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INTRODUCTION

WELCOME TO MARTIN'S POINT!

We welcome you to Martin's Point, one of the finest residential communities on the Outer Banks.

You are probably aware that there are a number of conditions and restrictions which apply to ownership in Martin's Point. Whether you are purchasing an unimproved Lot, buying or modifying a house already built, planning to build your own house or leasing an existing house, you need to be aware of the conditions and restrictions that apply.

They are set forth in five important documents which are included in this booklet - (1) the Martin's Point Declaration of Covenants, Conditions and Restrictions; (2) the Martin's Point Homeowners Association Articles of Incorporation; (3) the Martin's Point Homeowners Association By-laws; (4) the Martin's Point Homeowners Association Regulations; and (5) the Martin's Point Homeowners Association Construction Guidelines. They are referred to as the Declaration, Articles, By-laws, Regulations and Guidelines, respectively.

Before you take any action in Martin's Point, you should carefully read all five of these documents. You automatically accepted the restrictions and conditions contained in the Declaration, the Articles and the By-laws when you purchased property here. The Regulations are a codification of the restrictions and conditions contained in the Declaration and the By-laws as well as some additional restrictions and conditions which were subsequently promulgated by the Board of Directors. The Guidelines are a compilation of pertinent conditions and restrictions applicable to construction in particular and to life here in general. All conditions and restrictions, regardless of source, are strictly adhered to.

It is suggested that you read the Regulations first since they provide a codification of the restrictions and conditions by which we are governed. You should, however, be knowledgeable of the complete texts as set forth in the Declaration, the Articles and the By-laws.

If you are contemplating construction or exterior modification of an existing structure, you should also read the Guidelines since they provide a concise overview of the restrictions and conditions applicable to this activity. Again, you should be aware of the complete texts as found in the other documents.

The copies of the documents contained in this booklet reflect all amendments which have been enacted as of the time of printing.

In future, as additional amendments are made, you will receive a revised copy of this booklet. You should be aware of the fact that earlier copies of the documents that you might have in your possession may not contain the most recent amendments.

Regardless of the type of property you have purchased in Martin's Point, membership in the Martin's Point Homeowners Association is mandatory. We hope that you will become involved in Association activities and, in particular, attend and actively participate at the meetings of the Association. The Semi-Annual Meeting of the Association is held on the 2nd Saturday in May and the Annual Meeting is held on the 3rd Saturday in November. In addition, the Board of Directors may call Special Meetings at their discretion. Prior to each meeting, you will receive notification of the date, time and place.

As an Owner, you have also obligated yourself to the yearly homeowner's assessments which pay for the guard service, operating expenses, Association activities and maintenance of the roadways and common areas. Recently the assessment has averaged about \$475 per Lot per year, some years higher, some lower. The assessment is set at the Annual Meeting in November and is due by January 31st of the following year. If you purchase property during the year, the assessment for that year is prorated at closing.

It is recognized that the information contained in this booklet may, at first, appear formidable but no well organized democratic society can long exist without some form of regulation. The restrictions and conditions contained herein are not meant to be burdensome, but rather to provide a basis for harmonious enjoyment by all. Welcome to Martin's Point, neighbor! We hope your life here will be everything you expect it to be.

**DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
MARTIN'S POINT**

**NORTH CAROLINA
DARE COUNTY**

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants, Conditions and Restrictions, made and entered into on this 1st day of June, A.D., 1982, by MARTIN'S POINT, INC., a North Carolina corporation, hereinafter referred to as Developer:

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article One of this Declaration and desires to create thereon a residential community (the "Development") with Common Areas for the benefit of the community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the Development and for the maintenance of the Common Areas and, to this end, desires to subject the real property described in Article One to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of values and amenities in the Development, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Common Areas and administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused to be incorporated under the laws of the State of North Carolina a non-profit corporation, Martin's Point Homeowners Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article One, and such additions thereto as may hereafter be made pursuant to Article One hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the terms and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and

restrictions” or “this Declaration”) hereinafter set forth.

ARTICLE ONE¹ **PROPERTY SUBJECT TO THIS DECLARATION**

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Dare County, North Carolina, and is more particularly described in Schedule “A,” attached hereto (see page 16) and incorporated herein by reference.

ARTICLE TWO **DEFINITIONS**

Section 1.

The following words when used in this Declaration or any supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

- (a) “Association” shall mean and refer to the Martin’s Point Homeowners Association, Inc.; and “By-laws” shall mean and refer to the By-laws of the Association.
- (b) “Board” shall mean and refer to the Board of Directors of the Martin’s Point Homeowners Association, Inc.
- (c) “Common Areas” shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties labeled as “Common Areas” or shown as streets or roads.
- (d) “Front Lot Line” shall mean the line separating said Lot from those streets that are the front streets. Martin’s Point Road, Creek Road, Mill Point Road and Martin’s Point West (now Currituck Road), as shown on the plats to which this Declaration is applicable, are deemed to be front streets.
- (e) “Living Area” shall mean and refer to those heated and/or air-conditioned areas within a Living Unit which shall not include garages, carports, porches, patios or storage areas.
- (f) “Living Unit” shall mean and refer to any building or portion of a building, situated upon any Lot, which is a part of The Properties, designated and intended for use and occupancy as a residence by a single family.
- (g) “Lot” shall mean and refer to any plot of land within The Properties shown upon any recorded subdivision map of The Properties, or any portion thereof, with the exception of Common Areas as heretofore defined.

¹ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

- (h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article Five, Section 1, hereof.
- (i) "Mobile Home" shall mean and refer to a modular unit, including double wide and triple wide units, built on a chassis, designed to be used as a dwelling, with or without a permanent foundation.
- (j) "Owner" shall mean and refer to each Owner of record of any Lot situated upon The Properties, whether such interest be fee simple, as land contract vendee, or otherwise, but not withholding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or deed of trust beneficiary or trustee, unless and until such mortgagee, trust beneficiary or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (k) "The Properties" shall mean and refer to all real properties as are subject to this Declaration under the provisions of Article One hereof.
- (l) The "Developer" shall mean and refer to Martin's Point, Inc. ("MPI") and any person or entity who is specifically assigned the rights and interests of MPI hereunder, subject to the prior assignment of those interests for security by deed of trust recorded at Book 322, Page 175, Dare County Registry, and in the event that deed of trust is foreclosed, the purchaser of the security shall be the Developer. [Note: MPI ceased to exist as of July 14, 1989.]
- (m) "Common Expense" shall mean and refer to expenses defined as Common Expenses by the provisions of the By-laws.

ARTICLE THREE
GENERAL PROVISIONS

Section 1. Duration.²

The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by the Association or any Owner, its and their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change said covenants and

² As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

restrictions in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices.

Any notice required to be sent to any Member or Owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, Certified Mail, Return Receipt Requested, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Owner shall be responsible to notify Association of any change in address. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

Section 3. Enforcement.

Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, which action may be maintained by the Association or any Owner; and failure by Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 4. Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

ARTICLE FOUR **RESTRICTIONS ON USE AND RIGHTS OF THE** **ASSOCIATION AND OWNERS**

- (a) ⁴ Permissible Uses. No Lot shall be used except for residential purposes, and no building of any type shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling and accessory building (for storage or other purpose), bulkhead, bridge, dock, fence, garage, gazebo, swimming pool, tennis court or wall, for the private use of the occupant, which shall comply with any applicable zoning regulations. The dwelling shall be constructed prior to or simultaneously with any of the other

³ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

⁴ Ibid.

permitted structures listed above. No Lot shall be used for access to any adjoining Lot or other property. When an Owner acquires two or more adjoining Lots, then and in that event, the adjoining one or more Lots may be used as one building site and the side Lot lines and easements referred to herein shall apply to the outside perimeter line of the combined Lots. Each building erected upon said Lot shall be completed within twelve (12) months after commencing construction, except where completion is, in the opinion of the Association impossible or would result in severe hardship to the Owner or the builder, due to causes not in his or their control.

(b) ⁵ Utilities and Easements. All utility lines of every type, including but not limited to water, electricity, telephone, sewage and television cables, must be underground. The Association reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone systems, cable television service and conduits for the purpose of bringing public services to The Properties, on, in or over fifteen (15) feet of each Lot line fronting on a street, five (5) feet along the side lines of each Lot, and five (5) feet along the rear line of each Lot, and such other areas as are shown on any recorded plats of The Properties, provided that there shall be no easement adjacent to the rear line of Lots bordering on The Currituck Sound or Jean Guite Creek; provided further, that the Association may cut, at its own expense, drainways for surface water wherever and whenever such action is required by applicable health or sanitation authorities in order to maintain reasonable standards of health, safety and appearance. The Association reserves unto itself a fifteen (15) foot easement surrounding all ponds and wet areas, as same are designated on any recorded plats to which this Declaration is applicable, for the purpose of protection of said areas from erosion and the implementation of adequate draining and circulation of said ponds and wet areas. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation, to facilitate storm water maintenance or to maintain reasonable standards of health, safety and appearance.

⁵ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

(c) Minimum Square Footage and Setback Requirements. In no event shall any residential building located on a Lot contain less than one-thousand-eight-hundred (1,800) square feet of Living Area. No building, including porches, eaves, steps and similar fixtures, shall be located on any Lot within forty (40) feet of the front lot line, nor closer than twelve and one-half (12½) feet from the sidelines thereof, nor closer than twenty-five (25) feet from the rear property line. In the case of a side property line which abuts a street, the minimum setback shall be twenty (20) feet.

(d) Temporary Structures and Limitations on Use. No structure of a temporary character shall be placed upon any portion of The Properties at any time. Temporary shelters, tents, travel trailers, campers or self-propelled mobile homes may not at any time be used as a temporary or permanent residence. Campers, travel trailers, boat trailers, self-propelled mobile homes and other vehicles of that nature may be stored on a Lot, provided they do not constitute a visual nuisance and are stored in compliance with the setback requirements of sub-paragraph (c) above. No mobile homes shall be permitted to remain on any portion of The Properties, either temporarily or permanently.

(e) Driveways, Aprons and Culverts. Before commencing construction of improvements or clearing of any Lot, other than by hand, the Owner shall install a temporary driveway, no more than eighteen (18) feet wide, to provide entry to the construction site from the road. Prior to the issuance of a Certificate of Occupancy, the Owner shall replace the temporary driveway with a permanent driveway incorporating (1) an asphalt, brick or concrete apron, extending from the roadway edge to the lot line and (2) a 16-gauge corrugated steel, pre-cast reinforced concrete or smooth bore corrugated polyethylene culvert, placed under the apron in the existing roadside swale. The width of the apron and permanent driveway shall be approved, prior to construction, by the Association. The culvert shall have a minimum inside diameter of fifteen (15) inches, shall not extend more than three (3) feet beyond each side of the apron, shall be installed so as not to impede drainage and shall be kept open.

⁶ As amended, filed March 10, 1997, with Register of Deeds, Dare County, NC, and registered in Book 1101, Page 0088.

⁷ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

- (f) Debris. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of The Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Properties.
- (g) Sewage Disposal. Prior to the occupancy of any Living Unit located on The Properties, proper and suitable provisions shall be made by the Owner for the disposal of sewage by means of a septic tank or tanks constructed on such Lot, or other governmentally approved disposal system. No sewage disposal system shall be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority. Each septic tank and the nitrification field relating thereto shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any other Owner.
- (h) Trees and Foliage. In order to preserve a desirable beauty and prevent purchasers of those Lots and lands from the massive destruction of trees, the plan for cutting trees on the Lots shall be submitted in writing and approved by the Association.
- (i) Unsanitary Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions of buildings or grounds on a Lot of any Owner which shall tend to substantially decrease the beauty of The Properties specifically and as a whole.
- (j) No Offensive Activity. No noxious or offensive activity shall be carried on upon any portion of The Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, Tenant or guest thereof, in any portion of The Properties. No wastewater shall be discharged in any portion of the Properties.
- (k) Animals and Pets. Except as otherwise permitted herein, or in supplementary declarations hereto, no plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other Lots by any Owner, Tenants and guests thereof, may be maintained. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.
- (l) Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or

bows and arrows within The Properties is prohibited unless required for public safety.

(m) Docks, etc. No Owner of any Lot shall erect or maintain a private dock, dam or similar structure on any Common Areas such as lakes, ponds or waterways.

(n) Signage. No sign or any kind of advertising device shall be displayed to the public view on any Lot except one (1) sign of not more than four-hundred-thirty-two (432) square inches with the name and address of Owner or advertising the property for sale; and all other signs on any Lots must be approved in writing by the Association.

