading or unloading, except in those portions of the Property, if any, designated specifically for such purpose by the Board. "Temporary parking" shall mean parking of vehicles belonging to Invitees or Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owner and parking of vehicles belonging to or being used by Owners for loading and unloading purposes only. No noisy or smoky vehicles shall be operated in the Community.

5.8.2 Restricted Vehicles. No inoperable or unlicensed vehicle shall be permitted to remain upon any area within the Condominium in such a manner that it is visible from the Common Area, neighboring property and public roads. Motorcycles and motorbikes shall be permitted, provided they are operated at noise levels not exceeding 45 decibels. The storing, placing or parking of any vehicle, or any part thereof, which is disabled, unlicensed, unregistered, inoperative, or from which an essential or legally required operating part is removed, shall be prohibited.

5.8.3 Permitted Vehicles. Automobiles, standard-sized vans, sport utility vehicles and pickup trucks shall be permitted vehicles within the Parking Areas. Permitted commercial vehicles shall include automobiles or standard sized vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

5.8.4 Construction and Sales Vehicles. Trailers or temporary structures for use incidental to the actual construction or reconstruction of improvements in the Condominium may be erected with the prior written approval of the Board or its delegated committee, but no such temporary structure shall remain in the Condominium for a longer period of time than is customarily required to construct like or similar improvements. The foregoing notwithstanding, Declarant or Declarant's successor in interest may maintain trailers or temporary structures within the Condominium which are incidental to the completion of the

Condominium or for initial construction on property owned by Declarant and situated in the vicinity of the Condominium.

5.8.5 Parking. The parking spaces located underneath a building and the concrete parking areas denoted on the plat of the Condominium immediately adjacent to that building are reserved for the Unit Owners of that building. A Building Unit Owner shall be allocated two (2) parking spaces for each Unit owned. Occupants shall not park more vehicles in the Condominium at any time than the number of vehicles that their Unit was designed to accommodate. No vehicle shall block or impede access of fire fighting equipment to private streets and fire hydrants within the Common Elements. The Board may, from time to time, establish rules and regulations for the operation and parking of vehicles in the Common Elements and such activities related thereto. Any permission from the Board for use of an unassigned Parking Space, if any, will create only a license to use such Parking Space, revocable at any time by the Board with three (3) days' written notice, unless otherwise agreed to by the Board or Declarant in writing.

5.8.6 Vehicle Maintenance Prohibited. Except with the prior written approval of the Board in each instance, no vehicle maintenance, servicing, repairing, assembling, disassembling, modifying, restoring, other than emergency work, shall be permitted in a Unit or the Condominium. The foregoing shall not apply to the washing or polishing of motor vehicles together with those activities normally incident to such activity.

5.8.7 Notwithstanding anything contained herein to the contrary, the Declarant and Association, their agents, employees, successors and assigns shall be entitled to full use and benefits of the easements granted to or reserved by them over and through the Property and shall not be subject to the foregoing restrictions of this Paragraph 5.8.

5.9 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or be permitted to accumulate upon any portion of the Property, except in containers specifically designated for such purpose, nor shall any odors, be permitted, so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Property. No nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to persons using or occupying other portions of the Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes, shall be located, used or placed on the Property.

5.10 Prohibited Activities. Noxious or offensive activities shall not be carried on in any Unit or in any part of the Common Elements. Each Owner and Occupant shall refrain from any act or use of his Unit or the Common Elements which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants. Further, nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction) to or in his Unit or the Common Elements. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Property.

5.11 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed and are hereby incorporated by reference herein as if set forth word for word. All Unit Owners shall acknowledge, adhere to, and comply with any and all such governmental regulations, including the provisions of

the Coastal Area Management Act and the regulations of the Division of Environmental Management. In the event of any conflict between any provision of any State governmental code, regulation or restriction and any provisions of this Declaration, the more restrictive provisions shall apply.

5.12 Exterior Appearance of Building Units. To provide a neat, attractive and harmonious appearance throughout the Condominium, no awnings, shades, screens or other item shall be attached to, hung or used on the exterior of any window of a Building Unit without the prior written consent of the Board, or an architectural committee appointed by the Board. Further, no foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purposes. Unless otherwise approved or waived by the Board, all shades, drapery linings, and other window treatments visible from the exterior of a Building Unit on any window or door shall be white or off-white. Outside clothes lines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Property, nor shall any clothing, rugs or any other item be hung on any exterior railing.

5.13 Grills. No cooking grill of any kind, including but not limited to gas or charcoal grills, shall be permitted to be used on the balconies of any Building Unit. Grilling shall only be permitted in designated areas on the Property.

5.14 Antennas/Satellite Dishes. The Association may adopt safety regulations regarding a Unit Owner's installation and use of a satellite dish or antenna. The Association may also adopt regulations mandating the location of satellite dishes and antennas provided that the dish or antenna is capable of receiving acceptable quality signals from such location. The Declarant and Association, their agents, employees, successors and assigns shall be entitled to erect and maintain such devices for providing satellite and/or cable television services to the Units or enter into contracts for the provision of satellite and/or cable television, as they deem beneficial.

