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DECLARATION OF UNIT OWNERSHIP

OF

MARINER'S LANDING CONDOMINIUM



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NORTH CAROLINA

## DECLARATION OF UNIT OWNERSHIP

DARE COUNTY

## OF MARINER'S LANDING CONDOMINIUM

THIS DECLARATION made this 9 day of December, 1985, by MARINER'S LANDING PARTNERSHIP, (herein called the Developer) and for themselves, their heirs, grantees, and assigns does hereby make, declare and establish this Declaration of Unit Ownership (hereinafter Declaration) as and for the Plan of Dwelling Ownership of Mariner's Landing Condominium, being the property and improvements hereinafter described.

Section 1. Establishment and Submission to Condominium Ownership. The Developer is the owner of the fee simple title to that certain real property situate in Nags Head, Nags Head Township, Dare County, North Carolina, which property and improvements therein is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Developer does hereby submit the property described in Exhibit "A" and improvements thereon to condominium ownership under the provisions of Chapter 47A of the General Statutes of North Carolina (Unit Ownership Act), and hereby declares the same to be a condominium to be known and identified as Mariner's Landing Condominium. Hereinafter in this Declaration, Mariner's Landing Condominium shall also be referred to as the "Condominium".

In furtherance of said purpose, Developer hereby declares that all of the condominium and each part thereof, shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to this Declaration and the limitations, covenants, conditions and restrictions set forth in this Declaration as the same may be amended from time to time, all of which are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the condominium and each part thereof. All such limitations, covenants, conditions, restrictions and Declarations and the Rules and Regulations shall

constitute Covenants running with the land and equitable servitudes and liens and shall be binding upon and for the benefit of the Developer and each condominium unit owner having or acquiring any right, title, interest or estate in a condominium, including, but not limited to, the heirs, executors, administrators and assigns of any such parties and all subsequent owners and lessees of all or any part of a condominium.

The effective date of this Declaration of Unit Ownership shall be as of the date of recordation of this Declaration with the Office of the Register of Deeds of Dare County.

Section 2. Survey and Description of Improvements. Annexed hereto and expressly made a part hereof as Exhibit "B", consisting of 11 pages, is a Survey of the land, graphic descriptions and plans of the improvements constituting the condominium, identifying the condominium units and common areas and facilities, limited common areas, as said terms are hereinafter defined, and their respective locations and approximate dimensions. Each condominium unit is identified by specific numerical designation on said Exhibit "B", and no condominium unit bears the same designation as any other condominium unit.

Section 3. Definitions. The Condominium consists of condominium units, common areas, limited common areas and facilities, as said terms are hereinafter defined.

A. Condominium units as the term is used herein shall mean and comprise the 4 separate numerically identified dwelling units which are designated on Exhibit "B" to this Declaration and each condominium unit shall consist of and include the space and improvements within horizontal and verticle planes consisting of the horizontal plane formed by connecting the lower ends of the foundation pilings in the ground and intersected by verticle planes formed by each exterior perimeter wall surface and outer most perimeter foundation piling surfaces extended from the point

of intersection with the aforesaid horizontal plane in the ground upward to the point of intersection with the diagonal planes formed by the exterior surface material of the roof, and then by extending upward the diagonal planes of the exterior surface of the roof to the point of intersection of said diagonal planes; and each condominium unit shall include all exterior surface materials on the roof and exterior walls (including windows and doors) heating and air conditioning systems and compressor, decks, and the waste water - septic disposal system attached to and used by each condominium unit; and further including all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to condominium units up to and including the point of entry of such pipes, ducts, wires, and conduits through the exterior surface material of the walls or the point of entry of such through the verticle planes heretofore described. All pipes, ducts, wires, conduits and other such facilities shall become a part of the respective condominium units at such point of entry. All exterior decks, stairways and stairway landings, doors, window frames, panes and screens shall be part of the respective condominium units and the exterior decks and painting of the exterior surface of such decks, stairways and stairway landings, walls, doors and window frames shall be the responsibility of the condominium unit owner subject to the approval of the Board of Directors of Mariner's Landing Condominium Association, Inc., and the Rules and Regulations adopted by the association's board for architectural review.

The maintenance and repair of the heating, air conditioning unit, compressor, fan, and any accessory heating and air conditioning equipment, septic tank, septic drainfield or septic-wastewater system serving each unit shall be the expense of the unit owner. The repair, maintenance or replacement of or any portion of the water system within the common area, including but

not limited to lines, taps, meters, pipe and water pumps, if any, shall be the expense of the Condominium Unit Owners Association.

B. Common areas and facilities (sometimes referred to herein as "Common Property") shall mean and comprise all of the real property, improvements and facilities of the condominium other than the condominium units and shall include all personal property held and maintained for the use and enjoyment of all the owners of condominium units.

Common areas and facilities are further defined in North Carolina General Statute 47A-3(2) except as modified herein.

C. Certain portions of the common areas and facilities may be reserved for the use of a particular condominium unit or units to the exclusion of other units and are designated as "Limited Common Areas" or "Limited Common Elements". Limited common areas and the condominium units which they are reserved for are as follows:

The concrete drive-way from the said concrete parking areas within the condominium unit to the common access drive-way as delineated on Exhibit "B", the roof overhangs and roof cupolas located on the apex of each condominium unit roof.

The condominium unit owners shall have the exclusive right to possession and control of the limited common areas appurtenant to their respective units subject to the Declaration of Unit Ownership and the Mariner's Landing Condominium Association, Inc., By-Laws and said unit owners shall bear the expense of repairing and maintaining the limited common areas due to normal wear and tear.

The terms "Association of Unit Owners," "Building," "Common Areas and Facilities" (sometimes herein referred to as "Common Property"), "Common Expenses," "Common Profit," "Declaration," "Majority" or "Majority of Unit Owners," "Person", "Property," "Recordation," "Unit" or "Unit Designation," and "Unit Owner", unless it is plainly evident from the context of this Declaration

that a different meaning is intended, shall, as used herein, have the meaning set out in Section 3 of Chapter 47A of the General Statutes of North Carolina, known as the Unit Ownership Act.