ARTICLE FIVE⁸

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION AND BOARD OF DIRECTORS

Section 1. Membership.

There shall be two classes of members: (1) Members and (2) Associate Members. Each Owner shall be a Member of the Association. If not otherwise a Member, each of the following shall be an Associate Member of the Association: the spouse and children, or legal wards, of a Member who have the same principal residence as the Member.

Section 2. Voting Rights.

The Association shall have one (1) class of voting membership, and Members shall be entitled to one (1) vote for each Lot in which they hold an interest required for membership by Section 1 of this Article. When more than one person or entity holds such an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as set forth in the By-laws.

ARTICLE SIX

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment.

Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Areas.

Legal title to the Common Areas is retained by the Association, having been conveyed by the Developer to the Asso-

⁸ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

⁹ Ibid.

ciation by Deed of Trust dated July 14, 1989, recorded at Book 636, Page 0709, Dare County Registry.

Section 3. Extent of Members' Easements.¹⁰

The rights and easements of enjoyment created herein shall be subject to the following:

- (a) The right of the Association, as provided in its Articles and By-laws, to suspend the rights to use the Common Areas of any Owner for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations; and
- (b) The right of the Association to dedicate or transfer all or any part of the Common Areas (which includes streets and roads) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast fifty-one percent (51%) of the total number of votes of all Members has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

ARTICLE SEVEN
COVENANT FOR PAYMENT OF ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation for Assessments.¹¹

Each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such annual and special assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made.

¹⁰ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

¹¹ *Ibid.*

Upon filing with the Dare County Register of Deeds, each such lien shall be prior to all other liens except the following: (1) Assessments, liens and charges for real estate taxes due and unpaid on the Lot; and (2) All sums unpaid on Deeds of Trust, Mortgages and other encumbrances duly of record against the Lot prior to the docketing of the aforesaid lien. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments.¹²

The assessments levied by the Association shall be exclusively for the purpose of promoting the health, enjoyment, safety or welfare of the Owners of The Properties and in particular for the improvement and maintenance of properties and facilities devoted to the purpose and related to the use and enjoyment of the Common Areas and of the homes situated upon The Properties, all of which shall be common expenses, as detailed in Article VI, Section 4 of the By-laws, which provision is attached to this Declaration and incorporated by reference.

Section 3. Annual Assessment.¹³

The annual assessment for each Lot shall be established by the Board of Directors in accordance with the provisions of the By-laws. The total assessment payable by an Owner may be divided into such installments as the Board shall deem appropriate, but until notice from the Board to the contrary is received, the Owner of each Lot shall pay his or its proportionate share as herein determined on an annual basis, in advance.

Section 4. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or re-construction, unexpected repairs or replacement of any capital improvement (including, without limiting the generality thereof, any lake, waterway or pond) located upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ($\frac{2}{3}$) of the votes of all the Members at a meeting duly called for this purpose. Normal road

¹² As amended, filed June 21, 1985, with Register of Deeds, Dare County, NC, and registered in Book 405, Page 56.

¹³ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

maintenance shall not require a special assessment.

**Section 5. Date of Commencement of Annual Assessments:
Due Dates.**¹⁴

The annual assessments provided for in Section 3 of this Article shall commence on the first day of the month next succeeding the month the Owner acquires title to a Lot, and shall be levied for the balance remaining in the calendar year in an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that calendar year bears to twelve (12). The assessments for any year shall become due and payable, upon fifteen (15) days notice from the Board as to the amount of such annual assessment, on the first day of January of each year.

The due date of any special assessment under Section 4 hereof or any assessment against any particular Lot, or Lots, permitted by this Declaration shall be fixed in the resolution authorizing such assessment.

Section 6. Certification of Assessments.

The Association shall, upon demand, furnish at any time to any Owner liable for said assessment, prospective purchaser or lending institution, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien, Remedies of Association.

If the assessments are not paid on the date due (being the dates specified in Section 5 of this Article), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot, or Lots, which shall bind such Lot, or Lots, in the hands of the then-Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then-Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest set by the Board,

¹⁴ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

not to exceed the maximum rate permitted by law and the Association may bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot, or Lots, and there shall be added to the amount of such assessment to be collected upon foreclosure, the costs of such action and reasonable attorney's fee or other cost incurred by the Association. In the event a judgment is obtained against any Owner for such assessments, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

Section 8. Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all Common Areas as defined in Article Two hereof; and (b) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions of this Section 8, no Lot or any Living Unit located thereon shall be exempt from said assessments, charges or liens.

ARTICLE EIGHT **ARCHITECTURAL CONTROL**

Section 1. Purposes.¹⁵

The Association desires to provide for the preservation of the values in the community known as Martin's Point with respect to any improvements to be constructed on the Lots constituting a portion of The Properties, and to that end, desires to establish an Architectural Control Committee in order to provide and maintain certain standards as to harmony of external design and location in relating to surrounding structures and/or topography.

Section 2. Architectural Control.¹⁶

Unless expressly authorized in writing by the Architectural Control Committee (the "Committee") no dwelling, driveway, or other permitted structure as provided for in Article Four, paragraph (a), nor any exterior addition or alteration to any existing structure, nor any clearing or site work shall be commenced, erected or maintained upon The Properties, until plans and specification therefor showing the shape, dimensions, ma-

¹⁵ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

¹⁶ *Ibid.*

terials, basic exterior finishes and colors, location on site, driveway, parking, well, septic tank and drain field, floor plan and elevations therefor (all of which is hereafter referred to as the "Plans"), shall have been submitted in duplicate to and approved in writing, as to harmony of external design and location in relation to any surrounding structures and topography, by the Committee. The Committee shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient.

Section 3. Architectural Control Committee.

(a) Memberships. The Committee shall be composed of at least three (3) persons, who need not be Members of the Association, appointed by the Board. A majority of the Committee may designate a representative to act for it. In the event of death, resignation or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names of the persons who form the Committee and a list of the names of any designated representatives of the Committee, and such list shall be available to any Owner.

(b) Procedure. At least thirty (30) days prior to the commencement of any construction, the Plans shall be submitted to the Committee. The Committee's approval, disapproval or waiver as required in these covenants shall be in writing, and the decision of a majority of the Committee, in case of any disagreement among the Committee Members, as to the approval, disapproval or waiver by the Committee, shall be controlling. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after Plans have been received by it, whether before or after construction has commenced, approval by the Committee will not be required and the re-

¹⁷ As amended, filed March 10, 1997, with Register of Deeds, Dare County, NC, and registered in Book 11011, Page 0088.

¹⁸ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

lated covenants and conditions of this Declaration shall be deemed to have been fully complied with; furthermore, in the event any construction, or any change to approved plans, is commenced on any Lot without submission to the Committee of the Plans with respect thereto and no action or suit is instituted against the Owner of such Lot by the Association, or any Owner of any other Lot constituting a portion of The Properties, within one-hundred-eighty (180) days after issuance of a Certificate of Occupancy by Dare County, or within one-hundred-eighty (180) days of discovery of the unapproved construction or change by the Association Board, whichever is later, then and in any such event approval by the Committee will not be required and the related covenants and conditions of the Declaration shall be deemed to have been fully complied with.

ARTICLE NINE¹⁹ AMENDMENT OF DECLARATION

This Declaration may be amended by a majority vote of the Owners. If any amendment to the Declaration creates an inconsistency in the By-laws, to the extent such inconsistency exists, the Declaration shall control. No amendment to this Declaration shall be effective until recorded in the Office of the Register of Deeds of Dare County, North Carolina.

ARTICLE TEN CAPTIONS, INTRODUCTIONS AND GENDER

The captions and introductory material herein are inserted only as a matter of convenience and or reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the context so required.

SCHEDULE "A"

Lots 1 through 72, Block I, 1 through 15, Block II, 1 through 15, Block III, 1 through 14, Block IV, 1 through 24, Block V, and 1 through 34, Block VI, as shown on that certain plat entitled "Martin's Point, Section One," prepared by Professional Land Services, Inc., dated May 30, 1982, which plat is recorded in Plat

¹⁹ As amended, filed December 16, 2002, with Register of Deeds, Dare County, NC, and registered in Book 1466, Page 229.

Cabinet B, Slides 82, 83, 84, 85, 86 and 87, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

²⁰ Lots 1 through 73, Block I, Lots 1 through 25, Block II and Lots 1 through 18, Block III, as shown on that certain plat entitled "Martin's Point, Section Two," prepared by Professional Land Services, Inc., dated December 17, 1982, which plat is recorded in Plat Cabinet B, Slides 159, 160, 161 and 162, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

²¹ Lots 1 through 4, as shown on that certain plat entitled "Martin's Point, Section Five," prepared by Quible and Associates, Inc., dated June 4, 1984, which plat is recorded in Plat Cabinet B, Slides 246 and 247, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

²² Lots 1 through 4, as shown on that certain plat entitled "Revised Plat Martin's Point, Section Five," prepared by Quible and Associates, Inc., dated June 4, 1984, which plat is recorded in Plat Cabinet B, Slides 270 and 271, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

²³ Lots 1 through 21, Block I, Section Four, Lots 1 through 14, Block II, Section Four, and Lots 1 through 26, Block I, Section Three, Lots 1 through 14, Block II, Section Three, Lots 1 through 14, Block III, Section Three, as shown on that certain plat entitled "Martin's Point, Section III, Blocks I, II, and II, Section IV, Blocks I and II," prepared by Quible and Associates, Inc., dated April 9, 1985, which plat is recorded in Plat Cabinet B, Slides 332, 333, 334, 335 and 336, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

²⁴ Lots 1-34, Block VI, Section One and Lots 1-29, Block I

²⁰ Filed May 25, 1983, with Register of Deeds, Dare County, NC, and registered in Book 344, Page 273.

²¹ Filed September 5, 1984, with Register of Deeds, Dare County, NC, and registered in Book 379, Page 990.

²² Filed October 26, 1984, with Register of Deeds, Dare County, NC, and registered in Book 384, Page 170.

²³ Filed June 26, 1985, with Register of Deeds, Dare County, NC, and registered in Book 405, Page 459.

²⁴ Filed September 17, 1985, with Register of Deeds, Dare County, NC and registered in Book 429, Page 683.

Section Two, as shown on that certain plat entitled "Martin's Point, Lot Revision; Block VI, Section I, Lots 1-34 and Block I, Section Two, Lots 1-29" prepared by Triangle Engineering Services, Inc., dated January 25, 1984, which plat is recorded in Plat Cabinet B, Slides 327, 328, 329, 330 and 331, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

²⁵ Lots 2 & 3, Block II, Section Three and Lots 1, 5, 6, Block III, Section One, as shown on that certain plat entitled "Martin's Point, Amended Plat of Lots 2 & 3, Block II, Section Three and Lots 1-6, Block III, Section I, Revised to Lots 1, 5, 6 and Common Area, Block III, Section One," prepared by Quible and Associates, P.C., dated April 18, 1986, which plat is recorded in Plat Cabinet C, Slides 6A and 6B, Dare County Registry, said plat being incorporated herein by reference for a more complete and precise description.

**ARTICLES
OF
INCORPORATION¹**

**MARTIN'S POINT HOMEOWNERS
ASSOCIATION, INC.**

A NON-PROFIT CORPORATION

I, the undersigned, a natural person of the age of eighteen years or more, do hereby make and acknowledge these Articles of Incorporation for the purpose of forming a non-profit corporation under and by virtue of the Laws of the State of North Carolina, and as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act" and the several amendments thereto, and to that end do hereby set forth:

ARTICLE I

The name of the corporation is MARTIN'S POINT HOMEOWNERS ASSOCIATION, INC., (hereinafter called the "Association").

ARTICLE II

The period of duration of the corporation shall be perpetual.