5.15 Alterations of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

5.16 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

5.17

Restrictions, Conditions and Covenants That Run With Land. Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner. !

5.18

Use Restrictions on Marina Units.

5.18.1 Each Marina Unit is restricted to marine mooring occupancy for a single pleasure boat not requiring Coast Guard licenses for carrying passengers for hire. No sign indicating commercial uses for a Marina Unit may be displayed in the Condominium. A "pleasure boat" is defined as a registered pleasure boat under the licensing laws of the State, not licensed for carrying passengers or cargo for hire, and operated



between its owners on a non profit, non commercial basis.

5.18.2 All boats of the Marina Unit (Owners must fit within the boundaries of the Marina Units, including all bow sprits, booms, pulpits, and other projections and overhangs. No boat or other vessel or craft shall be docked or moored in the waterways and canals in the Condominium so as to block or hinder the reasonable access, ingress and egress of others. Only Marina Unit owners or their tenants, will be permitted to dock or moor their boats in the Marina Units constructed and submitted as part of the overall development plan. Prospective Marina Unit purchasers must obtain approval of their proposed boat from the Declarant prior to purchase. Maximum allowable boat length is 70 feet; maximum beam in 18-foot Units is 16 feet; maximum beam in 12-foot Units is 10 feet. No boat over 18 feet wide, measured at the "beam", shall be allowed in the waterways and canals of the Condominium, unless it shall first seek and obtain the prior written approval of the Board. The Board may, by appropriate resolution, make such other and further rules and regulations concerning the use and enjoyment of the docks, piers, canals and waterways comprising the Condominium as the Board may deem fit and proper.

5.18.3 All boats that are required to do so shall (1) be fully equipped and operable for operation on the sea (except for the period of temporary repairs not to exceed eight days), (2) be equipped with all safety of life at sea equipment, required by Coast Guard regulations and federal, state and local laws, and (3) comply with all licensing and registration requirements.

5.18.4 No boat may be used for a year-round residence. Barges with no method of self-propulsion are prohibited. All boats must be equipped with sanitary holding tanks, and may not discharge household sewage, trash, petroleum products or other wastes overboard into the sea.

5.18.5 All boats occupying Marina Units must be safe and sea-worthy. An agent of the Association may periodically inspect boats for sea worthiness, and order removal of any non sea-worthy boat. Boats sunk in Marina Units will be removed by the Marina Unit Owner within twelve hours of sinking or the Association may cause removal of the sunken boat at the expense of the Marina Unit Owner. The Association may prohibit certain contractors from providing services to boats on the Marina Units for cause relating to safety.

5.18.6 From time to time, piers and boats may be required to be removed for maintenance, repairs, and dredging at which time the Marina Unit may be entered for such period as may be necessary. To the extent fill is removed from the Unit, subject to the rights of the State, it will be treated as property of the Association.

5.18.7 When a Marina Unit is to be unoccupied by the Marina Unit Owner for a period of over three (3) days, the Marina Unit Owner will notify the Association, who may place the Marina Unit in a transient guest pool. Rents charged for transient occupancy will be divided, a portion to be given as a credit against common expense assessments of the particular Marina Unit, and the remainder to be paid as income to the Association. The proportions shall be decided by resolutions of the Board.

## ARTICLE 6 Assessments

6.1 Assessment Liens. The Board has the power to levy all Assessments (general and special, limited common area assessments, or any other assessments properly levied by the Association) against the Unit for Common Expenses. Each Unit Owner covenants and agrees to pay to the Association all levied assessments. Any assessments levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit when filed of record in the Office of the Clerk of Superior Court in Dare County, North Carolina. The Association's lien may be foreclosed in a like manner as a mortgage upon real estate under Power of Sale under Article 2A of Chapter 45 of the General Statutes of the State of North Carolina.

All fees, charges, late charges, and interest charged pursuant to this Declaration and pursuant to Chapter 47 C of the North Carolina General Statutes are enforceable as Assessments under this Section. The Lien under this Section is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court of Dare County, and (b) liens for real estate taxes and other governmental assessments or charges against the Unit.

6.2 Separate Assessments for Membership Classes. The Association may levy separate assessments for Membership Classes A, B, C and D, and if it does so, the Association shall maintain separate accounts for the assessment funds collected from each Membership Class.