Section 4. Ownership of Condominium Units and Appurtenant Interest in Common Property. Each condominium unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said condominium unit, an undivided interest in the common property. The undivided interest appurtenant to each condominium unit shall be as set out in Exhibit "C" attached hereto and made a part hereof. The proportional interest in the common property that is appurtenant to each condominium unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each unit at the date of the Declaration bears to the then aggregate fair market value of all of the units having an interest in the common property. The fair market value of each unit and the aggregate fair market value of all the units has been determined by the Developer, and this determination shall be binding upon all unit owners. The percentage of undivided interest in the common property assigned to each condominium unit shall not be changed except with the unanimous consent of all of the owners of all of the condominium units and with the consent of all of the Institutional Lenders holding first mortgages or deeds of trust on the condominium units.

Section 5. Restriction Against Further Subdividing of Condominium Units; Separate Conveyance of Appurtenant Common Property Prohibited. No condominium unit may be divided or subdivided into a smaller unit or units than as shown on Exhibit "B" hereto, nor shall any condominium unit or portion thereof be added to or incorporated into any other condominium unit. The undivided interest in the common property declared to be an appurtenance to each condominium unit shall not be conveyed,



transferred, devised, encumbered or otherwise dealt with separately from said condominium unit, and the undivided interest in common property appurtenant to each condominium unit shall be deemed conveyed, transferred, devised, encumbered or otherwise included with the condominium unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, transferring, devising, encumbering or otherwise dealing with such condominium unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a condominium unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a condominium unit and its appurtenant undivided interest in common property, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire condominium unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any condominium unit, which describes said condominium unit by the numerical designation assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire condominium unit and its appurtenant undivided interest in the common property. Nothing herein contained shall be construed as limiting or preventing ownership of any condominium unit and its appurtenant undivided interest in the common property by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety.

Section 6. The Condominium Subject to Restrictions. The condominium units, common property, and limited common areas shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said condominium units, common property and limited common areas and the use thereof shall be in accordance with the following provisions:

A. Each of the condominium units shall be used only for

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residential purposes and occupied only as a residence, or vacation or resort retreat, and for no other purpose. No condominium unit may be used for any commercial or professional purpose, provided, however, this restriction shall not prohibit any unit owner from selling his unit or from renting, leasing or letting his unit for any period of time or the Developer (or Developer's Agents) from selling or marketing a unit or units until all units have been sold by Developer, their successors or assigns

B. The common areas and limited common areas shall be used only for the purposes for which they are intended in furnishing services and facilities for the enjoyment and recreation of the condominium units.

C. No use or practice shall be permitted on the condominium property which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. The use of clothes lines, except inside the garage area out of view of any other condominium unit, is prohibited. No condominium unit owner shall permit any use of his condominium unit, or of the common areas or limited common areas, which will increase the rate of insurance upon the condominium property. No immoral, improper, offensive, or unlawful use shall be made of the condominium property or any part thereof. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification, or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

D. No trailer, travel trailer, camper, mobile home (self-contained or otherwise), tent, boats, storage shed, garage or

other similar outbuilding or structure , shall be permanently placed or stored on the common property at any time. Temporary storage of a travel trailer, camper, boat and/or boat trailer while the unit is occupied by the owner of the vehicle, camper, travel trailer, boat and/or boat trailer (and storage at any time of the unit owner's boat and/or boat trailer) will be permitted provided the vehicle, travel trailer, boat and/or boat trailer, or camper is stored or parked within the unit and is stored in accordance with any regulations promulgated therefore by the Board of Directors. This restriction shall not apply to the Developer, or his contractor and subcontractors, until such time as all condominium units have been constructed and sold.

E. Except as hereinafter reserved unto the Developer, no signs (including but not limited to "For sale," "for rent," or the unit owner's name) shall be erected or maintained on any condominium unit or any portion of the common areas or limited common areas, except with the written consent of the Board of Directors, it being understood that the Board of Directors will not grant permission for said signs unless their erection is reasonably necessary, or unless said sign conforms with a sign format adopted by the Board of Directors to indicate the condominium unit owner's name.

F. All utilities serving the condominium property (including but not limited to electrical utility service, telephone service, television cable service, water, sewage and drainage) shall be located underground along and under easements heretofore reserved in Section 9 of this Declaration and as delineated on the Plat of the Condominium recorded in the office of the Register of Deeds of Dare County. The use of exterior radio, television or satellite system antennas on the roof or outside of any building is expressly prohibited. Each condominium unit owner shall be responsible for all charges and assessments, connection fees, tap fees and deposits made or

levied by any utility company or municipal agency for service furnished each individual condominium unit. Charges and assessments for utilities furnished to the common areas and limited common areas shall be a common expense borne by the Association.

G. No animals shall be kept on the premise, or in a unit except common domesticated household pets. Pets outside of the unit shall be on a leash or otherwise restrained by the owners. While outside the owner's unit, pets will be encouraged to use areas designated by the Board of Directors for waste disposal. Any expense incurred by the owner's association cleaning up or removing animal waste will be assessed against the unit owner of the animal or his invitee's animal. Such assessment shall be paid by the unit owner at the time of an in the manner on the next owner's assessment coming due.

H. Reasonable regulations concerning the use of the condominium common property may be made and amended from time to time by the Association in the manner provided by its By-Laws. Copies of such regulations and amendments thereto shall be furnished by the Association to all condominium unit owners upon request.

I. In the event of a violation of breach of any of these use restrictions or of any other covenant of this Declaration by any property owner or his guest, tenant, invitee, licensee or agent, the owner of any condominium unit shall have the right to proceed at law or in equity to compel a compliance of the terms hereof or to prevent the violation or breach in any event.