ARTICLE III

The purposes for which the corporation is organized are:

(1) This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the administration, maintenance and management of the community and facilities known as "Martin's Point" according to that certain "Declaration of Covenants, Conditions and Restrictions of Martin's Point," as same may be amended from time to time covering and regarding that certain tract

¹ Filed May 11, 1982, with Register of Deeds, Dare County, NC, and registered in Book 9, Page 320.

or parcel of land described as:

All that certain parcel or parcels of land shown on a plat or plats entitled "Martin's Point, Atlantic Township, Dare County, North Carolina," which may or will be recorded from time to time in the

Office of the Register of Deeds of Dare County,

North Carolina, reference to which is hereby made,

and to promote the health, safety and welfare of the residents within the community;

(2) To exercise all the powers and privileges and to perform all the duties and obligations of the Association as set forth in said Declaration of Covenants, Conditions and Restrictions of Martin's Point, hereinafter called the "Declaration," applicable to the property mentioned above and recorded, or to be recorded, in the Office of the Register of Deeds of Dare County, North Carolina, and as the same may be amended or supplemented from time to time as therein provided, the Declaration being incorporated herein as if set forth in its entirety;

(3) To fix, levy, collect and enforce payment by any lawful means, all charges, assessments or common expenses pursuant to the terms of said Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property maintained and managed by the Association;

(4) To have and to exercise any and all powers, rights and privileges which a corporation organized under the non-profit corporation laws of the State of North Carolina may now or hereafter have or exercise.

ARTICLE IV

The Association shall have members which shall consist solely of the Owners of residential Lots in the property known as Martin's Point, and membership in the Association may be transferred only as an incident to the transfer of the Owner's interest

in a Lot constituting a portion of the properties described in the Declaration, and any such transfer shall be subject to the procedures and matters set forth in the Declaration and other documents referred to therein.

ARTICLE V

The directors of the Association shall be elected by the members and in the manner provided in the By-laws.

ARTICLE VI

No By-law of the Association shall be amended, decided or altered contrary to the Declaration.

ARTICLE VII

No part of the net income or net earnings of the Association shall inure to the benefit of any officer, director or member of the Association; upon dissolution of this Association, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefor, be distributed to any corporation(s), organization(s) or association(s) organized for the purposes or engaged in activities substantially similar to those set forth in Article III hereinabove, all as more particularly may be provided in the By-laws of the Association.

ARTICLE VIII

The address of the initial registered office of the Association is: c/o Sun Realty, P. O. Box S, U. S. Highway 158 By-pass, Kill Devil Hills, Dare County, North Carolina 27948, and the name of the initial registered agent at such address is: David S. Watson.

ARTICLE IX

The initial Board of Directors of the Association shall consist of the following:

David S. Watson, P. O. Box 53, Kitty Hawk, NC 27949;

S. Michael Riddick, P. O. Box 409, Kill Devil Hills, NC 27948;

Mike A. Beacham, Kitty Hawk, NC 27949.

ARTICLE X

The name and address of the incorporator is Christopher L. Seawell, P. O. Box 339, Manteo, NC 27954.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this the 6th day of May, 1982.

/s/ Christopher L. Seawell (SEAL)
Christopher L. Seawell

BY-LAWS

MARTIN'S POINT HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1¹ DEFINITIONS

The following terms as used in these By-laws are defined as follows:

- (a) Martin's Point Homeowners Association, Inc., hereinafter referred to as the "Association," means and refers to the Association of Owners of properties of the community known as Martin's Point.
- (b) "Board" means the Board of Directors of the Association.
- (c) "By-laws" means the By-laws of the Association.
- (d) "Common Areas" shall mean and refer to those areas shown on any recorded subdivision plat of The Properties labeled as "Common Areas" or shown as streets or roads.
- (e) "Declaration" means the Declaration of Restrictive Covenants of Martin's Point, dated June 1, 1982, and duly recorded in Book 327 at Page 519 and any Amendments thereto, including the various sections of Martin's Point as shown on maps or plats by Professional Land Services, Inc., Quble and Associates, Inc. and Triangle Engineering Services, Inc., recorded in the Public Registry of Dare County, North Carolina. The Declaration as hereinabove set forth is incorporated in these By-laws by reference as if fully set forth herein.
- (f) "Development" shall mean and refer to that residential community known as "Martin's Point," located in Dare County, North Carolina.
- (g) "Lot" shall mean and refer to any plot of land within The Properties shown upon any recorded subdivision map of The Properties, or any portion thereof, with the exception of Common Areas as heretofore defined.
- (h) "Owner" shall mean and refer to each Owner of record of any Lot situated upon The Properties, whether such interest be fee simple, as land contract vendee, or otherwise, but not withstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or deed of trust beneficiary or trustee, unless and until such mortgage, trust beneficiary or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

¹ As amended November 16, 2002.

- (i) "The Properties" shall mean and refer to all property subject to the Declaration under the provisions of Article One of the Declaration.
- (i) "Regulations" means the rules and regulations adopted and published by the Board as from time to time amended and then in effect.

ARTICLE II PURPOSES

The purposes of the Association are:

- (a) To provide for the administration, maintenance and management of the community and facilities known as "Martin's Point" according to the Declaration, as same may be amended from time to time covering and regarding that certain tract or parcel of land described as:

All that certain parcel or parcels of land shown on a plat or plats entitled "Martin's Point, Atlantic Township, Dare County, North Carolina," which have been recorded from time to time in the Office of the Register of Deeds of Dare County, North Carolina, reference to which is hereby made,

and to promote the health, safety and welfare of the residents within the community.

- (b)³ To exercise all the powers and privileges and to perform all the duties and obligations of the Association as set forth in said Declaration, applicable to the property mentioned above and recorded in the Office of the Register of Deeds of Dare County, North Carolina, and as same may be amended or supplemented from time to time as therein provided, the Declaration being incorporated herein as if set forth in its entirety.
- (c) To fix, levy, collect and enforce payment by any lawful means, of all charges, assessments or common expenses pursuant to the terms of said Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property maintained and managed by the Association.
- (d) To have and to exercise any and all powers, rights and privileges which a corporation organized under the non-profit corporation laws of the State of North Carolina may now or hereafter have or exercise.

² As amended November 16, 2002.

³ *Ibid.*

ARTICLE III MEMBERSHIP

Section 1. Classes of Members.

There shall be two classes of members: (1) Members and (2) Associate Members.

Section 2. Member.

Each Owner shall be a Member of the Association.

Section 3. Associate Member.

If not otherwise a Member, each of the following shall be an Associate Member of the Association: the spouse and children, or legal wards, of a Member who have the same principal residence as the Member. Associate Members shall have no vote or right to notice of any regular or special meeting of Members and shall have no duty to pay assessments levied hereunder upon Members. Otherwise, the privileges and duties of Associate Members shall be as those of Members unless otherwise established from time to time by the Board by resolution.

Section 4. Privileges of Members.

Members shall have the license to use the Common Areas and facilities thereon, subject to the provisions of the Declaration and subject to such Regulations as may be established from time to time by the Board.

Section 5. Guests.

A Member may permit his guest to use Common Areas to the same extent he can, but not to the extent of permitting the guest to invite guests. Unless the guest is then staying overnight in the Member's house on The Properties, the Member must be present when the guest uses the Common Areas.

Section 6. Lessees.

Lessees of homes of Members on The Properties will have the same use of Common Areas as the Member, subject to the provisions of the Regulations.

Section 7. Suspension of Privileges of Membership.

The Board may suspend the right to use the Common Areas of the Association of any Member or Associate Member for:

- (a) Any period during which any Association charge (including assessments, fines or penalties, if any, assessed under Article Seven of the Declaration) owed by the Member or Associate Member remains unpaid. Membership shall be automatically reinstated upon satisfactory payment of such charges.
- (b) For a period not to exceed thirty (30) days for any infraction of its Regulations.

ARTICLE IV TRANSFER OF MEMBERSHIP

When a Member ceases to be an Owner, such person's membership, and that of those Associate Members existing through relationships to such person, shall automatically cease, but such person shall remain liable for all Association charges incurred prior to the giving of written notice to the Association that such person is no longer an Owner.

ARTICLE V MEETING OF MEMBERS

Section 1. Place of Meeting.⁴

Any meeting of the Members of the Association shall be held at such place within Dare County, North Carolina, as may be stated in the notice of such meeting.

Section 2. Scheduled Meetings.⁵

Each year, the Association shall hold the Semi-Annual Meeting on the second (2nd) Saturday in May and the Annual Meeting on the third (3rd) Saturday in November, commencing with the year 2003.

Section 3. Special Meetings of the Association.

Special meetings of the Association may be called by the President or by three (3) or more members of the Board at any time in the manner provided herein.

Also, the Secretary shall call a special meeting upon written request of one-fourth (1/4) of the Members entitled to vote. The written request shall set forth the purpose of the special meeting.

Section 4. Notice of Meetings of the Association.⁶

Written notice of the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than forty (40) days before the date of the meeting, either personally, by ordinary mail, or by e-mail, to each Member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the person at his address as it appears on the records of the Association, with postage prepaid. If e-mailed, such notice shall be deemed to be delivered when sent to the person's e-mail address as it appears on the records of the Association. Alternatively, such notice may be published in any newspaper

⁴ As amended November 16, 2002.

⁵ *Ibid.*

⁶ *Ibid.*

or publication printed under the auspices of the Association and distributed generally among Members of the Association. At a special meeting, no business shall be conducted except that stated in the notice of said meeting.

All Members may attend meetings but only voting Members, as defined below, may vote.

Section 5. Quorum.

A quorum at either a Special Meeting, the Semi-Annual Meeting or the Annual Meeting shall be the voting Members entitled to cast at least ten percent (10%) of the votes at such meeting in person or by proxy. The vote of a majority of the voting Members present in person or by proxy and entitled to vote at any meeting at which a quorum is present shall be necessary for the adoption of any matter to be voted upon by the Members, unless a greater proportion is required by law.

Section 6. Continuation of Meeting.

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

Section 7. Proxies.⁷

In all meetings of Members, each Member may vote in person or by proxy. Designation of a proxy shall be in writing and be filed with the Secretary at least 24 hours prior to the opening of the meeting at which it is to be exercised. Each proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot in Martin's Point. No proxy shall be valid after five (5) months from the date of its execution, unless otherwise provided in the proxy.

Section 8. Voting.⁸

(a) If there is only one Owner with respect to a Lot, he is the voting Member with respect to that Lot's one vote.

In the event that the Association has received notice that there is more than one Owner of a Lot, the Owners of such Lot shall execute and deliver to the Secretary of the Association a certificate duly executed by all of such Owners designating the person who shall be authorized to cast the vote allocated to the Owners of said Lot or to signify approval or disapproval of any matter on behalf of the Lot Owners. Said certificate shall be valid until revoked by a subsequent certificate. Unless and until said certificate is filed with the Secretary of the Association, the vote of such Owners shall not be considered for the purpose of deter-

⁷ As amended November 16, 2002.

⁸ *Ibid.*

mining a quorum or for any other purpose. The requirements of this Section shall not apply if there are no more than two Owners and said Owners are husband and wife, in which event the husband shall be the voting Member.

(b) No cumulative voting shall be permitted.

(c) No Member shall be eligible to vote if such Member is more than thirty (30) days delinquent in payments due the Association.

Section 9. The Agenda.⁹

The Board shall prepare an agenda for any meeting of the Members. Any Member desiring to place an item on the agenda must submit the item to the Board at least forty-five (45) days prior to the meeting so that the agenda can be included in the announcement of the meeting. The Board must include any item proposed by a Member, provided it meets the above requirement and does not conflict with any law, the Declaration or these By-laws. Once the proposed agenda is published, no items shall be added or deleted. Following consideration of new business listed in the agenda, the President shall request other items of new business to be presented for discussion only. Such items shall not be acted upon but shall be placed on the agenda for the next meeting and acted upon at that time.

Section 10. Order of Business.¹⁰

At all meetings of the Association, the order of business shall be as follows:

- (a) Call to order.
- (b) Adoption of the Agenda.
- (c) Reading of Minutes of immediate prior meeting for information and approval.
- (d) Reports of Officers.
- (e) Reports of Committees.
- (f) Agenda items of unfinished business.
- (g) Agenda items of new business.
- (h) Other items of new business for discussion.
- (i) Adjournment.

ARTICLE VI THE DIRECTORS

Section 1. Powers.¹¹

The Board shall:

- (a) Manage and control the affairs of the Association.

⁹ As amended November 16, 2002.