6.3 Purposes of Assessments. The Assessments levied by the Association shall be used exclusively for the following purposes:

6.3.1

For the promotion of the health, safety, and welfare of the Owners and Occupants;

6.3.2 For the payment of ad valorem taxes and public assessments levied on the Common Elements;

6.3.3 For the maintenance and operation of Common Utility Lines, if any, and any signage, parking areas, sidewalks, bulkheads, docks, decks, piers, landscaping and lighting located on the Common Elements;

6.3.4 For the general use, enjoyment, and maintenance of the Common Elements including but not limited to, the costs of labor, materials and equipment necessary for the proper use, enjoyment, maintenance, repair and replacement thereof;

6.3.5 For the acquisition, improvement and maintenance of the services and facilities located on the Common Elements;

6.3.6 For the procurement and maintenance of liability, hazard and other insurance in accordance with the Bylaws of the Association.

6.3.7 For the maintenance, repair or replacement of the exterior of the Improvements on the property consistent and in accordance with this Declaration;

6.3.8 For the employment of professional, such as accountants, consultants and attorneys, to represent and assist in the operation of the Association when reasonable or necessary including payment of costs and expenses associated with enforcement of the terms, conditions, obligations, and provisions of the Act, the Declaration, the Bylaws, the Articles of Incorporation for the Association, or the rules and regulations, as the same may be amended from time to time;

6.3.9 For the establishment and maintenance of an adequate reserve fund or funds for the periodic maintenance, repair and replacement of those Common Elements (including Limited Common Elements) which the Association may be obligated to maintain and of a reserve to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures and other matters, as may be authorized from time to time by the Board; and

6.3.1 0 For administrative costs of operation for the Association including rental or lease of office space.

6.4

Annual Assessment.

6.4.1 To and including December 31, 2001, the annual assessment shall be \$2,400.00 for Building Unit owners and \$1,200.00 for Marina Unit owners as otherwise provided herein, the first year's assessment to be collected at closing on the purchase of the Unit, with the timing and collection and exact amount of subsequent years' assessments to be determined from time to time by the Board.

6.4.2 From and after December 31, 2001, the annual assessment may be increased by the Board effective January 1 of each year:

6.4.2.1 Without the vote of the Members, by a percentage which may not exceed five percent (5%); or

6.4.2.2 Otherwise, only if sixty-six percent (66%) of the votes of all of the Members who are voting in person or by proxy at a meeting called for such purpose. Written notice of the meeting shall be given to all Members not less than ten (10) days in advance of the meeting. The provisions of this subsection shall not apply to nor be a limitation upon any change in the annual assessment undertaken incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

6.5 Special Assessments for Repairs. If any portion of any Common Area is damaged or destroyed by an Owner or any of its Occupants, or an Owner fails to maintain and keep in good repair his Unit and Improvements thereon that are such Owner's responsibility to maintain and keep in good repair, such Owner hereby authorizes the Association to repair such damaged or unmaintained Improvement in a good and workmanlike manner. The amount expended or to be expended by the Association for such repairs, labor and materials, shall become a special assessment and lien upon the Unit of such Owner, such amount to be established by the Board without the vote of the Members.

6.6 Special Assessments for Maintenance and Capital Improvements. In addition to annual assessments authorized above, the Board in its discretion may levy special assessments at such other time and additional times as in its judgment are required for:

6.6.1

Maintenance, repair, restoration and reconstruction of the Common Elements.

6.6.2 Alterations, improvements and additions to the Common Elements, provided however that any such special assessments involving an expenditure in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000) shall first be approved by the members entitled to cast at least sixty-six percent (66%) of the total votes of the Association at a regular or special meeting of the Association.

Special Assessments made pursuant to this Section shall be deemed levied upon notice thereof given to the members subject to such special assessment, and shall be payable as determined by the Board as set out in such notice.

6.7 Uniform Date of Assessment. Both annual and special assessments (with the exception of fines and penalties, special assessments authorized under this Article and such other assessments arising out of failure of a Unit Owner to perform his obligations under this Declaration) must be fixed at a uniform rate for all Units of the same type and may be collected on a monthly, quarterly, semi-annual or annual basis in advance as the Board may determine.

6.8 Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence on the date that the first Unit is conveyed by the Declarant, with such annual assessment being prorated as necessary. The Board shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The dates and appropriate penalties for late payments shall be established by the Board. The Association, upon demand at any time, shall furnish a certificate in writing setting forth whether the assessments on a specified Unit have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of a payment status.

6.9 Declarant's Financial Responsibilities. While the Association shall not assess the Declarant for any Units not yet constructed and completed, the Declarant shall be responsible for any deficit in the Association's budget until such time that the Condominium is complete.

6.10

Remedies for Non-Payment of Assessments.

6.10.1 Any assessment which is not paid when due shall be delinquent. If an Assessment is not paid within thirty (30) days after its due date, (i) the Assessment shall bear interest from the date of delinquency at a rate established by the Board; (ii) the Association may levy a late charge established by the Board; and (iii) the Association may file of record in the office of the Clerk of Superior Court of Dare County a Claim of Lien in the manner provided therefor by Chapter 44, Article 8 of the North Carolina General Statutes. The Board may, in its sole discretion, waive the imposition of interest and late charges as to any delinquent Assessment. The Association may then bring an action at law against the Owner personally obligated to pay any delinquent Assessment or foreclose the lien created therein in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust, including the right to foreclose under a power of sale, in which case the Association shall have the right and option in its sole discretion to appoint a person or entity to serve in the role of trustee. Costs, late charges, interest and reasonable attorney's fees of any such action shall be added to the amount of such Assessment and shall be part of the lien assessed against such Unit. The Association has the right to bid and purchase at the foreclosure sale regardless of whether a trustee is used.