Section 7. Perpetual Non-Exclusive Easements in Common Property. The common property or common elements, exclusive of limited common elements, shall be, and the same is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the owners of condominium units in the condominium for their use and the use of their immediate

families, guests and invitees, and licensees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of the condominium units. In addition, this easement shall run in favor of the Developer, the condominium unit owners association, the managing agent if one is so designated, and the easement may be used for ingress and egress for providing electric power, telephone, sewer, water and other utility services and lighting facilities, including but not limited to, cable television, reception facilities, security services, and facilities connected therewith. The Developer, for themselves, their heirs and assigns, and for the Association reserves the right to impose upon common elements and areas, from time to time, such easements and cross-easements in favor of the unit owners for any of the foregoing purposes the Developer deems in the best interest of and necessary and proper for the condominium unit owners. Notwithstanding anything above provided in this Section, Mariner's Landing Condominium Association, Inc., hereinafter identified, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any condominium unit, his family, guests and invitees, may be entitled to use the common property, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof and to establish rules and regulations concerning the use of any recreation area.

Developer, for themselves, their heirs and assigns, reserve the right to use a portion of the common elements for the purpose of aiding in the sale of condominium units, including the right to use portions of the condominium elements for parking for prospective purchasers and such other parties as the Developer determines. The foregoing right shall include the right to use an unsold unit therein as a model, granting use thereof to prospective purchasers, and the right to display and erect signs,

placecards and to store, keep and exhibit the same and distribute audio visual promotional material upon the common elements.

There is hereby granted and conveyed to each condominium unit owner, their heirs, successors and assigns, and reserved unto them a non-exclusive easement of access, egress and ingress to and from the condominium unit and the North Carolina State Road designated 1200 upon the drive-way or 12 foot access easement as designated on the Plat of the Condominium shown on Exhibit "B" and for access, egress and ingress to recreational facilities situate within the development area (subject to such assessments and conditions of use as set forth in Section 22) and for access, egress and ingress over such easements as may be submitted to this Declaration and/or shown on the survey for Mariner's Landing Condominiums shown on Exhibit "B" for purposes of access to and from the Atlantic Ocean, such easements being also for the benefit of the Developer and those to whom the Developer may convey a similar easement or easements as an appurtenance to any real property interest conveyed by the Developer within the Condominium.

There is hereby granted and conveyed an easement of right of way and access in and to the condominium common area for the benefit of condominium unit owners and the Mariner's Landing Condominium Association, Inc., for the construction, operation, and maintenance of all utility lines, pipes, sewage lines, septic tanks, waste treatment facilities, drain fields, drain lines and facilities related thereto, which said easement shall inure to the benefit of the Developer, its successors, heirs and assigns and all future owners of condominium units, their heirs, successors and assigns.

The Developer reserves unto itself and the Mariner's Landing Condominium Association, Inc., the right to specifically designate on the ground within the common property, the location of the above-described easement, including but not limited to,

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easements for all roads, walkways, parking areas, utility lines, cable television and recreational facilities.

Section 8. Easement for Unintentional and Non-Negligent Encroachments. In the event that any condominium unit shall encroach upon any common property, or any other condominium unit or units, for any reason not caused by the purposeful or negligent act of the condominium unit owner, or agents of such owner, then an easement appurtenant to such condominium unit shall exist for the continuance of such encroachment upon the common property or upon a condominium unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the common property shall encroach upon any condominium unit, then an easement shall exist for the continuance of such encroachment of the common property upon any condominium unit for so long as such encroachment shall naturally exist. If any condominium unit or common property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such unit and/or common property in accordance with Section 20 hereof, there exist encroachments or portions of the common property upon any condominium unit, or of any condominium unit upon any other condominium unit or upon any portion of the common property, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

Section 9. Utility Easement. The Developer, on behalf of itself and/or such utility companies that may service the condominium from time to time, reserves a perpetual right, privilege and easement ten feet in width over, on, upon, under, and along each side line, the rear lot line, and the front lot line of the real property delineated on the survey attached hereto as Exhibit "B" and incorporated herein, the same being the

real property upon which the condominium is located. All utility connections must be installed underground. After the first condominium unit has been sold and the deed therefore recorded in the Dare County Registry, any common subsequent utilities shall be paid for by the condominium unit owners association. Said easements hereby reserved shall be for the purpose of constructing, maintaining and operating in, upon, under and through said easement, in a proper workmanlike manner the electric, telephone, gas, sewer, water, television, drainage and other conveniences and utilities and appurtenances necessary and convenient thereto, together with the right at all times to enter upon easement with men and equipment for the purpose of inspecting, altering and repairing the same. The Developer reserves the right to maintain or otherwise keep clear any obstructions that may adversely affect the proper maintenance and operating of the various utility systems.

Section 10. Administration of the Condominium by Unit Owners Corporation. To efficiently and effectively provide for the administration of the condominium by the owners of the condominium units, a non-profit North Carolina Corporation known and designated as Mariner's Landing Condominium Association, Inc., has been organized, and said Corporation shall administer the operation and management of the condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of said Articles of Incorporation and By-Laws are annexed hereto and expressly made a part hereof as Exhibits "D" and "E" respectively. The owner or owners of each condominium unit shall automatically become Members of said Corporation upon his, their or its acquisition of an ownership interest in title to any condominium unit and its appurtenant undivided interest in common property, and the membership of such owners or owner shall terminate automatically upon such owner or owners being divested



of such ownership interest in the title to such condominium unit, regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any condominium unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Corporation or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, Mariner's Landing Condominium Association, Inc., shall have and is hereby granted the authority and power to enforce the provisions of this Declaration of Condominium or Unit Ownership, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units and common property as the Board of Directors of said ~~Corporation~~ may deem to be in the best interests of the Corporation. Mariner's Landing Condominium Association, Inc., is hereinafter referred to as "Corporation" and/or the "Association".