¹⁰ *Ibid.*

¹¹ *Ibid.*

- (b) Adopt a corporate seal as the seal of the Association.
- (c) Designate a banking institution or institutions as depository of the Association's funds and the officer or officers and agents authorized to make withdrawals therefrom and to execute obligations on behalf of the Association.
- (d) Perform other acts, the authority for which has been granted by the Charter of the Association or Declaration, including the borrowing of money for Association purposes. A resolution by the Board that the interest of the Association requires the borrowing of money shall be sufficient evidence for any person that the borrowing is for a proper corporate purpose. The Board may, if it determines that the same shall be reasonably necessary, assign, pledge, mortgage or encumber any Association property as security for such borrowings, and they may pledge or assign future revenues of the Association as security therefor.
- (e) Employ a sufficient number of persons to adequately maintain Association property. Further, the Board may adopt rules of order for the conduct of the meetings of the Association, and unless otherwise designated, Robert's Rules of Order shall prevail in all parliamentary matters arising in the Members' meeting and the Directors' meeting.
- (f) Prior to the Annual Meeting of the Association in each year, adopt an operating budget to be presented for approval by the Members. Upon the adoption and approval of the budget, the Board shall be bound by the same and shall not authorize expenditures which may exceed the total amount budgeted as aforesaid by more than fifteen percent (15%) without having to call a special meeting of the Association to approve such variations.
- (g) Appoint, if needed, committees of the Association. Such committees may be temporary or permanent. They shall have such powers and responsibilities as the Board may by resolution direct.
- (h) In accordance with the Declaration (Article Eight, Section 3), appoint members of the Architectural Control Committee ("ACC") which committee shall prepare guidelines governing future construction, which guidelines shall be approved by the Board. The ACC shall review and approve all plans for future construction to determine their compliance with the Declaration and all approved guidelines. Failure on the part of any builder and Owner to observe guidelines and plan approval procedures shall be brought to the attention of the Board which, in turn, shall determine what legal action or other action is indicated.

(i) Fix the amount of the annual assessment against each Lot for each assessment period. The Board shall not increase any annual assessment more than fifteen percent (15%) over that of the prior year unless two-thirds ($\frac{2}{3}$) of the quorum of voting Members present approve same at a meeting called for that purpose.

¹²(j) Promulgate such Regulations as it deems appropriate with regard to the use and maintenance of the Common Areas, as well as other matters, to carry out the purposes of the Association as set forth in Article II herein. All such Regulations shall be adopted, administered and enforced in the following manner:

(1) All Regulations adopted shall have a reasonable basis and justification in fact which shall be set forth in a preamble thereto.

(2) Regulations shall be enacted upon an affirmative vote of at least two-thirds ($\frac{2}{3}$) of the members of the Board of Directors following a hearing duly noticed. Notice of adoption shall be given after adoption. Regulations will become effective fifteen days after notice of adoption has been given.

(3) Regulations shall contain such provisions for enforcement thereof, and penalties for adjudged violations thereof, as the Board of Directors may deem appropriate, including, without limitation, the imposition of monetary penalties and the removal or other disposition of offending property. Penalties or other provisions in the Regulations shall be in addition to any other remedies available to the Association as set forth in the Declaration. Any monetary penalties imposed and unpaid shall be added to the next annual assessment for the property owned or inhabited by the violator and collected and recovered in the same manner as is provided for the collection of annual assessments.

(4) Enforcement Procedure.

(aa) Regulations shall be enforced by the Board of Directors, or by any committee or person designated by it, all hereinafter referred to as the enforcing agency.

(bb) Before the enforcing agency commences an enforcement proceeding, a sworn and written complaint of the alleged violation must have been received by it.

¹² As amended December 3, 1988.

- (cc) Prior to any such proceeding in cases of first alleged violations, the enforcing agency must have attempted to resolve the matter informally, and without any imposition of penalties, by conferring with all interested parties. Interested parties shall be the alleged violator and the complainant.
- (dd) If the matter is not resolved informally, the enforcing agency shall forward the matter to the Adjudicating Officer, and shall give the alleged violator at least ten days advanced written notice of the alleged violation and of a hearing to be held thereon.
- (ee) The Adjudicating Officer shall hear and decide all matters referred to him by the enforcing agency after hearing all interested parties, and shall impose such penalty for adjudicated violations as to him may seem appropriate, considering all aspects of the matter and as may be authorized in the Regulation violated. The hearing procedure shall be determined by the Adjudicating Officer and shall afford interested parties and the Board of Directors an opportunity to be heard. Strict rules of evidence shall not apply. Any party may be represented by an attorney. The expenses of any desired transcript, record or report of any proceeding shall be borne initially by the party or parties desiring same. Written notice of the decision of the Adjudicating Officer shall be sent via certified mail to the interested parties, the enforcing agency and the Board of Directors.
- (5)¹³The Adjudicating Officer shall be nominated and elected triennially at the Annual Meeting, commencing in 1989, in the same manner as Directors, shall not be required to be a member of the Association, and shall receive such compensation as may be determined by the Board of Directors.
- (6) Notices of hearing and of enactment.
- (aa)¹⁴ Notices of hearing and of enactment of any Regulation shall be sent by ordinary mail or e-mail to all members, either as a separate notice or as part of any publication, communication or newsletter of the Board of Directors, and shall be posted on the Association's bulletin board at the

¹³ As amended November 16, 2002.

¹⁴ Ibid.

Martin's Point postal building.

- (bb) Notices of hearing and of enactment of any Regulation shall contain at least the text of the proposed or enacted Regulation; and the time, date and place of the hearing, or the date of the enactment, as the case may be.
- (cc)¹⁵ Notices of hearing shall be mailed or e-mailed at least fifteen days before the hearing date. Notices of enactment shall be sent as soon as practicable after enactment.¹⁶

Section 2. Number of Directors.¹⁶

The Board of Directors shall be composed of nine (9) Directors, elected as provided for herein.

Section 3. Election and Removal of Directors.¹⁷

(a) Election.

Three Directors shall be elected at each Annual Meeting in November for a term of three (3) years.

(b) Nominations.

The Members shall be provided with a slate of candidates for election to board directorship. At least sixty (60) days prior to the Annual Meeting, the Board shall appoint a Nominating Committee consisting of five (5) members, of whom no more than two (2) members may be incumbent Directors or officers of the Association. No later than forty (40) days prior to the Annual Meeting, this Committee shall develop a slate of candidates and present it to the Secretary of the Association. Notice of the slate shall be sent to the Membership with the announcement of the Annual Meeting. Additional nominations may be made from the floor at the Annual Meeting. All nominees shall be Members of the Association.

(c) Removal of Directors.

At any meeting of Members, duly called and at which a quorum is present, the Members may, by the affirmative vote of the holders of a majority of the votes entitled to be cast, remove any elected Director or Directors from office and may elect a successor or successors to fill any resulting vacancies for the unexpired portions of terms of removed Directors.

Section 4. Budget.

(a) The Board shall adopt a budget for each fiscal year, which

¹⁵ As amended November 16, 2002.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

shall contain estimates of the costs of performing the functions of the Association. The budget shall establish the annual assessment for the coming year and any proposed special assessment then known. The annual assessment shall be that amount necessary to provide for the Common Expenses, which shall be defined as:

- (1)¹⁸Expense of administration, maintenance, repair or replacement of Common Areas, which areas include, but are not limited to, 5.02 miles of roads within the Development, as shown on a plat prepared by Professional Land Services, Inc., dated December 22, 1981, all areas designated as Common Areas, drainage facilities, entrances, ponds, garbage disposal areas, planted areas or marinas on said plat. Common expenses shall also include administration, construction, maintenance, repair or replacement of any improvements on said areas, including, but not limited to, docks, bulkheads, marinas, or recreational facilities or buildings.
- (2) Association expenses in the nature of staff payroll, supplies, office expenses, insurance, taxes, common utilities, fees and permits.
- (3) Expenses agreed upon as a Common Expense by the Members and lawfully assessed against Owners of Lots in accordance with the By-laws.
- (4) Any valid charge against the Association or against the Common Areas as a whole.
- (5) Capital Improvements Reserve. It is recognized that certain Common Expenses, such as road maintenance, construction and/or repair of facilities, as well as other expenditures, will not be incurred annually but, when necessary, will be substantial. For this reason, the reserve fund shall be established by the Board, which shall estimate the amount and time of such expenditures and include funds therefor in each budget to ensure the availability of such funds when said expenditures are required.
- (6) A reasonable contingency fund.
- (b) Copies of the budget shall be transmitted to each Member on or before the 1st day of the fiscal year for which the budget is made. If the budget is subsequently amended, then a copy of the amended budget shall be furnished immediately to each Member.

¹⁸ As amended November 16, 2002.

(c) Accounting shall be on a cash basis and conform to generally acceptable accounting standards.

Section 5. Meetings of the Board of Directors.

The Board shall meet at least twice annually, once following the Annual Meeting of the Association as set forth in Article V herein, and once to prepare the annual budget. Special meetings of the Board may be called by the President or by a majority of the Board and shall be held at such place in the State of North Carolina as the call or notice of the meeting shall designate. Notice of a special meeting must be given to all Directors in writing or orally at least twenty-four (24) hours prior to the date of said special meeting, or notice thereof must be waived by the Directors in writing. After adoption of a resolution setting forth the times of regular meetings, no notice of such meetings shall be required, or waived, but notice of special meetings of the Board shall be given.

Section 6. Action Without Meeting.

Unless prohibited by law, any action which may be taken at a meeting of the Board may be taken without a meeting if authorized in a writing signed by all of the Directors who would be entitled to vote upon said action at a meeting, and filed with the Secretary of the Association.

Section 7. Quorum.

A majority of the number of Directors fixed by the Charter or By-laws shall constitute a quorum to transact business of the Board, and the act of the majority of the Directors present at any meeting shall be deemed to be the act of the Board.

Section 8. Vacancies.

If any vacancy exists on the Board, such vacancy shall be filled by the remaining Directors even though those remaining Directors might be less than a quorum. Any person so named a Director shall serve until the next annual election, at which time a Director will be elected to serve the unexpired portion of the term.

Section 9. Compensation.

No compensation shall be paid to Directors for their services as Directors. Directors and officers may be compensated for reasonable expenses incurred while so acting. Directors shall have the right to set and pay all salaries or compensation to be paid to officers, employees, agents or attorneys for services rendered to the Association. Overall departmental salaries or wages to be paid to employees shall be approved by the Directors in the annual budget. These salaries or wages shall be paid to individual employees at the discretion of the current President.

Section 10. Resignations.

Any Director may resign at any time by giving written notice to the President or the Secretary of the Association. Such resignations shall take effect at the time specified therein, or if no time is specified therein, at such time such resignation is received by the President or Secretary of the Association.

ARTICLE VII¹⁹ THE OFFICERS

Section 1. Officers.

The officers of the Association shall be the President, one (1) or more Vice President, the Secretary, the Treasurer and such other officers and assistant officers as the Board may from time to time elect. The President, Vice President(s), Secretary and Treasurer shall be selected from among the elected members of the Board as hereinafter provided in Section 2. The positions of Assistant Secretary or Assistant Treasurer, if established by the Board, may be filled without requirements of Association or Board membership. Officers shall serve at the will of the Board for a one (1) year term. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. If more than one (1) Vice President shall be elected, there shall be a designation as to First Vice President and Second Vice President insofar as authority to act in the absence of the President.

Section 2. Selection of Officers.

At the first meeting of the Board after the election of new members, as set forth in Article VI, Section 3, the Board shall elect one (1) of its members by majority vote, a quorum being present, as President, Vice President(s), Secretary and Treasurer.

Section 3. President.

The President shall preside over all meetings of the Board and of the Association. He shall be ex-officio a member of all committees except the Rules Committee, if any. He shall conduct the affairs of the Association in accordance with these By-laws and those policies promulgated by the Board of Directors. He shall be responsible for the preparation of a full and true report as to the Association activities during the interim between meetings, to be submitted to the Members at the meeting of the Association next following. He shall file said report with the Secretary where it shall be available for inspection by the membership.

Section 4. Vice President.

In the absence of the President, or in the event of his in-

¹⁹ As amended November 16, 2002.

ability or refusal to act, the First Vice President is empowered to act and in lieu thereof the Second Vice President is empowered to act and shall thereupon be vested with the powers and duties of the President.

Section 5. Secretary.

The Secretary of the Association shall keep or cause to be kept the minutes of the meetings of the members of the Board. He shall cause to be mailed all notices required under the By-laws. He shall have the responsibility for the safe-keeping of the corporate seal and records and see that a list of the Members and their addresses shall be maintained and perform duties incident to the office of Secretary. In order to carry out the above and other duties described in these By-laws, the Secretary may appoint assistants as deemed necessary.

Section 6. Treasurer.

The Treasurer shall have custody of the funds of the Association, collect monies due, pay the obligations of the Association out of its funds and perform such other duties as are incident to the office of Treasurer.

Each check, payable from the Association funds, shall be signed by at least two persons, each of whom shall have been authorized by the Board of Directors to perform this function. The Board may so authorize up to six (6) persons, providing the list shall include President, Vice President, Treasurer and Secretary. Each such person, before signing any such check shall have been bonded by such surety as set forth below.