6.10.2 In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, the Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the state of North Carolina.

6.10.3 The Board may also suspend an Owner's voting privileges and rights and the right to use any recreational facilities of the Condominium by the Owner, his Occupants, invitees and guests, and Common Area appurtenant thereto for any period of time during which an Assessment against his Condominium Unit remains unpaid or for reasonable time for infractions of any provisions of the Condominium Instruments or rules and regulations.

6.11 Subordination of the Lien to First Priority Mortgages or Deeds of Trust. The lien of the Assessments provided for herein on any Unit shall be subordinate to the lien of any mortgage or deed of trust

representing a first priority lien on such Unit. Sale or transfer of any Unit shall not affect the Assessment lien or liens established in this article; provided, however, that the sale or transfer of any Unit pursuant to a decree of foreclosure on such a first priority deed of trust or mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability or liens arising from Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first priority mortgage or deed of trust.

6.12 Annual Budget. By a majority vote of the Board, the Board shall adopt an annual budget for the subsequent year of operation of the Association, which shall provide for allocation of expenses in such a manner that the obligation imposed by the Declaration and any and all amendments hereto shall be met. The annual assessment levied against the Units shall include a reasonable amount allocated to a reserve fund for the replacement of Improvements on the Common Area and for the exterior maintenance of the buildings on the Property that are the Association's obligation to maintain.

6.13 Omission of Assessments. The omission by the Board, before the expiration of any year, to fix the annual assessments hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the annual assessment fixed for the preceding year shall continue until a new annual assessment is fixed.

6.14

Personal Liability of Transferees: Statement: Liability of First Mortgagee.

6.14.1 The personal obligation of assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit as a personal obligation unless said delinquent assessments are expressly assumed as a personal obligation by said transferee. However, any lien rights against the Unit shall remain in full force and effect.

6.14.2 Any such transferee shall be entitled to a statement from the Board, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.

6.14.3 Where a mortgagee or the beneficiary of a deed of trust, or other person claiming through such deed of trust, pursuant to the remedies provided in a deed of trust, or by foreclosure or by a deed, or assignment, in lieu of foreclosure, obtains title to a Unit, the liability of such mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would be delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be mean by deed acquired by foreclosure upon expiration of the applicable period of redemption.

6.14.4 Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under 6.14.2 above or, resulting as provided in 6.14.3 above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed, or by assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the purchaser at foreclosure or such other person under 6.14.3 above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

6.15 Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Owner may waive or otherwise escape liability for the Assessments provided for herein by the non-use of the Common Area or abandonment of his Unit nor shall damage to or destruction of any Improvements on any Unit by fire or other casualty result in abatement of the Assessment provided for herein.

ARTICLE 7 Management, Maintenance, Repairs, Replacements, Alterations and Improvements

7.1

Common Elements.

7.1.1 By the Association. The management, replacement, maintenance, repair, alteration and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provision of Section 7.2 hereof, the cost thereof shall be a Common Expense to the extent not provided by Unit Owners pursuant to Section 7.1.2 hereof. All damage caused to a Unit by any work on or to the Common Element done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

7.1.2 By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of any intentional acts or negligence on the part of the Unit Owner, his guests, his or its officers, employees, agents, invitees, or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

7.2 Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units.

7.2.1 Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

7.2.2 In addition, the Association may, but is not obligated to, assess any Common Expense benefitting less than all of the Units against the Units benefitted in proportion to their

Common Expense liability.

7.3 Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has

become damaged or destroyed by reasons of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

7.4 Buildings. Except for those buildings expressly defined as Limited Common Elements herein, the Association shall provide exterior maintenance of all Buildings upon the Property, including but not limited to

paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces and canopies.

7.5 Professional Management. The Board may employ a professional management firm to manage the operation and affairs of the Condominium and the Association. Any management firm employed shall be employed pursuant to a written agreement executed on behalf of the Association by its President and Secretary. All such management agreements shall be terminable by the Association for cause upon thirty (30) days written notice and without termination fee and upon ninety (90) days prior written notice and without termination fee without cause, and the term thereof may not exceed the maximum stated in the Bylaws. To the extent permitted by law, the Board shall be authorized to delegate to such management firm such of the powers and duties of the Association and of its Board and Officers as the Board shall determine. The Declarant or any person affiliated with the Declarant may be employed as the professional management firm pursuant to this section.