Section 11. Use of Common Property Subject to Rules of Corporation. The use of common property, including the limited common areas and facilities, by the owner or owners of all condominium units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Corporation.

Section 12. Right of Entry into Condominium Units in Emergencies. In case of any emergency originating in or threatening any condominium unit, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Corporation, or any other person authorized by it, or the Managing Agent, shall have the right to enter such condominium unit for the purpose of remedying or abating the

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cause of such emergency, and such right of entry shall be immediate.

Section 13. Limitation Upon Right of Owners to Alter and Modify Condominium Units; No Right to Alter Common Property. No owner shall cause any improvements or changes to be made on or to the exterior of the condominium (including painting or other decoration) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association's Board being first obtained or as otherwise provided herein. No unit owner shall cause any object to be fixed to the common property (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the Common Property without the written consent of the Association's Board being first obtained.

Notwithstanding the foregoing provisions of this Section 13, a unit owner may divide the ground level storage room with an interior wall to create an owner's storage room. A door may be constructed in the exterior wall of the owner's storage room for access. The Board of Directors shall approve the color of the door if the color is different from the other exterior doors of the unit.

Section 14. Right of Corporation to Alter and Improve Common Property and Assessment Therefor. The Corporation shall have the right to make or cause to be made such alterations or improvements to the common property which do not prejudice the rights of the owner of any condominium unit in the use and enjoyment of his condominium unit, provided the making of such alterations and improvements are approved by the unanimous vote of all the condominium unit owners, and the cost of such alterations or improvements shall be common expenses to be assessed and collected from all of the owners of condominium units. However, where any alterations and improvements are

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exclusively or substantially for the benefit of the owner or owners of certain condominium unit or units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the owner or owners of the condominium unit or units exclusively or substantially benefited, the assessment to be levied between or among such benefitted condominium units in the proportion of each unit's appurtenant undivided interest as set forth on Exhibit "C".

In the event a condominium unit is damaged or destroyed and can not, due to governmental regulations, be rebuilt in the same location as shown on Exhibit "B", then such condominium unit may be relocated and rebuilt upon the common area of the condominium in accordance with the covenants, obligations and restrictions of this Declaration and any requirements adopted by the Board applicable to said specific condominium units relocation and reconstruction. Any relocation outside the perimeter boundaries of the existing condominium unit as shown on Exhibit "B" shall require unanimous written approval of all unit owners and all costs, fees, and expenses associated therewith or resulting from or caused by such relocation and reconstruction shall be borne by the condominium unit owner whose unit is being relocated.

Section 15. Maintenance and Repair by Owners of Condominium Units. Every owner shall perform promptly all maintenance and repair work to the exterior of his condominium unit which, if omitted, would affect the condominium, either in its entirety or in a part belonging to other owners, every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each condominium unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment and compressors, septic tank and septic drainfield, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections

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required to provide water, light, power, telephone, sewage and sanitary service to his condominium unit. Such owner shall further be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of the roof and all walls as provided herein, and the interior surfaces of any and all walls, ceilings, and floors within his unit including painting, decorating and furnishings, and all other accessories which such owner may desire to place or maintain in his condominium unit. Whenever the maintenance, repair and replacement of any item for which the owner of a condominium unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Corporation, the proceeds of the insurance received by the Corporation shall be used for the purpose of making such maintenance, repair or replacement except that the owner of such condominium unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The owner of a condominium unit who has exclusive use of any limited common area shall maintain such at his own expense. All glass doors, window frames, panes and screens are a part of the respective condominium units and shall be maintained by the respective unit owners.

Section 16. Maintenance and Repair of Common Property by the Corporation. The Corporation, at its expense, shall be responsible for the maintenance, repair and replacement of all of the common property and all conduits, ducts, pipes and plumbing, identification signs, wiring and other facilities located in the common property for the furnishing of utility and other services to the condominium units and said common property, (except a units septic-wastewater system), and should any incidental damage

be caused to any condominium unit by virtue of any work which may be done by the Corporation in this maintenance, repair or replacement of any common property, the Corporation shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Corporation is obligated to maintain, replace or repair at its expense is occasioned by any act of a condominium unit owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Corporation, the proceeds of the insurance received by the Corporation shall be used for the purpose of making such maintenance, repair or replacement, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. If any such loss or damage is not covered by insurance in force and before the Corporation repairs or replaces an item for which the Corporation is obligated to repair or replace at its expense due to damage caused by an act of a condominium unit owner, his immediate family, guest, or invitees, the Corporation shall give the unit owner written notice of the damage or loss and 20 days thereafter in which to effect necessary repair and/or replacement in accordance with the procedures, methods, and standards approved by the corporation for the same. If such repair and/or replacement has not been effected by the unit owner within said 20 day period or an arrangement therefore made with which the board of directors is satisfied, then the corporation shall proceed with obtaining the necessary repair to or replacement of said item in accordance with this section and assess such costs against the unit of the responsible unit owner.

Section 17. Insurance, Authority to Purchase. Insurance policies upon the Common and limited Common Property (other than title insurance) may be purchased by the Corporation in the name of the managing agent or board of directors of the Corporation, as Trustees for the Condominium Unit Owners and their respective mortgagees as their interests may appear, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against condominium unit owners, the Corporation and their respective servants, agents and guests. Each condominium unit owner may obtain insurance, at his own expense, affording coverage upon his condominium unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

Section 18. Insurance Coverage to Be Maintained: Use and Distribution of Insurance Proceeds.

A. The following insurance coverage shall be maintained in full force and effect by the Corporation covering the operation and management of the Condominium, to wit:

(1) Casualty insurance covering the buildings (and any other improvements upon the common area and designated to be insured by the board of directors) and all personal property included within the property described in Exhibit "A" (except such personal property as may be owned by the condominium unit owners and the Owner's Condominium Unit) shall be procured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation, foundations, walkways, streets, driveways, and parking facilities) as determined annually by the insurance company affording such coverage or other method approved by the board; and provided that such policies may be written on a co-insurance basis of not less than ninety percent (90%). Such coverage shall afford protection against: (a)

loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief, (c) and coverage against risk as the board of directors deems necessary.