The Treasurer, and such other officers as may be designated by the Board of Directors, shall be bonded by such surety company and in such amount as may be determined by the Board. Indemnity bond premiums shall be paid by the Association.

Section 7. Removal of Officers.

Any officers may be removed when, in the judgment of the Board, the best interest of the Association will be served by such removal.

ARTICLE VIII DISTRIBUTION OF ASSETS AFTER TERMINATION

Section 1.

No Member of this Association shall have, as an individual, any interest or title to the assets of Martin's Point Homeowners Association and such assets shall be devoted exclusively to the purposes of the Association.

Section 2.

In the event of dissolution or other termination of this Association, all of its assets shall be distributed in accordance with Article VII of its corporate Charter pursuant to a plan of

distribution which shall be adopted by the Members of the Association and which shall be in accord with the appropriate revenue provisions of the Internal Revenue Service and the Department of Revenue of the State of North Carolina, such plan being selected and approved by the Board of Directors.

ARTICLE IX²⁰ INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

Any Director or officer or employee or agent or former Director or officer or employee or agent of the Association or any person who may have served at the Association's request as a Director or officer or employee or agent of another corporation, partnership, joint venture or other enterprise shall be indemnified by the Association against liabilities and reasonable litigation expenses, including attorney's fees, incurred by him or her in connection with any action, suit or proceeding in which he or she is made or threatened to be made a party by reason of being or having been such Director or officer or employee or agent except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason of willful misconduct in the performance of duty. Such expenses shall also include amounts paid by him or her with the consent of the Association acting through its Board of Directors in reasonable settlement of such actions. The indemnification authorized by this provision shall be in addition to that permitted by North Carolina General Statutes Sections 55A-17.2 and 55A-17.3 and shall also include any additional indemnification which is or hereafter may be permitted by statute.

Expenses incurred by a Director, officer, employee or agent in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as may be authorized by the Board of Directors in the specific case.

ARTICLE X²¹ ASSESSMENTS

Section 1. Payment of Assessments.

The assessments levied by the Association as provided by the Declaration shall be paid to it as provided therein and herein.

(a) Written notice of the assessment and the due date of pay-

²⁰ As amended December 3, 1988.

²¹ As amended November 12, 1986.

ment shall be sent to each Owner at the address last given by such Owner to the Association. For the Annual Assessment, such notice shall be given as soon as practicable after the last Annual Meeting; the due date shall be fifteen (15) days from notice by the Board of Directors as to the amount of the assessment. For Special Assessments, the due date shall be as established by the Board of Directors. After the due date, unpaid accounts shall become delinquent.

(b) Annual Assessments shall apply on a calendar year basis, in advance, effective on January 1 of each year. Special Assessments shall apply and be effective as specified by the Board of Directors.

Section 2. Late Payments.

If any assessment made against any Lot remains unpaid after the due date, and is thereby delinquent, then such assessment, together with interest at the rate as provided for in Section 3 of this Article, and the cost of collection thereof as hereinafter provided, shall continue to be a lien on the Lot which shall bind such Lot in the hands of the then Owner(s), his/her heirs, devisees, personal representatives and assigns.

- (a) The personal obligation of the then-Owner to pay such assessment shall remain his/her personal obligation for the statutory period and shall not pass to his/her successors in title unless expressly assumed by them.
- (b) All payments on account shall be first applied to cost of collection, next to accrued interest and lastly to assessments.

Section 3. Grace Period and Interest.

Notwithstanding the provisions of Section 2 of this Article, a 30-day grace period shall be allowed after the due date; if payment is received during that grace period, no penalty shall be assigned for the lateness of the payment. If the assessment is not received within that grace period, then the assessment shall bear interest from the due date at a rate of interest set by the Board of Directors, not to exceed the maximum rate permitted by law.

Section 4. Liens.

After the expiration of the 30-day grace period, the Board of Directors may file a claim or notice of lien against any Lot(s) for which full payment has not been made.

- (a) Claims or notices of liens will be filed for record in the Office of the Clerk of Superior Court for Dare County, North Carolina, at the expense of the Owner.
- (b) Upon such claims or notices being duly filed, the lien shall be prior to all other liens except the following:

- (1) Assessments, liens and charges for real estate taxes due and unpaid on the Lot;
- (2) All sums unpaid on deeds of trust, mortgages and other encumbrances duty of record against the Lot prior to filing of the aforesaid lien.
- (c) The Association may bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against such Lot(s), and there shall be added to the amount of such assessment to be collected upon foreclosure, the costs of such action and reasonable attorney's fees or other cost incurred by the Association. In the event a judgment is obtained against any Owner for such assessments, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

Section 5.

All assessments shall be made in accord with the terms and conditions of the Declaration.

ARTICLE XI²² AMENDMENTS

Section 1.

These By-laws may be amended from time to time under the following procedures:

- (a) The Board of Directors may, on its own motion, present recommendations to the Members for approval of changes to the By-laws; or any Member(s) may, by written petition to the Board of Directors signed by at least ten percent (10%) of the Members, direct the Board of Directors to present recommendations to the Members for approval of changes to the By-laws;
- (b) The Board of Directors shall notify the Members, at least ten (10) days in advance of the next Semi-Annual or Annual Meeting, or of a Special Meeting called for that purpose, of the proposed text of such changes and the reasons therefor;
- (c) The Members present at the Meeting must approve the amendment or amendments proposed, including any modifications thereto made at the Meeting, as provided for in Article V of these By-laws.

Section 2.

The authority to amend these By-laws as provided for herein is subject to the provisions contained in the Charter of

²² As amended November 16, 2002.

the Association which provides that no such amendment, decision or alteration shall be made which is contrary to the Declaration.

ARTICLE XII MISCELLANEOUS

Section 1. Conflict.

These By-laws are subordinate and subject to all provisions of the Declaration, the Articles of Incorporation of the Association and the General Statutes of North Carolina. All of the terms hereof, except where clearly repugnant to the context shall have the same meaning as in the Declaration, said Articles of Incorporation, or said Statutes. Every provision of these By-laws shall be construed, if possible, so as not to conflict with said Declaration or the Articles of Incorporation.

Section 2. Severability.

In the event that any provision or provisions of these By-laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 3. Waiver.

No restriction, condition, obligation or provision of these By-laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 4. Waiver of Notice.

Whenever any notice is required to be given to any Association Member or Director by law, by the Charter or by these By-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be equivalent to the giving of such notice.

REGULATIONS

MARTIN'S POINT HOMEOWNERS ASSOCIATION, INC.

PREAMBLE

The purpose of these Regulations is to provide a framework for preserving order and harmony in the Martin's Point community, in balance with its tranquil and unique setting. They apply to every member of the Association, their Tenants, guests and contractors.

Many of the following Regulations are automatically in effect. They are contained in: (1) the Declaration of Covenants, Conditions and Restrictions of Martin's Point (hereinafter referred to as the "Declaration"), made and entered into on June 1, 1982, by Martin's Point, Inc., as amended June 21, 1985, March 10, 1997 and December 16, 2002; (2) the provisions of the By-laws of the Martin's Point Homeowners Association, Inc. (hereinafter referred to as the "By-laws"), as amended from time to time, most recently on November 16, 2002; and (3) rules previously promulgated by the Board of Directors.

Each member automatically accepted the Regulations already contained in the Declaration and By-laws upon purchase of property in Martin's Point. No justification for their enactment is required and they cannot be changed by the Board of Directors unless formal amendment to the Declaration and/or the By-laws is approved by the membership after public hearing, enacted by the Board and, in the case of the Declaration, filed with the Register of Deeds, Dare County, North Carolina. They have been enforced, from time to time, by the Board and are codified and included here to provide a practical means for enforcement.

Regulations may be amended or new Regulations added by the Board of Directors after public hearing and due notice of enactment. Amendments or additions must be supported by reasonable bases and justifications in fact, that are provided to each member prior to the hearing, and given in an Appendix starting on page 54.

The following Regulations became effective initially on March 1, 1991. When Regulations are added at a later date or amended because of amendments made to the Declaration or By-laws, the dates of enactment are given in footnotes.

ARTICLE I DEFINITIONS

In addition to the definitions contained in the Declaration and in the By-laws, the following terms shall have the meaning indi-

cated in these Regulations:

- (1) "CAMA" shall mean and refer to the "Coastal Areas Management Act."
- (2) "Common Areas" shall mean those areas owned by the Martin's Point Homeowners Association, Inc., (hereinafter referred to as the "Association"), or in which it has an interest, including, but not limited to areas shown on any recorded plat of Martin's Point which are labeled as "Common Areas," such as the marina, ponds and adjacent land, dumpster area, postal building area, various planting areas, roadways and associated rights of way and easements.
- (3) "Person" shall mean any Owner, Tenant resident, guest, vendor, service personnel, construction crew member, or other individual, group or corporation.
- (4) ¹ "Pier/Dock" shall mean any structure built out over the water, such as a pier or wharf, for receiving boats or providing a pleasure platform.
- (5) "Plans" shall mean those plans and specifications for structures or other improvements on any Lot showing: the shape, dimensions, materials, floor plan(s) and elevations, basic exterior finishes and colors therefor; locations on site; driveways and parking, wells, septic tanks and drain fields.
- (6) "Tenant" shall mean lessees of property in Martin's Point.

ARTICLE II

PROPERTY USAGE AND IMPROVEMENTS

Section A. Permissible Uses.

- (1) No land in Martin's Point may be used except for residential purposes.
- (2) No Lot may be used for access to any adjoining Lot or other property.
- (3) When an Owner acquires two or more adjoining Lots, the adjoining one or more Lots may be used as one building site and, in that event, the side lot lines and easements referred to herein shall apply to the outside perimeter line of the combined Lots.
- (4) ² No building of any type may be erected, altered, placed, or permitted to remain on any Lot in Martin's Point:
 - (a) other than one single-family dwelling and accessory building (for storage or other purpose), bulkhead, bridge, dock, fence, garage, gazebo, swimming pool,

¹ Effective January 7, 2003.

² Ibid.

- tennis court or wall, for the private use of the occupant;
- (b) unless the improvements comply with all applicable zoning regulations; and
- (c) are approved by the Architectural Control Committee.
- (5) Any dwelling shall be constructed prior to or simultaneously with any accessory structure.
- (6) No structure of a temporary character or mobile home may be placed on any portion of Martin's Point at any time.
- (7) Tents, travel trailers, campers, self-propelled motor homes or mobile homes may not at any time be used as a temporary or permanent residence in Martin's Point.
- (8) Owners and their contractors shall comply with provisions of the Declaration, Guidelines and these Regulations.
- Section B. Square Footage and Setback Requirements.**

- (1)³ In no event shall any residential building located on a Lot contain less than one-thousand-eight-hundred (1,800) square feet of heated living area.
- (2) No building, including porches, eaves, steps and similar fixtures, may be located on any Lot within forty (40) feet of the front lot line, nor closer than twelve and one half (12½) feet from the sidelines thereof, nor closer than twenty five (25) feet from the rear property line. In the case of a side property line which abuts a street, the minimum setback shall be twenty (20) feet.

Section C. Compliance and Approvals.

- (1)⁴ Unless plans therefor are submitted in duplicate to the Architectural Control Committee (hereinafter referred to as the "Committee"), reviewed by it as to harmony of external design and location in relation to any surrounding structures and topography, and expressly authorized in writing by it: no dwelling, driveway, or accessory structure, as listed in Section A(4)(a) above, nor any exterior addition or alteration to any existing structure, nor any clearing of trees or site work (including grading and filling), nor any creation of ponds or wetlands, shall be commenced, erected or maintained in Martin's Point.
- (a) The Committee shall have the absolute and exclusive right to refuse to approve any such plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient.

³ Effective August 22, 1996.

⁴ Effective January 7, 2003.

(b) The Committee shall not refuse to approve any plans which are substantially similar to any other plans which previously have been approved for or constructed on any other Lot.

(c) The procedures for obtaining or being relieved from Committee approval may be found in the Declaration and/or the Guidelines.

(2)⁵ Prior to approval of any plans for site improvement or construction, the Owner or Owner's agent shall deposit four-thousand dollars (\$4,000.00) with the Committee, by cash, certified check or assignment of bank account(s), payable or assigned to the Association. Such deposit shall be transferred to and held in escrow by the Association for the purposes of:

(a) Ensuring the repair of any damage done to Common Areas caused by such site improvements or construction; and

(b) Ensuring compliance with all construction requirements.