7.6 Waiver of Claims. The Association, except only as provided in Section 7.7, agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of anyone or more of such persons and all such claims are hereby waived and released; provided, that this waiver shall not apply to any such loss or damage due to intentional acts.

7.7

Right of Entry.

7.7.1 By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purpose of performing any of the Association's duties or obligations or exercising any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 7.6, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

7.7.2 By Unit Owners. Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit of, or performing the duties and obligations under the Act, this Declaration or the Bylaws of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right or entry shall be immediate. Notwithstanding Section 7.6, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

## ARTICLE 8 Insurance

### 8.1

#### Authority to Purchase: Notice.

8.1.1 Except as otherwise provided in Section 8.4, all insurance policies relating to the property shall be purchased by the Association prior to the conveyance of the Condominium Unit to any party other than the Declarant. The Board shall not be liable for failure to obtain coverage for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverages are available only at a demonstrably unreasonable cost. The Association shall promptly furnish to each Unit Owner written notice of the procurement of, subsequent changes, or termination of, insurance coverages obtained on behalf of the Association. Premiums upon insurance policies purchased by the Association shall be paid by the Association at least three (3) days prior to the expiration date of such policies and shall be a part of the annual assessment.

8.1.2 Each such policy shall provide that:

8.1.2.1 The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Unit Owners, and their respective agents, employees, tenants, invitees and guests.

8.1.2.2 Such policy shall not be canceled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents, tenants or employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and neither shall have so cured such defect within sixty (60) days after such demand;

8.1.2.3 Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors and the Managing Agent, and in the case of physical damage insurance, to all Mortgagees.

8.1.3 All policies of insurance shall be written by reputable companies licensed to do business in the State of North Carolina. Physical damage policies shall be in form and substance and with carriers acceptable to Mortgagees holding a majority of the Mortgages (based upon one vote for each Mortgage owned).

8.1.4 The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a Common Expense, except where the claim is for components of a Unit.

8.2 Casualty Insurance. The Association shall maintain casualty insurance upon the property in the name of, and the proceeds thereof shall be payable to the Association, as trustee for all Unit Owners and Security Holders as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in the amount equal to not less than the full insurable value of the Property on a replacement cost basis and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making cash settlement, such option shall not be



exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

8.3 Liability Insurance. The Association shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) and property damage insurance in such limits as the Board may from time to time determine, insuring any member of the Board, the Managing Agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owner (and their invitees, agents and employees) arising out of, or incident to the Ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and contain:

8.3.1 a cross liability endorsement under which the rights of a name insured under the policy shall not be prejudiced with respect to his action against another named insured;

8.3.2 hired and non-Owner vehicle coverage;

8.3.3 deletion of the nonnal products exclusion with respect to events sponsored by the Association; and

8.3.4 a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner.

The Board shall review such limits once a year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than Five Million Dollars (\$5,000,000.00).

If the insurance purchased by the Association against liability as set forth above relating to the use of the Common Areas shall for any reason, not fully cover any such liability, the amount of any such deficit shall be assessed as a special assessment at a uniform rate against all Owners without the requirement of an affirmative vote of the Members.

8.4

Other Insurance. The Board of Directors may obtain and maintain:

8.4.1 adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the Managing Agent. Such fidelity bonds shall:

8.4.1.1

name the Association as an obligee;

8.4.1.2 be written in an amount not less than one-half (1/2) of the total annual Condominium Assessments for the year or the amount required by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC),

whichever is greatest; and

8.4.1.3 contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

8.4.2 if required by any governmental or quasi-governmental agency, including without limitation the FNMA or the FHLMC, such insurance as required in accordance with the then applicable regulation of such agency;

8.4.3 workmen's compensation insurance if and to the extent necessary to meet the requirements of law; and

8.4.4 such other insurance as the Board may determine or as may be requested from any of the Unit Owners.

8.5 Insurance Trust. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

8.6 Individual Policy for Unit Owners. Each Unit Owner shall have the right, at his own expense, to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit under coverage normally called "improvement and betterment coverage"; provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Board of Directors or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by a Unit Owner. All such policies shall contain waivers of subrogation. No Unit Owner shall obtain separate insurance policies on the Condominium except as provided in this Section. Should any Unit Owner obtain insurance on his own Unit, said insurance must name the Association as an additional insured whether said insurance shall be a property insurance or a liability insurance policy.

8.7 Application of Declaration and Bylaws, Any Improvements which are destroyed and not subsequently restored or reconstructed or which has been destroyed in whole or in part, by fire or other casualty, and are subsequently restored or reconstructed, shall continue to be subject to the provisions of this Declaration and to the Bylaws of the Association,

8.8 Unavailability of Insurance. In the event any required insurance is not available, the Board of Directors must deliver notice of the fact to all of the Unit Owners.

#### ARTICLE 9 Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act.

#### ARTICLE 10 Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and the awards paid on account thereof

shall be used and applied in accordance with Section 4 7C-I-1 07.