(2) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Corporation, including but not limiting the same to legal liability, hired automobile, non-owned automobile and off-premises employee coverages.

(3) Flood insurance on insurable improvements and property described in sub-paragraph (1) above in an amount determined annually by the board of directors of the Corporation.

(4) All liability insurance shall contain cross-liability endorsements to cover liabilities of the condominium unit owners as a group and to a condominium unit owner.

B. Premiums upon insurance policies purchased by the Corporation shall be paid by the Corporation as common expenses to be assessed and collected from all of the owners of condominium units.

C. All insurance policies purchased by the Corporation shall be for the benefit of the Corporation and the condominium unit owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Corporation. The Corporation shall hold such proceeds in trust for the benefit of the Corporation, the condominium unit owners and their respective mortgagees in undivided shares for each condominium unit owner and his mortgagee, if any, which shares as to each condominium unit are shown on Exhibit "C" attached hereto.

D. In the event a mortgagee endorsement has been issued as to a condominium unit, the share of the condominium unit owner

shall be held for the mortgagee and the condominium unit owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

E. Proceeds of insurance policies received by the Corporation shall be distributed to or for the benefit of the beneficial condominium unit owners in the following manner:

(1) if the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial condominium unit owners or paid as provided under the terms of the policy. This is a covenant for the benefit of any mortgagee of a condominium unit and may be enforced by him.

(2) if it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial condominium unit owners, remittances to condominium unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a condominium unit and may be enforced by him.

Section 19. Obligation of Owner of Condominium Unit to Maintain Insurance Coverage and Owner's Duty to Rebuild or Repair or Restore Damaged Condominium Units. Upon taking title to a condominium unit in the condominium, the owner shall have in effect fully paid fire and extended coverage and flood insurance and the owner shall furnish evidence of insurance as well as payment of the premium to the corporation within ten (10) days of the title transfer date. Thereafter, each owner of a condominium unit shall obtain and maintain in force such insurance coverage on his condominium unit as the board of directors of the corporation may determine or require in sufficient amounts to replace his condominium unit. Each owner of a condominium unit



shall furnish to the board of directors of the corporation such evidence of insurance coverage as the board may from time to time require. In the event an owner fails to maintain such coverage or furnish evidence thereof, the corporation may obtain policies providing such coverage and pay the premium therefore, which premium shall be chargeable against the owner of the condominium unit failing to maintain such coverage or failing to furnish evidence thereof as aforesaid, which premium shall constitute and continue as a lien on the condominium unit of any such owner and shall also be a personal obligation of any such owner and be in force as provided in Section 22 hereof.

In the event any condominium unit is or condominium units are partially destroyed, the owner covenants and agrees to rebuild, repair or restore the units to essentially the same condition and appearance (including using the same or similar materials) as existed prior to the partial destruction thereof subject only to current building code requirements and specifications. The Association shall retain and safely keep a set of plans and specifications for each building within the condominium for the use by an owner who is rebuilding, repairing or restoring a partially or wholly destroyed unit.

In the event the condominium unit is wholly destroyed, the owner shall remove all debris and material from the condominium site within 30 days after receiving notification and demand therefore from the corporation. If the owner rebuilds the condominium unit the owner covenants and agrees to rebuild the unit to essentially the same condition and appearance (including using the same or similar materials) as existed prior to the total destruction thereof.

Section 20. Reconstruction or Repair of Casualty Damage; Damage to Common Property; Damage to Condominium Units.

A. If any part of the Common Property shall be damaged by

casualty the Common Property shall be reconstructed or repaired

unless otherwise determined by the unanimous vote of all the condominium unit owners at a meeting of the members of the Corporation called and held prior to commencement of such reconstruction or repair.

Any such reconstruction or repair or any reconstruction permitted or allowed by this Declaration shall be substantially in accordance with the plans and specifications contained herein and on file with the Dare County Register of Deeds or, if constructed subsequent to the effective date of this Declaration, on file with the corporation; however, in the event any plan or specification conflicts with the applicable building code then in effect, such current building code standard or specification shall control.

B. If the damage is only to those parts of one or more condominium units for which the responsibility for maintenance and repair is that of the condominium unit owner, then the condominium unit owner shall be responsible for reconstruction and repair after casualty. In all other instances and unless otherwise provided herein, the responsibility of reconstruction and repair after casualty shall be that of the Corporation. Immediately after the casualty causing damage to property for which the Corporation has the responsibility for maintenance and repair, the Corporation shall obtain reliable and detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the board of directors deems necessary or appropriate.

C. Each condominium unit owner shall be deemed to have delegated to the board of directors of the Corporation his right to adjust with insurance companies all losses under policies purchased by the Corporation.

Register setting forth the names of the owners of all of the condominium units. In the event of the sale or transfer of any condominium unit to a third party, the purchaser or transferee shall notify the Corporation in writing of his interest in such condominium unit, together with such recording information as shall be pertinent to identify the instrument by which such purchases or transferee has acquired his interest in any condominium unit.

Section 22. Assessments; Liability, Lien and Enforcement.

The Corporation is given the authority to administer the operation and management of the condominium, and employ a managing agent for that purpose, it being recognized that the delegation of such duties to one entity is in the best interest of the owners of all condominium units. To properly administer the operation and management of the condominium, the Corporation will incur for the mutual benefit of all of the owners of condominium units, costs and expenses which are sometimes herein referred to as "common expenses." To provide the funds necessary for such proper operation, management and for capital improvements, as well as for the repair maintenance and/or alteration of the amenities or common areas, the Corporation has heretofore been granted the right to make, levy and collect assessments against the unit owners and their condominium units. In furtherance of this grant of authority to the Corporation to make, levy and collect assessments to pay the costs and expenses for the operation, and management of and capital improvements to the condominium, and the repair, maintenance and/or alteration of the amenities and common areas and to pay for the costs of common utilities, including water, the following provisions shall be operative and binding upon the owners of all condominium units. The owner of each condominium unit, by acceptance of a deed or other conveyance for such unit, shall be deemed obligated to pay

or common expenses to be fixed, established and collected on a condominium unit basis as hereinafter provided.