Thirty (30) days following completion of the site improvement or issuance of a Certificate of Occupancy for such construction, the escrowed deposit shall be refunded to the Owner or Owner's agent unless there is any unrepaid damage to Common Areas caused by such work or any non-compliance with construction requirements. In these events, the Association shall cause such repairs to be made to the Common Areas and initiate and complete activities needed for compliance with construction requirements; the costs thereof shall be paid from the escrowed deposit and the balance thereof, if any, shall be refunded to the Owner or Owner's agent. The Owner shall be responsible for costs in excess of the deposit. Any such deposit may be waived by the Committee upon its determination that the proposed site improvement or construction is unlikely to cause damage to the Common Areas or is unlikely to be in any non-compliance with the construction requirements. If the Committee makes a determination to waive such deposit, the Owner and Owner's agent (if applicable) will be so notified in writing. Notwithstanding anything contained in this paragraph, irrespective as to whether in fact a deposit is required, neither the Committee, the Association nor the Board shall have any obligation to contract for compliance with the construction requirement and/or the

⁵ Effective January 7, 2003.

- repair of any damage to the Common Areas by such site improvements or construction.
- (3) Unless otherwise approved in writing by the Committee, no signs, mailboxes, birdhouses, shrubbery, trees, fences, sprinkler systems or other improvements, other than grass, driveway aprons and culverts may be placed on any portion of the Common Areas abutting any Lot.
- (4) No Owner may erect or maintain a private dock, dam or similar structure on any Common Areas, such as lakes, ponds or waterways.
- (5) ⁶ Zoning, building and construction ordinances of Dare County shall apply to Martin's Point unless superseded by more restrictive requirements contained in the Declaration, the Guidelines or these Regulations.
- (6) Each building erected upon a Lot shall be completed within twelve (12) months after commencing construction, except where completion is, in the opinion of the Association, impossible or would result in severe hardship to the Owner or the builder, due to causes beyond their control. In such cases, written approval by the Committee shall be required.
- (7) Additional facilities.
- (a) The following facilities must be provided when construction is commenced:
- (i) a temporary toilet, if no operating toilet already exists on that site; and
- (ii) a construction-trash container.
- (b) These additional facilities must be placed on the Lot and not on the Common Areas.
- (8) Job sites must be kept as orderly as practicable.
- (9) Minimum landscaping must be completed within one year of completion of construction of a dwelling.
- (10) ⁷ The first floor of heated and/or air conditioned living area must be at least eight (8) feet above mean sea level.
- Section D. Utilities.**
- All utility lines of every type, including but not limited to water, electricity, telephone, sewage and television cables, must be placed underground.⁸
- Section E. Tree Cutting.**
- In order to preserve a desirable beauty and to prevent the massive destruction of trees, all cutting of live trees with a diameter greater than four (4) inches must conform to a written tree-cutting plan approved by the Committee.

⁶ Effective January 7, 2003.

⁷ Effective August 22, 1996.

⁸ Effective January 7, 2003.

Section F. Driveways, Aprons and Culverts.⁹

- (1) Before commencing construction of improvements or clearing of any Lot, other than by hand, the Owner shall install a temporary driveway, no more than eighteen (18) feet wide, to provide entry to the construction site from the road.
- (2) Prior to the issuance of a Certificate of Occupancy, the Owner shall replace the temporary driveway with a permanent driveway incorporating (1) an asphalt, brick or concrete apron, extending from the roadway edge to the lot line and (2) a 16-gauge corrugated steel, pre-cast reinforced concrete or smooth bore corrugated polyethylene culvert, placed under the apron in the existing roadside swale. The width of the apron and permanent driveway shall be approved, prior to construction, by the Committee.
- (3) The culvert shall have a minimum inside diameter of fifteen (15) inches, shall not extend more than three (3) feet beyond each side of the apron, shall be installed so as not to impede drainage and shall be kept open.

Section G. Sewage Disposal.

- (1) Prior to the occupancy of any Lot, proper and suitable provisions must be made by the Owner for the disposal of sewage by means of a septic tank or tanks constructed on such Lot, or other governmentally approved disposal system, which is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority.
- (2) Each septic tank and the nitrification field relating thereto must be maintained in good condition so that its use and existence does not constitute a nuisance to any other Owner.

Section H. Repair of Damage.

- (1) Each Owner shall repair, or cause to be repaired, any damage done to the Common Areas as a result of activities arising from the construction or occupancy of structures, or from site work of any kind performed on each Owner's Lot.
- (2) Each Owner shall remove any trees or branches which fall from his/her Lot onto any Common Area.

Section I. Piers/Docks.¹⁰

- (1) One (1) Pier/Dock per building site is permitted and it must

⁹ Effective January 7, 2003.

¹⁰ *Ibid.*

- be located within the central fifty percent (50%) of the building site.
- (2) The length of the Pier/Dock shall be measured from the estuarine bulkhead, Mean High Waterline or from a line connecting the outermost limits of the coastal wetlands on either side of the proposed structure (as approved by CAMA).
- (3)¹¹ Except as provided below, the Pier/Dock must not exceed a maximum length of seventy five (75) feet for a building site having an average width of one hundred (100) feet.
- (a) For a building site located on Currituck Sound, having an average width of more than one hundred (100) feet, the Pier/Dock must not exceed a maximum length of seventy five (75) feet plus an additional three (3) inches for each one (1) foot of average width in excess of one hundred (100) feet.
- (b) Each such longer Pier/Dock must not exceed a maximum length of one hundred (100) feet.
- (4) The Pier/Dock must not interfere with marine navigation.
- (5) All required governmental permits must be acquired before construction commences.

Section J. Tenants. Each Owner leasing property to another person under a tenancy agreement shall notify the Association within thirty (30) days of the name and mailing address of the Tenant and the duration of tenancy.

ARTICLE III CONDUCT OF ACTIVITIES

Section A. Nuisances.

- (1) Each Owner shall prevent any unclean, unsightly or unkempt conditions of buildings or grounds which would tend to substantially decrease the beauty of Martin's Point specifically and as a whole.
- (2) No person may place anywhere in Martin's Point any garbage, trash, construction debris or other unsightly or offensive materials except as is temporary and incidental to the bona fide improvement of any portion of Martin's Point. Such waste material (other than construction debris) shall be placed in the containers provided in the dumpster area.
- (3) No person may maintain any plants, animals, device or thing of any sort, whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of

¹¹ Effective October 16, 2000.

such nature as may diminish or destroy the enjoyment of Martin's Point by any Owner, Tenant or guest.

- (4) No person may carry on any noxious or offensive activity anywhere in Martin's Point or may do anything which would tend to cause embarrassment, discomfort, annoyance or nuisance to any Owner, Tenant or guest.

Section B. Storage on Undeveloped Lots.

Undeveloped Lots shall not be used for long term storage or keeping of trash, debris, commercial materials or animals.

Section C. Animals and Pets.

- (1) No person may raise, breed, or keep any animals, livestock or poultry, of any kind, in Martin's Point, other than dogs, cats or other household pets not being raised, bred or kept for any commercial purpose.
- (2) Animals belonging to guests (including but not limited to dogs, cats, etc.) shall not be brought into Martin's Point without permission of the guest's host. If such permission is granted, and the gate guard so notified, the animal may be allowed to enter but must remain on the premises of the host.
- (3) Animals belonging to non-residents are not allowed in Martin's Point under any circumstances, except as provided in (2) above.
- (4)¹² All dogs on Common Areas shall be on a leash and Owners shall be responsible for removing waste deposited on the Common Areas by their animals.
- (5)¹³ Owners shall maintain control of their pets while on the Owner's property.

Section D. Discharge of Firearms and Hunting.

Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within Martin's Point is prohibited unless required for public safety.

Section E. Fishing in Common Areas.

- (1) Fishing by guests in Common Area ponds or at the Marina is allowed only when the guests are accompanied by the Owner.
- (2) Fishing by non-Owners, other than guests, is prohibited.
- (3) All largemouth bass, taken from ponds, must be returned to the water unharmed. Catches of other fish must not exceed posted limits.

Section F. Use of Common Areas.

- (1) Except as otherwise provided, an Owner may permit

¹² Effective January 7, 2003.

¹³ *Ibid.*

- his/her guests and Tenants to use the Common Areas to the same extent as the Owner can.
- (2) If a person is an overnight guest in an Owner's house in Martin's Point, the Owner need not be present when the guest uses the Common Areas.
 - (3) Guests may not invite other guests to use the Common Areas.

Section G. Use of Trash Dumpsters.

- (1) All trash and garbage not removed by the Owner from Martin's Point shall be placed entirely within one of the community trash dumpsters provided near the Martin's Point postal building.
- (2) Objects too large to fit within the standard trash dumpsters must not be left in the dumpster area except when special collection of such over-size articles is announced, at which time they must be placed entirely within the special trash dumpster.

Section H. Use of Marina.¹⁴

- (1) Every boat kept at the marina shall have a current state registration sticker, if required by law to operate on state waters.
- (2) Every boat and boat trailer kept at the marina shall have a current Martin's Point vehicle identification sticker. In the case of a guest, a note indicating their name and the name and address of their host in Martin's Point shall be affixed to their boat and/or boat trailer.
- (3) Any empty boat trailer kept at the marina shall be associated with a boat. Utility trailers shall not be kept at the marina.
- (4) Every boat, kayak, etc. must be stored on a trailer or kayak rack; they shall not be left on the ground.
- (5) No boat that is inoperable shall be kept:
 - (a) at the marina for more than thirty (30) days; or
 - (b) in a pier slip for more than fifteen (15) days.
- (6) The Board shall have the right to dedicate any and all boat slips on the north side of the pier to the exclusive use of an Owner, for a period not to exceed twelve (12) consecutive months, and charge a fee for such use.
- (7) Except as provided in (6) above, the length of time that a boat slip may be occupied by the same boat or same Owner is limited to seven (7) days and no more than fourteen (14) days total in any year.
- (8) Owners are responsible for damages to the pier or other facilities caused by their boats.

¹⁴ Effective January 7, 2003.

ARTICLE IV VEHICLES

Section A. Vehicles Authorized.

- (1) The use of the roadways in Martin's Point is limited to those vehicles authorized by the State of North Carolina to be operated on public highways.
- (2) All-Terrain Vehicles (3- or 4-wheeled types), go-carts or similar such powered vehicles, may not be driven at any time on any of the Common Areas and may not be driven on any privately owned property in Martin's Point (occupied or not) without the permission of the Owner of that property.

Section B. General Rules.

- (1) No person may operate a vehicle in Martin's Point at a speed in excess of thirty (30) miles per hour or in violation of the laws of the State of North Carolina.
- (2) Except in the case of emergency, or except as specifically directed to do so by the guard, vehicles are not allowed to enter Martin's Point via the left (west exit) side of the guard house.

Section C. Identification Stickers.¹⁵

Each Owner shall obtain and affix a current Martin's Point vehicle identification sticker to each of his/her vehicles, including boats, boat trailers and utility trailers, that will routinely be passing in and out of, or kept in, Martin's Point. In addition to other penalties provided for herein, vehicles, boats, boat trailers and utility trailers without a current identification sticker may be stopped at the guard house and prevented entry.

Section D. Inoperable Vehicles and Boats.¹⁶

Inoperable vehicles, boats and boat trailers shall not be stored in Martin's Point, except on the Owner's property in an enclosed structure. They shall not be visible from adjacent properties or streets.

Section E. Vehicle and Boat Parking.¹⁷

- (1) No vehicle, boat, boat trailer or utility trailer may be parked on the shoulders of the roadways for more than twenty-four (24) hours.
- (2) Passenger vehicles, trucks and other construction equipment, operated by construction contractors and their employees, may be parked during daylight hours on the shoulders of the adjacent road, off the roadway, near the con-

¹⁵ Effective January 7, 2003.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

struction site. Any vehicles or other construction equipment (insofar as practicable), parked after dark or overnight, must be parked on the construction site, at least twenty (20) feet from the road edge, not on the roads, road shoulders or Common Areas; such vehicles, parked in violation, are subject to being towed at the owner's expense.

Section F. Long Term Storage.

- (1) Boats, boat trailers, campers, self-propelled motor homes, travel trailers, utility trailers and other vehicles of that nature may be stored on an owner's lot provided they do not constitute a visual nuisance and are stored in compliance with the same set-back requirements as pertain to buildings.
- (2) Only operable boats and boat trailers may be stored at the designated area near the postal building. Utility trailers may be stored in this area on a space available basis only. (See also Section D above.)