## ARTICLE 11 Termination

The Condominium may be terminated only in strict compliance with Section 4 7C-2-118 of the Act. Notwithstanding anything else as contained in Section 47C-2-118, any agreement of Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated may also provide that all of the Common Elements and Units of the Condominium may be sold following the termination.

## ARTICLE 12 Amendment

12.1 Declaration. This Declaration may be amended only in strict compliance with the Act, including, without limitation Section 4 7C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. The Declarant further declares that, in addition to the Property described in Exhibit A, the Declarant shall have the right and authority to submit additional property to the Condominium under the Act by future amendment and/or amendment and restatement of this Declaration. The right of the Declarant to submit additional property to this Declaration and to the Act shall survive regardless of the number of units sold.

12.2 Plats. The Declarant reserves the unilateral right to amend the Condominium Plats, and to record such amended plats, to reflect the removal or relocation of existing third party easements should Declarant enter into agreements with said third parties for such easement removal or relocation. The Declarant further reserves the unilateral right to amend the Condominium Plats, and to record such amended plats, to reflect the removal of improvements in the common elements including but not limited to guest parking which encumber such third party easements.

## ARTICLE 13 General Provisions

13.1 Run with the Land: Enforcement. Except as expressly provided herein, each restriction, easement or obligation on each Unit shall be a burden on that Unit, shall be appurtenant to and for the benefit of the other Units and the Condominium complex and each part thereof and shall run with all Units and may be enforced by each Owner.

13.2 Conflict with the Act: Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provision of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event, the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or for any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition,

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13.3 Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

13.4 Captions and Headings. The captions and headings herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

13.5 Exhibits. The exhibits referenced in this Declaration are incorporated herein by reference, whether or not they are attached hereto and recorded herewith.

13.6 Successors and Assigns. This Declaration and the restrictions, easements and

obligations created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, legal representatives, successors and assigns, and upon any person or entity acquiring a Unit, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Unit, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title, but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Unit or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Unit or portion thereof from and after the date of sale and conveyance of title.

13.7 Duration. This Declaration shall be effective as of the date recorded in the office of the Register of Deeds of Dare County, North Carolina and shall continue in full force and effect until 11:59 P.M. on December 31, 2059. Upon the expiration of such period, this Declaration shall automatically be extended for successive periods of ten (10) years each. The number of ten (10) year extension periods hereunder shall be unlimited, and this Declaration shall be automatically extended upon the expiration of the initial period and each ten (10) year extension period for an additional ten (10) year period until such time as all of the Owners unanimously agree to terminate this Declaration, which termination shall further have the approval of any municipality having jurisdiction there over, if required.

13.8 Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the condominium shall at all times be subject and subordinate to the terms of this Declaration, except to the extent expressly otherwise provided herein, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration.

13.9 Non-Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Condominium complex to the general public or for any public use or purpose whatsoever, it being the intention of the Declarant and its successors and assigns and that nothing in this Declaration, expresses or implied, shall confer upon any person, other than as expressly hereunder any rights or remedies under or by reason of this Declaration.

13.10 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner or Member to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner or Member may hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, and this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

13.11 Injunctive and Other Remedies. In the event of a breach by any Owner or Occupant of any obligation of this Declaration, the Association and the other Members or Owners shall be entitled to obtain an order specifically enforcing the performance of such obligations or an injunction prohibiting any such breach, the Owners and Members acknowledging the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach. Any action taken or document executed in violation of this Declaration shall be void and may be set aside upon the petition of the other Owners or the Association. Any costs and expenses of any such proceeding,

including reasonable attorney's fees shall be paid by defaulting Owner and shall constitute a lien against the Unit, and improvements or the interests therein, until paid.

13.] 2 Attorney's Fees. If any person or entity initiates or defends any legal action or proceeding to enforce or interpret this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and reasonable attorney's fees.

13.13 Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

13 .14 Joint and Several Obligations. If any Owner is composed of more than one person, obligations of such Owner shall be joint and several.

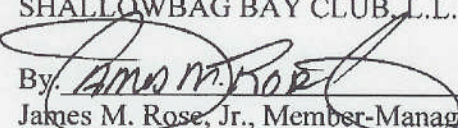
13.15 Governing Law and Venue. This Declaration shall be governed by and construed in accordance with the laws of the state of North Carolina. Venue for any action arising out of, or in any way connected with this Declaration shall be in Dare County, North Carolina.

13.16 No Merger. The Declarant hereby expressly intends that the easement interests created hereby in one Unit shall not merge with the fee simple ownership interest held by the Declarant or any Owner of another Unit, but shall be and remain at all times separate and distinct, notwithstanding any union of such interests at any time.