A. All assessments levied against the unit owners and their condominium units shall be uniform and, unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Corporation shall be in such an amount that any assessment levied against a unit owner and his condominium unit shall bear the ratio to the total assessment made against all unit owners and their condominium units as the undivided interest as set forth on Exhibit "C" in Common Property appurtenant to each condominium unit bears to the total undivided interest in Common Property appurtenant to all condominium units. Should the Corporation be the owner of a condominium unit or units, the assessment which would otherwise be due and payable to the Corporation by the owner of such unit or units, reduced by the amount of income which may be derived from the leasing of such unit or units by the Corporation, shall be apportioned and assessment therefore levied ratably among the owners of all units which are not owned by the corporation, based upon their proportionate interests in Common Property exclusive of the interest therein appurtenant to any unit or units owned by the Corporation.

The funds arising from the annual assessment or charge as well as any additional or special assessments may be used for any or all of the following purposes: operating and managing the Corporation on behalf of the condominium, repairing, maintaining, altering, improving, replacing the swimming pool and swimming pool area, if built, as well as the access ways and driveways within the project, the septic systems and drainfields and all utility systems as well as such other common improvements as the board of directors may authorize and subsequently approve; employing a manager for the condominium; employing or obtaining legal and accounting services or other professional services

necessary in the furtherance of the condominium affairs; enforcing these restrictions and the rules and regulations of the condominium; paying taxes, if any, indebtedness of the Corporation, insurance premiums, common utility expenses of the condominium, including but not limited to, charges for water and electric services (the cost of water used by condominium units shall be considered a common expense), governmental charges of all kinds and descriptions and, in addition, doing any other things necessary or desirable in the opinion of the Corporation to keep the property in neat and good order and to provide for the health, welfare, and safety of the owners and residents of the Mariner's Landing Condominium.

The expense and the cost of water shall be borne equally by the individual condominium unit owners until individual water meters are installed for all the condominium units. The owners shall pay their equal share of the water costs to the corporation at such times and pursuant to such rules as established by the board, and such water costs shall be in the nature of common assessments, which, if unpaid, shall be a lien upon the condominium unit of the delinquent owner. The existing water meter serving the condominium shall be Common property of the condominium.

By vote of a majority of directors of the corporation, the corporation may obtain individual water meters for each condominium unit which shall be installed between the main common water line and the condominium unit to be served by the new meter. The condominium shall have the individual meters read within ten (10) days of receiving the corporation's water bill and the corporation's water bill shall be apportioned among the condominium unit owners based upon the ratio of their water gallons used as shown by said individual condominium owner's water meter to the total gallons used for said period as read

B. Assessments provided for herein shall be payable in annual installments or in such other installments and at such times as may be determined by the board of directors of the corporation. Said annual assessments or charges shall be due on January 1 of the year for which it is assessed except that the annual assessment for the calendar year of 1986 shall include that portion of the calendar year 1985 after the Declaration of Unit Ownership has been filed in the Dare County Public Registry and any such assessment for the calendar year 1986 and the remaining portion of the calendar year 1985 shall be due on January 1 and payable on the date therefore established by the Corporation through its board of directors. The board of directors shall establish the due date of any assessments other than the annual assessment at the time such special or emergency assessments are declared by the board of directors. Each annual assessment or charge (or installment thereof) shall, when due, become a lien against the condominium unit against which such assessment or charge is made. The annual assessment or charge shall be in an amount to be fixed from year to year by the Corporation, which may establish different rates from year to year as it may deem necessary.

C. The board of directors of the Corporation shall establish an annual budget in advance for each fiscal year (which shall correspond to the calendar year, except that the first year shall include the remaining portion of 1985). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the condominium including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The board of directors shall keep separate, in accordance

maintenance from items relating to capital improvements. Upon adoption of such annual budget by the board of directors of the Corporation, copies of said budget shall be delivered to each owner of a condominium unit and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each owner or the failure to deliver a copy of the budget shall not affect the liability of any owner for such assessment. Should the board of directors at anytime determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the condominium, or in the event of emergencies, the board of directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

D. The board of directors of the Corporation, in establishing the annual budget for operation, management and maintenance of the condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the common property, which Capital Improvement and Replacement Fund (Capital Improvement Fund) shall be for the purpose of enabling the Corporation to replace structural elements and mechanical equipment constituting a part of the Common Property, as well as the replacement of personal property which may constitute a portion of the Common Property held for the joint use and benefit of the owners of condominium units. The amount to be allocated to the Capital Improvement Fund may be established by said board of directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Corporation and such monies shall be used only to make capital improvements to Common Property. Any

the discretion of the board of directors of the corporation, be expended for current operation and maintenance. Each unit owner shall be deemed to own a portion of the Capital Improvement Fund equal to the percentage of undivided interest as set forth on Exhibit "C" appurtenant to his condominium unit. The Corporation shall annually notify each condominium unit owner of the amount of his balance in the Capital Improvement Account. However, such balance shall not be subject to withdrawal by a condominium unit owner.