**ARTICLE V
SIGNS**

Section A. General.

- (1) Other than construction contractor's signs, as provided for in Section B, below, no sign or advertising device may be displayed to the public view on an Owner's Lot except one (1) sign of not more than four-hundred-thirty-two (432) square inches either with the name and/or address of the Owner or advertising the property for sale. No more than one such sign per Lot may be displayed. Other signs may be approved by the Association on a case-by-case basis.
- (2) All signs shall be free standing and not affixed to trees.

Section B. Construction Signs.

Construction contractors may place only one (1) sign on the building site, framed with not more than four (4) feet on a side, on which all site work advertising for the contractor, any subcontractors and financiers must be placed. All construction signs must be removed within thirty (30) days from issuance of an Certificate of Occupancy.

**ARTICLE VI
FIRES**

No person may build or set a fire outdoors in Martin's Point, except that outdoor cooking is allowed provided such fire is confined within a permanent barbecue pit or in a commercially manufactured grill or similar device designed for outdoor cooking.

¹⁸ Effective January 7, 2003.

ARTICLE VII¹⁹ **CHANGE OF ADDRESS**

Each Owner shall notify the Secretary of the Association of any change in mailing address or e-mail address within thirty (30) days of the effective date of the change.

ARTICLE VIII **ENFORCEMENT**

Section A. Procedures.

Procedures for enforcement of these Regulations and adjudication of complaints shall be as prescribed in the By-laws, Article VI, Section 1, paragraph (j)(4).

Section B. Failure to Enforce.

Failure of the Association to enforce at any time any Regulation herein contained shall not be deemed a waiver of the right to do so thereafter.

Section C. Other Remedies.

The remedies herein provided for enforcement shall be in addition to any other remedies available to the Association as set forth in the Declaration.

ARTICLE IX **PENALTIES**

Section A. Scope of Penalties.

(1) Penalties for violations of any of these Regulations may include one or more of the following:

- (a) Denial of use of the Common Areas for up to thirty (30) days, as provided for in Article Six, Section 3(a) of the Declaration and Article III, Section 7 of the By-laws.
- (b) Monetary fines in an amount not to exceed fifty (\$50) dollars for the first offense, not to exceed one hundred fifty (\$150) dollars for the second offense, and not to exceed two hundred fifty (\$250) dollars for each succeeding offense. Each day of a violation shall be considered a separate offense.
- (c) Removal or other disposition of offending property at the expense and risk of the Owner of that property, who, after reasonable notification has failed to remove same, shall be deemed to consent to such removal or other disposition. In case of emergency, such removal or other disposition may be done without notification to the Owner.

Section B. Payment of Fines.

Fines imposed shall be due and payable within thirty (30)

¹⁹ Effective January 7, 2003.

days following the date of imposition of the fine. Unpaid penalties and interest thereon may be added to the next annual assessment for the property owned or inhabited by the violator, and collected and recovered in the same manner as is provided in the Declaration and in the By-Laws, as amended from time to time.

Section C. Responsibility of Owner.

Owners shall be responsible for the acts and omissions of their Tenants and guests.

Section D. Penalties for Non-owners.

Persons, other than Owners, Tenants and guests, found to be in violation of these Regulations may be barred from entry into Martin's Point.

ARTICLE X
MISCELLANEOUS

Section A. Conflict.

These Regulations are subordinate and subject to all provisions of the Declaration, the Articles of Incorporation of the Association, the General Statutes of North Carolina and the By-Laws. All of the terms hereof, except where clearly repugnant to the context or previously defined, shall have the same meaning as in the said Declaration, Articles of Incorporation, Statutes or By-laws. Every provision of these Regulations shall be construed, if possible, so as not to conflict with said Declaration, Articles of Incorporation or By-laws.

Section B. Severability.

In the event that any provision or provisions of these Regulations shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section C. Waiver.

No restriction, condition, obligation or provision of these Regulations shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section D. Waiver of Notice.

Whenever any notice is required to be given to any Member or Director by law, by the Declaration, Charter, By-laws or these Regulations, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section E. Effective Date.

These Regulations will become effective fifteen (15) days after notice of enactment has been given.

APPENDIX TO REGULATIONS

The following reasonable bases and justifications in fact are provided as they relate to the foregoing Regulations.

Animals Belonging to Non-residents

There have been numerous problems with dogs running free in Martin's Point. Many of the problems have involved dogs belonging to construction contractors. The Board has decided to forbid entry of non-resident contractors animals, but allow entry to guest's animals provided that the Owner being visited has given specific permission therefor, notified the guards and will ensure that the guest's animal will remain on that Owner's property.

Animals on Common Areas

Over the years there has been a continuing problem with Owner's dogs roaming loose in Martin's Point. A Regulation such as this has been considered in the past to help alleviate the problem but formal action was never taken. With the growing number of residents in Martin's Point, it is imperative that Owners assume more responsibility for their pets on Common Areas and their property.

Blocking of Culverts

Dare County has an ordinance forbidding the blocking of drainage ditches which ensures that the drainage-blocking actions of one Owner do not adversely impact other Owners. For the same reason, the Board has enacted a Regulation forbidding the blocking of culverts which were required to be installed as a condition of development in Martin's Point.

Clean Job Sites

The requirement for maintaining a construction job site in as clean, safe and tidy a condition as possible is needed to minimize unsightly conditions for adjacent property Owners and to reduce the potential for health and injury problems.

Deposit in Escrow

The escrow deposit required before construction was set at \$1,500 for over a decade. For some time, the Board has been aware that the deposit is inadequate to meet the expenses the Association incurs when correcting mandatory construction items not performed by builders such as the driveway apron and culvert installation, proper maintenance of swales, reseeding and fertilization of the Common Area right of way in front of new residences.

The increase in the deposit is needed to provide the Association with adequate funds to perform the repairs and thus maintain the

value of all Member's property. The entire deposit is returned to the Owner or his agent if the above mentioned items are completed in compliance by the Owner. If not, the Association costs for making the necessary repairs will be deducted from the deposit and expenses over the amount of the deposit will be charged to the Owner.

Driveways, Aprons and Culverts

There have been cases where Owners have installed excessively long culverts which, while meeting the old requirement of being at least twenty (20) feet long, were unsightly. The need for driveway aprons was unrecognized when the Declaration was written but has been added as a recent amendment. By including the driveway apron in this paragraph and specifying the maximum width of the driveway and apron and the allowable extension of the culvert beyond the apron, a basis for determining the maximum allowable culvert length is provided. The amendment further specifies that the culvert diameter referred to is the inside diameter and the culvert must be installed and maintained in such a manner as to allow unimpeded drainage in the swale.

Elevation Requirement

The requirement that the heated and/or air conditioned living area be a minimum of eight (8) feet above mean sea level is a Dare County requirement for the flood zone that Martin's Point is in. While additional height is recommended, the minimum also serves as a reminder to an Owner contemplating construction, that, at least, this elevation is needed to obtain Federal Flood Insurance.

Entrance Traffic Pattern

There have been problems in the past with some people driving past the guard house on the west side without being identified and authorized to do so by the guard. It leaves the option for the guard to direct the entering traffic to the west side if the east side is blocked. Unauthorized entry on the west side also poses a significant traffic hazard.

Fires

Several dangerous fires have been observed in the past, too near houses and in too high a wind. In one case, a fire near the water's edge of a sound front Lot burned down into the peat and reignited several days later when the house on that Lot was unoccupied. Martin's Point is heavily wooded and there is a high potential for heavy damage should a fire become out of control.

Fishing

Association funds have been expended to stock the Common

Area ponds in order to provide a source of recreation for members. Over fishing will result in reduced enjoyment of these facilities

Identification Stickers

Identification stickers are needed to keep out unauthorized persons and to maintain the private character of Martin's Point. The guards also need a quick means of recognizing vehicles, boats, boat trailers and utility trailers that should be permitted to routinely enter and leave. In addition, identification stickers on boats and boat trailers facilitate notification of Owners in the event of problems concerning their property, especially when stored at the Marina.

Notification of Address Changes

The Association needs to be able to inform Owners and Tenants as to matters which affect their ownership or residency in Martin's Point. For this reason, the Association needs correct postal or e-mail addresses for sending newsletters and notices. The Association must know who's living here. Also, the Association has had problems in the past with mail being returned to the Association without indication of a change of address. It is imperative that the Owners' and Tenants' current postal and/or e-mail addresses be on file with the Association.

Permitted Structures

In order to provide guidance to Owners, the list of accessory structures for which plans must be submitted to the Architectural Control Committee has been modified to reflect current requirements specified in the Declaration.

Piers/Docks

Regulation of Pier/Dock lengths and location is needed to ensure adjacent Owners a relatively unrestricted view from their waterfront property and to allow reasonable access to adjacent waters.

Repair of Damage to Common Areas

There have been problems in the past with responsibility for repairs of damages done to the Common Areas in regard to trees and to shoulder damage done by contractors vehicles. When a member bought his/her Lot, that member also bought the trees on the Lot. If one of the trees, dead or alive, falls onto the Common Areas, that member is responsible for removing the tree and cleaning up the debris. If a construction contractor, performing work for a member, makes deep ruts in the road shoulder or damages the edge of the road surface with his vehicles, it is clearly the

responsibility of the Owner involved to repair the damage in a timely manner.

Signs

Signs bearing the name and/or address of the Owner or advertising a property for sale are permitted by the Declaration. Reasonably sized construction signs are also needed to facilitate delivery of building materials or services to a job site and thereby minimize wear and tear on the roadways.

Speeding and Negligent Use of Roadways

There continue to be numerous instances of excessive speed on our roadways which creates dangerous situations involving residents and pets or leads to destruction of property. Institution of a speed limit and enforcement of the same is just common sense.

Time Allowed for Minimum Landscaping

Some Owners contemplate large landscaping projects in conjunction with constructing their home. There is a requirement in the Declaration that home construction be completed within one year. It is reasonable to require that minimum landscaping also be completed within this time frame in order to minimize inconvenience to neighbors.

Trash Dumpsters

Restrictions are needed to control the use of the trash dumpsters and the dumpster area in order to prevent unsanitary and unsightly conditions. Proper use of the trash dumpsters eliminates the need for unsightly curb-side garbage containers and enhances the unique quality of Martin's Point.

Tree Cutting and Affixing Signs

There have been numerous instances recently of essentially "clear cutting" trees on a Lot, thus destroying the wooded nature of the community. A carte blanche approval is provided for removing dead trees or live trees less than four (4) inches in diameter but approval is required for removing larger trees. Further, since the nailing of signs to trees is harmful to the trees, a provision has been included to prohibit this action.

Use of Common Areas

Restrictions are needed to govern the use of Common Areas in order to enhance their availability to Owners and to minimize unauthorized use by non-residents. Such restrictions also serve to reduce the potential for liability of the Association resulting from unauthorized use.

Use of Marina

The number of boats owned by residents is increasing yearly. In order to accommodate this growth, use of the Marina must be controlled to allow each resident maximum access, convenience and safety while at the facility.

Use of Road Shoulders for Minor Improvements

Minor improvements on road shoulders, such as newspaper boxes, shrubbery, plantings, etc., interfere with the maintenance thereof as well as reducing the open character of our roadways.

Use of Roadways

Limitation of use of our roadways to vehicles authorized by the State to be driven on public roads enables the Association to regulate traffic and to establish that our roadways are not playgrounds for All-Terrain Vehicles (ATVs), go-carts and the like. There have been problems in the past with children driving ATVs and go-carts on the roads in Martin's Point, an extremely dangerous practice, as well as with such driving on Common Areas and private properties and causing damage thereto.

CONSTRUCTION GUIDELINES¹

MARTIN'S POINT HOMEOWNERS ASSOCIATION, INC.

INTRODUCTION

These Guidelines have been prepared by the Association's Architectural Control Committee (hereinafter referred to as the "Committee") to assist you prior to any Lot disturbance, new construction or exterior improvements or alterations to your house. The Committee is here to assist you and answer any questions you might have regarding regulations and requirements that pertain specifically to building in Martin's Point. It is strongly suggested that you utilize the Committee's expertise since you are ultimately responsible for meeting all of the applicable laws, covenants, ordinances, building code requirements, etc.

As you will see below, plans for construction or site improvement activities must be submitted to the Committee at least thirty (30) days prior to commencing any activity. The Committee meets regularly to consider plans and proposals from Owners. If you have any questions or need further information, please contact the Chairperson of the Committee or the Association Secretary. Their names and telephone numbers are listed on the community bulletin board at the Martin's Point postal building or you may write to them in care of the Association at P.O. Drawer 2029, Kitty Hawk, NC 27949-2029.