13.17 Negation of Partnership or Joint Venture. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners, the Declarant and the Association and their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. No Owner shall have the right to act as agent for another Owner unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

13 .18 Notices. Every notice or other communication required or contemplated by this Declaration shall be delivered to an Owner, Member, or Declarant in the manner provided by the Bylaws of the Association or either by (i) personal delivery; (ii) facsimile; (iii) mailing via United States mail, postage prepaid, certified or registered mail; or (iv) via a nationally recognized overnight courier (including, but not limited to, FedEx, UPS and Airborne). A notice to an Owner, Member or Declarant shall be forwarded to the registered agent of such Owner or Declarant (if an entity having a registered agent for service of process under North Carolina law) or to the address listed on the then current ad valorem tax records for the Dare County Tax Collector or to such other most recent address as such Owner, Member or Declarant has designated in writing to the Association at least ten (10) days in advance of such notice.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

SHALLOWBAG BAY CLUB, L.L.C.  
By:  (SEAL)  
James M. Rose, Jr., Member-Manager

NORTH CAROLINA Currituck County

I, a Notary Public of the state and county aforesaid, do hereby certify that JAMES M. ROSE, JR., MEMBER-MANAGER of SHALLOW BAG BAY CLUB, L.L.C., personally appeared before me on behalf of said company this day and signed or acknowledged the execution of the foregoing instrument. Witness my hand and official seal or stamp, this the 27th day of

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

, 2001.

State of North Carolina  
County of Dare

The foregoing certificate of JAMES M. ROSE, JR. is certified to be correct. This instrument and this certificate are duly registered at the Date and Time in the Book and Page shown on the first page hereof.

Barbara M. Gray, Register of Deeds

By:

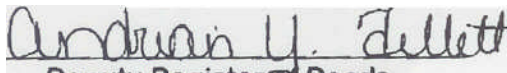
  
Deputy Register of Deeds

EXHIBIT A  
Legal Description of Shallowbag Bay Club Condominium

All that certain parcel of land located in Nags Head Township of Dare County, North Carolina in the Town of Manteo and more particularly described as follows:

Beginning at a point marked by an iron pipe and located in the eastern right of way of U.S. 64/264, a 100 foot right of way, and said point marking the northwestern corner of property now or formerly belonging to Darrell and Lorna Daniels as shown in a deed recorded in Book 388 at page 322 of the Dare County Registry and said point also be identified as a control corner with coordinates N: 798533.31, E: 2986469.51; running thence from the point of beginning and following the eastern right of way of u.s. 64/264 a course of North 21024' 02" West a distance of 45.99 feet to a point marked by an iron pipe; thence North 71030' 00" East a distance of 175.29 feet to a point marked by an iron pipe; thence North 21 a 47' 00" West a distance of 240.00 feet to a point marked by an iron pipe; thence North 70° 16' 02" East a distance of 822.26 feet, more or less, to a point in the shoreline of Shallowbag Bay; thence continuing a course of North 70° 16' 02" East a distance of 59.43 feet, more or less, to a point in the shoreline of Shallow bag Bay; thence South 30° 44' 25" East a distance of 102.83 feet to a point; thence South 57° 25' 25" East a distance of 121.42 feet to a point; thence South 590 42' 02" East a distance of 42.89 feet to a point; thence South 49003' 53" East a distance of 171.51 feet to a point; (the preceding six calls following the shoreline of Shallowbag Bay); thence South 64° 49' 40" West a distance of 764.96 feet to a point; thence South 77° 04' 40" West a distance of 252.46 feet to a point; (the preceding two calls following a 30 foot canal known as Cod King Ditch); thence turning and running North 210 58' 39" West a distance of 149.83 feet to a point marked by an iron pipe; thence turning and running South 67° 03' 04" West a distance of 175.00 feet to the point or place of beginning.

Same being a parcel of land consisting of 9.08 acres: including an existing basin off Shallowbag Bay, and being shown on a survey entitled "Parcel 2 and Remainder of Parcel 3, Benjamin F. Shaill on Estate" prepared by Albemarle Engineering, Inc. and dated 2/24/99 (Albemarle File No. 99-6700).

Less and except that portion of the Property designated as "Reserved Real Estate - Sprint Utility Building" as shown on the plat of Shallowbag Bay Club Condominium - Phase 1, recorded in Unit Ownership File\_, Page 241.

Being the same property conveyed to Shallowbag Bay Club, L.L.c. by deed filed in Book 1314, Page 176, Dare County Registry.

There is also included in this description the riparian and littoral rights associated with the property described above located in Shallowbag Bay where the proposed Marina Units are to be located as shown on the Condominium Plans of Shallowbag Bay Condominium recorded in the Dare County Registry.



**EXHIBIT B SHALLOWBAG BAY CLUB CONDOMINIUM**

**TABLE OF INTERESTS BUILDINGS 1,2,3,4 and 5 PHASE 1**

This Table of Interests sets forth percentages of Unit interests in the Common Elements based on the thirty (30) Units being declared in Phase 1. Unit percentages shown will decrease as future Units are completed and declared.