E. All monies collected by the Corporation shall be treated as the separate property of the unit owners, and such monies may be applied by the Corporation to the payment of any expense of operating and managing the condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominium, the Articles of Incorporation and the By-Laws of the Corporation. As monies for any assessment are paid to the Corporation by any owner of a condominium unit, the same by be commingled with monies paid to the Corporation by the other owners of condominium units. Although all funds and common surplus, including other assets of the Corporation, and any increments thereto or profits derived therefrom or from the leasing or use of Common Property, shall be held for the benefit of the members of the Corporation, no member of the Corporation shall have the right to assign, hypothecate, pledge or any manner transfer his owner's interest therein, except as an appurtenance to his condominium unit. When the owner of a condominium unit shall cease to be a member of the Corporation by reason of his divestment of ownership of such condominium unit, by whatever means, the Corporation shall not be required to account to such owner for any share of the fund or assets of the Corporation, or which may have been paid to the corporation by such owner, as all monies which any owner has paid to the corporation shall be



said monies may be used by the corporation and for the management of the condominium.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Corporation within thirty (30) days of the due date for such payment or the due dates of installments authorized by the board. When in default, the delinquent assessment or delinquent installment thereof due to the Corporation shall bear interest at the highest rate allowed by law (but in no event less than 6% per annum) until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Corporation. All monies owing to the Corporation shall be due and payable at the main office of the Corporation in the State of North Carolina or such other place as directed by the board.

G. Upon the failure of the owner of and condominium unit to pay any such assessment or charge, additional assessment, or installment thereof when due, the Corporation shall have the right to collect the amount thereof by an action at law against the owners as for a debt, and it may bring and maintain such other suits and proceedings at law or at equity as may be available. Such rights and powers shall continue in the Corporation and the lien of such charge or assessment shall be deemed to run with the land and the unit subject thereto, and the successive owners of each condominium unit subject to the lien, by the acceptance of deeds therefore, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been previously levied against the property, and all assessments or charges or additional assessments as shall become a lien thereon during their ownership. The owner or owners of each condominium unit shall be personally liable, jointly and severally, to the Corporation for the payment of all assessments, regular or special, which may be

such party or parties are owner or owners of a condominium unit. In the event that any unit owner or owners are in default in payment of any assessment or installment thereof owed to the Corporation, such unit owner or owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys' fee, whether suit be brought or not.

H. No owner of a condominium unit may exempt himself from liability for any assessment levied against him or his condominium unit by waiver of the use or enjoyment of any of the Common Property, or by abandonment of the condominium unit or in any other way.

I. Recognizing that proper operation and management of the condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the owners of condominium units, and that the payment of such common expenses represented by the assessments levied and collected by the Corporation is necessary in order to preserve and protect the investment of each unit owner, the Corporation is hereby granted a lien upon each condominium unit and its appurtenant undivided interest in Common property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the owner of each such condominium unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Corporation, and which lien shall also secure all costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Corporation in enforcing this lien upon said condominium unit and its appurtenant undivided interest in Common Property. The lien

that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Corporation shall be entitled to a reasonable rental from the owner of any condominium unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said condominium unit. The lien granted to the Corporation shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Corporation in order to preserve and protect its lien, and the Corporation shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any condominium unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Corporation, and shall acquire such interest in any condominium unit expressly subject to such lien rights.

J. The lien herein granted unto the Corporation shall be enforceable from and after the time of recording a claim of lien in the Public Records of Dare County, North Carolina, which claim shall state the description of the condominium unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or

by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be subordinated to the lien of any mortgage or deed of trust. Any person, firm or corporation acquiring title to any condominium unit and its appurtenant undivided interest in Common Property by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable for said condominium unit and its appurtenant undivided interest in Common Property subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a condominium unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party acquiring title shall be subject shall be absorbed and paid by all owners and all condominium units as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

K. Whenever any condominium unit may be leased, sold or mortgaged by the owner thereof, the Corporation, upon written request of the unit owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Corporation by such unit. Such statement shall be executed by any officer of the Corporation, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Corporation shall be bound by such statement.

In the event that a condominium unit is to be leased, sold

the owner of said condominium unit and such assessment due to the Corporation shall be in default (whether or not a claim of lien has been recorded by the Corporation) then the rent, proceeds of such purchase or mortgage proceeds, shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Corporation before the payment of any rent, proceeds of purchase or mortgage proceeds to the owner of any condominium unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a condominium unit, the grantee thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Corporation which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Corporation.

L. The Corporation shall not be obligated to spend in any one calendar year all of the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Corporation shall not be obligated to apply any such surplus to the reduction of charges in the succeeding year.

M. The Corporation shall have authority, in its discretion, to borrow money to expend for the purposes set forth in Section 22 hereof upon such terms and security and for such periods as it may determine. and to repay said borrowings and the interest

thereon from the assessments or charges or special or additional assessments provided for in this section.

Section 23. Common Surplus. "Common Surplus", meaning all funds and other assets of the Corporation (including excess of receipts of the Corporation, including but not limited to assessments, rents, profits, and revenues from whatever source over amount of the common expense), shall be owned by the owners of all condominium units in the same proportion that the undivided interest in Common Property appurtenant to each owner's condominium unit bears to the total of all undivided interest as set forth in Exhibit "C" in Common Property appurtenant to all condominium units; provided however, that said common surplus shall be held by the Corporation in the manner, and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the condominium, any attribution or distribution of common surplus which may be made from time to time shall be made to the owners of condominium units in accordance with their percentage interest in common surplus as declared herein.

Section 24. Termination. The condominium shall be terminated if at all, in the following manner:

A. The termination of the condominium may be effected only by the unanimous agreement of all condominium unit owners expressed in an instrument to that effect duly recorded; and, provided, that the holders of all liens affecting any of the condominium units consent thereunto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the condominium unit owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such agreement has

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B. If it is determined in the manner elsewhere provided that the condominium shall not be reconstructed after casualty, the condominium plan of ownership shall be terminated and the Declaration revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Corporation certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Dare County, North Carolina.

C. After termination of the condominium, the condominium unit owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the condominium unit or units formerly owned by such condominium unit owners shall have mortgages and liens upon the respective undivided shares of the condominium unit owners. The undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the Common Area and Facilities previously owned by each unit owner. All funds held by the Corporation and insurance proceeds, if any, shall be and continue to be held for the unit owners in the same proportion. The costs incurred by the Corporation in connection with the termination shall be a Common Expense.