Whether you are contemplating improvements to a vacant Lot, new construction or alterations to an existing structure, you must submit your plans to the Committee and get their written approval prior to commencing any of the following:

- (1) Clearing or filling the Lot or cutting any trees over four (4) inches in diameter;
- (2) Construction of any structural improvements (house, garage, driveway, pool, deck, etc.;
- (3) Bulkheading or building docks or bridges. (A Coastal Area Management Act ("CAMA") permit may also be required.);
- (4) Installing fencing or retaining walls;
- (5) Creating ponds or wetlands. (A CAMA permit may also be required.);
- (6) Any exterior modifications or additions to a structure;
- (7) Paving or rerouting a driveway; or

¹ As revised. Effective December 12, 2002.

(8) Major landscaping modifications.

CONSTRUCTION REQUIREMENTS

General Requirements

Zoning and Building Ordinances of Dare County apply to Martin's Point, including building height, lot coverage and minimum elevation of heated and/or air conditioned living areas.

Minimum Elevation Requirement – Contact the Dare County Building Inspector to determine the minimum elevation requirement for living space on your particular Lot. Although the elevation requirement may be as low as eight (8) feet above mean sea level, you should be aware that there may be significant savings in flood insurance if you build at a higher level – even one (1) foot higher.

Maximum Building Height is thirty-five (35) feet. This is the vertical distance measured from the lowest finished grade under the approximate center of the structure to the top of the highest roof structure. Cupolas and other similar architectural features are not to be included in the determination of the highest roof structure.

Permitted Structures – No structure of any type shall be erected on a Lot other than one single-family residential dwelling and accessory building(s) (for storage or other purpose), bulkhead, bridge, dock, fence, garage, gazebo, swimming pool, tennis court or wall, for the private use of the occupant. Residential dwellings must be constructed prior to or simultaneously with any accessory structures listed above. All buildings must be erected within twelve (12) months after commencing construction unless a written extension is granted by the Committee due to extenuating circumstances.

Minimum Square Footage – In no event shall any residential building located on a Lot contain less than one-thousand-eight-hundred (1,800) square feet of Living Area. In addition, each residence shall include an attached or detached enclosed garage capable of holding at least one (1) vehicle.

Setback Requirements – No building, including porches, eaves, steps and similar fixtures shall be located on any Lot within forty (40) feet of the front property line, nor closer than twelve and one-half (12½) feet from the side property lines, nor closer than twenty-five (25) feet from the rear property line. If a side property line abuts a street, the minimum setback shall be twenty (20) feet. More restrictive rear property line setbacks may be specified on the

Subdivision Plat for a Lot abutting the north pond in the 7000 block of Currituck Road.

Utility Services – Utility lines, including water, power, telephone and cable TV shall be underground.

Fences – No fence shall exceed six (6) feet in height.

Driveways, Aprons and Culverts – Before commencing construction of improvements or clearing of any Lot, other than by hand, the Owner shall install a temporary driveway, no more than eighteen (18) feet wide, to provide entry to the construction site from the road. Prior to the issuance of a Certificate of Occupancy, the Owner shall replace the temporary driveway with a permanent driveway incorporating (1) an asphalt, brick or concrete apron, extending from the roadway edge to the lot line (approximately twenty (20) feet) and (2) a 16-gauge corrugated steel, pre-cast reinforced concrete or smooth bore corrugated polyethylene culvert, placed under the apron in the existing roadside swale. The width and location of the apron and permanent driveway shall be approved, prior to construction, by the Committee. The culvert shall have a minimum inside diameter of fifteen (15) inches, shall not extend more than three (3) feet beyond each side of the apron, shall be installed so as not to impede drainage and shall be kept open.

Fill Material – No fill material may be placed in the swale or any part of the Common Area other than that which is necessary under the driveway, and then only after written approval by the Committee. No fill material may be placed on a Lot in the side setback areas unless the fill lies under a line with a vertical to horizontal slope of 1 to 3 or less, measured from the original grade on the side property line, as certified by a licensed surveyor or engineer. Be aware that there are regulations governing the filling of lowlands or wetlands. If you have any questions in this regard, consult the appropriate governing agency. APPROVAL BY THE COMMITTEE TO FILL YOUR LOT DOES NOT MEAN THAT YOU HAVE THE LEGAL RIGHT TO DO SO. IT SIMPLY MEANS THAT YOUR PLAN CONFORMS TO THE DARE COUNTY ZONING REQUIREMENTS FOR MARTIN'S POINT AND THE COMMITTEE HAS NO OBJECTIONS BASED ON AESTHETICS OR DRAINAGE.

Piers/Docks – Only one (1) Pier/Dock is permitted per building site. The length of the Pier/Dock shall be measured from the estuarine bulkhead, Mean High Waterline or from a line connecting the outermost limits of the coastal wetlands on either side of the proposed structure. The Pier/Dock shall be located within the

central fifty percent (50%) of the building site and shall not present any hazard to navigation. Except as provided below, no Pier/Dock shall extend into adjacent waters more than seventy-five (75) feet, as determined above. For a building site located on Currituck Sound, having an average width of more than one-hundred (100) feet, the Pier/Dock shall not exceed a maximum length of seventy-five (75) feet plus an additional three (3) inches for each one (1) foot of average Lot width in excess of one-hundred (100) feet, provided further that each such longer Pier/Dock shall not extend into adjacent waters more than one-hundred (100) feet, as determined above.

Signs - Other than construction contractor's signs, as provided for below, only one (1) sign or advertising device of not more than four-hundred-thirty-two (432) square inches, bearing the name and/or address of the Owner or advertising the property for sale, may be displayed to the public view on a Lot. All signs shall be free-standing, shall not be located on the Common Areas and shall not be affixed to trees.

Tree Cutting - One of the qualities of Martin's Point which attracts people is the wooded nature of the community. Trees not only provide beauty, shade and privacy, but are homes for birds and other wildlife as well as forming a barrier to winds generated by severe storms. Recognizing these facts, there is a requirement in the Declaration which states that "**the plan for cutting trees on the Lots shall be submitted in writing and approved by the Association.**" The best way to preserve trees is to examine your Lot before site work is commenced and take note of the trees, particularly the many varieties of oaks and other hardwoods which may be present on your Lot. Take them into consideration when you prepare your site plan. You will be glad you did.

Pre-Construction

No site work of any kind may be commenced without the written approval of the Committee, including tree cutting, lot clearing, filling, bulkheading, etc.

The following facilities shall be provided when construction is commenced and be maintained throughout the project:

- (1) a temporary toilet, if no operating toilet already exists on the site; and
 - (2) a container for construction trash.
- These facilities must be placed on the Lot, preferably behind the tree line, not in the common area.

During Construction

Job sites must be kept as clean and orderly as practicable. No

garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of the Properties, except as is temporary and incidental to the bona fide improvements of the Properties.

Concrete trucks must not clean the excess concrete from their hoppers anywhere in Martin's Point other than on the job site, not on the Common Areas or road shoulders.

No outdoor work or other noise-generating activities shall commence Monday through Saturday before 7:30 AM and Sunday before 8:00 AM.

Parking of passenger vehicles, trucks and other construction equipment, operated by construction contractors and their employees, is permitted during daylight hours on the shoulders of the adjacent road, off the roadway, near the construction site. Any vehicles and other construction equipment (insofar as practicable), parked after dark or overnight, must be parked on the construction site, at least twenty (20) feet from the road edge, not on the roads, road shoulders or Common Areas. Any vehicles or trailers which are parked in violation are subject to being towed at the Owner's expense.

Construction contractors may place only one (1) sign on the building site, framed with not more than four (4) feet on a side, on which all site work advertising for the contractor, any subcontractors and financiers must be placed. All construction signs must be removed within thirty (30) days after issuance of a Certificate of Occupancy.

Contractors must observe the posted Speed Limit of thirty (30) miles per hour in Martin's Point.

Contractors and their employees are not allowed to bring their pets into Martin's Point.

ASSOCIATION APPROVALS

Preliminary Approval – This approval procedure is to assure that a new structure, or exterior modification to an existing structure, that you are planning will not be inconsistent with the overall ambiance and requirements of Martin's Point. At least thirty (30) days prior to any lot clearing, filling or other site work, two (2) sets of the following shall be submitted for Committee review:

- (1) Drawings showing style and general design, including all four (4) elevations. Line drawings are acceptable at this stage;
- (2) Total square footage of heated and/or air conditioned living area, garage and deck space;

- (3) General listing of materials to be used in construction for the foundation, framing, exterior, roof, driveway, etc.;
- (4) Exterior color scheme and finish. (Approval is required when repainting an existing structure using a different color scheme and finish. If essentially the same color scheme and finish are to be used, no approval is required.)
- (5) Lot clearing (tree-cutting) plan,
- (6) Grading and filling plan, including original and proposed elevations;
- (7) Any other information, site plans, or specifications pertaining to accessory improvements such as a temporary driveway, dock, swimming pool, tennis court or other permitted structure; and
- (8) Lot coverage. (Coverage, which cannot exceed thirty percent (30%), shall be calculated and shown on the site plan.)

Final Approval – At least thirty (30) days prior to the commencement of any construction, submit two (2) complete sets of detailed design plans, drawings and specifications (if not already submitted for preliminary approval). The following information is also required by the Committee:

- (1) A site plan prepared by a North Carolina registered engineer or surveyor, showing the following:
 - (a) placement of all structures and other accessory improvements, such as a garage, swimming pool, tennis court or other permitted structure on the property;
 - (b) required set-backs;
 - (c) location and dimensions of permanent driveway and apron;
 - (d) location of approved septic tank, septic field and designated septic repair area;
 - (e) tabulation of square footage of all construction including, but not limited to, house, garage, pool, pool surrounds, paved walkways, driveways, etc.
- (2) The height of the lowest heated and/or air conditioned living area above mean sea level;
- (3) The initial landscaping plan (that must be completed within one (1) year following completion of construction).
- (4) A description of other accessory buildings or improvements.

Specific written approval of the Committee is required for any bulkhead, dock, bridge, pond, fence or retaining wall.

Any subsequent alterations of property or exterior modification of structures that would materially affect what has already been covered by the final Committee approval must be submitted to and

approved in writing by the Committee prior to commencement of work.

Security Deposit – Before final approval of any plans for site improvement or construction will be given, you must make a Security Deposit of four-thousand dollars (\$4,000.00) with the Committee by cash, certified check or assignment of bank account(s), payable or assigned to the Association. A lesser amount may be required by the Committee or the deposit requirement waived entirely for minor improvements or alterations that are unlikely to damage the Common Areas. The Committee will inform you in writing of the amount required. This Security Deposit will be held in escrow by the Association for the purpose of ensuring the repair of any damage done to Common Areas caused by your site improvements or construction. Thirty (30) days following completion of the approved site improvement or the issuance of a Certificate of Occupancy for such construction (whichever occurs last), this deposit will be refunded unless there is any unrepaired damage to Common Areas caused by such work or non-compliance with construction requirements. In the latter case(s), the Association will have the repairs made, pay the costs from this deposit and refund any remaining balance to you. If the cost of repairs exceeds the deposit, you will be billed for the difference.

PERMITS

In addition to the Martin's Point Committee approval, a number of permits and fees are required before construction including those listed below. Contact the appropriate office to determine their requirements and fees.

Water Tap, Meter and Impact Fee.
Building Permit.
Septic Permit.
CAMA Permit (for waterfront construction, docks, bulkheading and modification of wetlands).

OTHER USEFUL INFORMATION

Telephone Numbers

Dare County Building Inspector (252) 441-6414
Dare County Septic Inspections..... (252) 441-2143
Dare County Water Department (for Water Tap
and Impact fee) (252) 441-7788
Sprint Telephone (new service) (252) 338-9811
Dominion NO Power (new service)..... (252) 667-3000
Dominion NC Power (temporary service)..... (252) 225-2149
Charter Communications (cable TV)..... (252) 441-2881
CAMA..... (252) 264-3901

Mail Delivery

The Kitty Hawk Post Office delivers and distributes the mail at the Martin's Point postal building. It is delivered by street address, not the box number. Contact the Association Secretary if you do not know your street address. Contact the Kitty Hawk Post Office to get your box keys and to begin delivery. Mail may be addressed to either Kitty Hawk or Martin's Point; the zip code is the same, 27949.

NOTES