**KEY:**

RU designates Residential Unit CU designates Commercial Unit MU designates Marina Unit

**UNITS IN MEMBERSHIP CLASS A, PHASE 1:**

| Unit No. | Bldg. | Phase | Unit Type | Member-ship Class | Floor | Square Footage | Fractional Share of Common Elements | Fractional Share of Common Expense | Fractional Share of Class A Limited Common Elements | Fractional Share of Class A Limited Common Expense | Number of Units in Class A |
|----------|-------|-------|-----------|-------------------|-------|----------------|-------------------------------------|------------------------------------|---|--|----------------------------|
| 101      | 1     | 1     | RU        | A                 |       | 1850           | 3.333%                              | 3.333%                             | 3.333%  | 3.333%   |                            |
| 102      | 1     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                            |
| 103      | 1     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                            |
| 104      | 1     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                            |

| Unit No. | Bldg. | Phase | Unit Type | Member-ship Class | Floor | Square Footage | Fractional Share of Common Elements | Fractional Share of Common Expense | Fractional Share of Class A Limited Common Elements | Fractional Share of Class A Limited Common Expense | Number of Units |
|----------|-------|-------|-----------|-------------------|-------|----------------|-------------------------------------|------------------------------------|---|--|-----------------|
| 105      | 1     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 106      | 1     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 201      | 1     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 202      | 2     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 203      | 2     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 204      | 2     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 205      | 2     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 206      | 2     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 301      | 3     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 302      | 3     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 303      | 3     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 304      | 3     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 305      | 3     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 306      | 3     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 401      | 4     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 402      | 4     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |

| Unit No. | Bldg. | Phase | Unit Type | Member-ship Class | Floor | Square Footage | Fractional Share of Common Elements | Fractional Share of Common Expense | Fractional Share of Class A Limited Common Elements | Fractional Share of Class A Limited Common Expense | Number of Units |
|----------|-------|-------|-----------|-------------------|-------|----------------|-------------------------------------|------------------------------------|---|--|-----------------|
| 403      | 4     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 404      | 4     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 405      | 4     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 406      | 4     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 501      | 5     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 502      | 5     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 503      | 5     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 504      | 5     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 505      | 5     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| 506      | 5     | 1     | RU        | A                 |       | 1850           | 3.333                               | 3.333                              | 3.333   | 3.333  |                 |
| **       | ---   |       | --        | --                | --    | --             |                                     |                                    |   |  | -               |
| TOTALS:  |       |       |           |                   |       |                | 100.0                               | 100.0                              | 100.0   | 100.0  |                 |

## EXHIBIT C SHALLOWBAG BAY CLUB CONDOMINIUM

### ALLOCATION OF LIMITED COMMON ELEMENTS BUILDINGS 1, 2, 3, 4 and 5 PHASE 1

Limited Common Elements allocated to Class A Members.

a.

Owners of Units in Buildings 1, 2, 3, 4 and 5, Phase 1 are Class A Members.

b.

All portions of Buildings 1,2,3,4 and 5, Phase 1, including but not limited to the roof and all exterior surfaces, which are not defined in this Declaration as Units, shall be Limited Common Elements allocated to all Unit Owners in Buildings 1,2,3,4 and 5, Phase I. The purpose for this allocation is to allocate as a Limited Common Element Expense the cost of maintenance, repairs and capital improvements to Buildings 1, 2, 3, 4 and 5, Phase 1 to the Class A Members (Unit Owners in Buildings 1,2,3,4 and 5, Phase 1) and not to all Unit Owners in the Condominium.

c.

The allocation of the respective cost to each Class A Member (Unit Owners in Buildings 1,2,3,4, and 5, Phase 1) for the Limited Common Element Expense for Buildings 1,2,3,4, and 5, Phase 1 are designated as the "Fractional Share of Class A Limited Common Expense" on Exhibit B.

d.

Owners of Residential Units (maximum of 30 additional Units) in proposed Buildings 6, 7, 8, 9 and 10, shall be Class A Members, and all Class A Members (maximum of 60) shall share the Class A Limited Common Expense for all ten (10) buildings.

Limited Common Elements proposed to be allocated to Class B Members.

a.

If the Declarant exercises its Development Right to create Residential and/or Commercial Building Units in proposed Building 11, the owners of such Units shall be Class B Members, and all Class B Members shall share the Class B Limited Common Expense for proposed Building 11.

b.

The Class B Limited Common Expense for proposed Building 11 shall be the cost of maintenance, repairs and capital improvements to the Limited Common Elements allocated to proposed Building 11, which such Limited Common Elements shall be all portions of proposed Building II, including but not limited to the roof and all exterior surfaces, which are not defined in this Declaration as Units.

No Limited Common Elements are proposed to be allocated to Class C and Class D, but if the Declarant exercises its Development Right to create Units in the proposed Club House, and if the

Declarant exercises its development right to create Marina Units, Declarant may allocate Limited Common Elements to any or all of those Unit Owners at that time.