D. Following termination, the property may be partitioned and sold upon the application of any condominium unit owner. Following a termination, if the board of directors determines by the affirmative vote of not less than three-fourths (3/4) of its members to accept an offer for the sale of the property, each condominium unit owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the board of directors directs. In such event, any action for partition or the division of the property shall be held in abeyance pending such sale, and upon

thereto.

E. The members of the board of directors acting collectively as agent for all condominium unit owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Corporation itself may be dissolved upon a termination.

Section 25. Amendment of Declaration of Condominium.

A. This Declaration maybe amended in the following manner: An amendment or amendments to this Declaration may be proposed by the board of directors of the Corporation acting upon a vote of a majority of the directors, or by the members of the Corporation owning a majority of the condominium units, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said board of directors or members, such proposed amendment or amendments shall be Transmitted to the President of the Corporation, or other officer of the Corporation in the absence of the President, who shall thereupon call a special meeting of the members of the Corporation for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed amendment or amendments. It shall be the duty of the Secretary to give each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such special meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Corporation, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Corporation, whether before or after the holding



of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of all the owners of units in the condominium in order for such amendment or amendments to become effective. Thereupon such amendment or amendments of this Declaration of Condominium shall be transcribed and certified by the President and Secretary of the Corporation as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the Public Records of Dare County, North Carolina, within ten (10) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording date identifying the Declaration. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the Officers of the Corporation shall be delivered to the owners of all condominium units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Corporation shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Corporation prior to such meeting or at such meeting.

B. No alteration in the percentage of ownership in Common Property appurtenant to each condominium unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Corporation in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, shall be made without the prior written consent of all of the owners of all condominium units and all of

C. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of an Institutional Lender or Institutional Lenders shall be made without prior written consent of all Institutional Lenders holding mortgages on condominium units in the condominium being first had and obtained.

D. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Developer shall be made without the written consent of said party being first had and obtained.

Section 26. Remedies in Event of Default. The owner or owners of each condominium unit shall be governed by and shall comply with the provisions of this Declaration of Unit Ownership, and the Articles of Incorporation and By-Laws of the Corporation, as any of the same are not constituted or as they may be amended from time to time. A default by the owner of any condominium unit shall entitle the Corporation or the owner of other condominium units to the following relief:

A. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles of Incorporation or By-Laws of the Corporation, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Corporation or, if appropriate, by an aggrieved unit owner.

B. Each unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Corporation. Such liability shall include any increase in fire insurance rates occasioned by use,

misuse, occupancy or abandonment of a condominium unit or its appurtenances. No thing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of an alleged default by a unit owner, the Corporation, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court, but in no event shall any unit owner be entitled to such attorneys' fees.

D. The failure of the Corporation or any unit owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Corporation or of the unit owner to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to the Corporation or the owner or owners of a condominium unit pursuant to any terms, provisions, covenants or conditions of the Declaration or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

F. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned document shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.

G. The failure of an Institutional Lender or Institutional Lenders, as said term is herein defined, to enforce any right,

provision, privilege, covenant or condition which may be granted to it or them by this Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

Section 27. Right of Developer to Representation on Board of Directors of the Corporation. So long as Developer owns two (2) or more condominium units in the condominium, but in any event, no longer than December 31, 1987, Developer shall have the right to designate and select a majority of the persons who shall serve as members of each board of directors of the Corporation.

Whenever Developer shall be entitled to designate and select any person or persons to serve on any board of directors of the Corporation, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Corporation, and Developer shall have the right to remove any person or persons selected by them to act and serve on said board of directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed for the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by Developer need not be a resident in the condominium. However, Developer shall be responsible for the payment of any assessments which may be levied by the Corporation against any condominium unit or units owned by the said Developer, and for complying with the remaining terms and provisions hereof in the same manner as any other owner of a condominium unit or units.

Section 28. Severability. In the event that any of the terms provisions or covenants of this Declaration of Condominium are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter,

provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

Section 29. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender the feminine or neuter. The Section headings are for convenience of reference only and shall not be considered terms of this Declaration.

Section 30. Declaration of Condominium Binding on Assigns, and Subsequent Owners. The restrictions and burdens imposed by the covenants of this Declaration of Unit Ownership are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each condominium unit and its appurtenant undivided interest in Common Property, this Declaration shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become owners of condominium units in the condominium, and their respective heirs, legal representatives, successors and assigns.

Section 31. Interpretation of Construction In all cases the restrictions set forth or provided for in these restrictions and in this Declaration of Unit Ownership shall be construed together and shall be given the interpretation or construction which will best tend toward their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The use of the term Corporation shall mean the board of directors of the Mariner's Landing Condominium Association, Inc., unless the context of the sentence clearly indicates and means otherwise.

Section 32. Agent for Service of Process. The following named individual is designated as the person to receive service

1895, Kill Devil Hills, North Carolina 27948.

IN WITNESS WHEREOF, the undersigned general partners have caused these presents to be executed in its partnership name by its general partners and adopted as its seal the word "SEAL" appearing at the end of the respective signature line of each partner, this the 9 day of December, 1985, at Kill Devil Hills, North Carolina.

## MARINER'S LANDING PARTNERSHIP

BY: John I. Bowman (SEAL)BY: Miss E. Brown (SEAL)BY: George McGuire (SEAL)STATE OF NORTH CAROLINA  
CITY/COUNTY OF DARE

I, a Notary Public of the State and county aforesaid, do hereby certify that on this date personally appeared before me John I. Bowman, George McGuire, and Louis C. Peron, general partners of Mariner's Landing Partnership, a partnership, who acknowledged the due execution of the foregoing instrument for the purposes therein expressed by authority of and as an act of the partnership.

Witness my hand and notarial seal this 9th day of DECEMBER, 1985.

E. Paul Breaux, Jr.  
Notary Public

My commission expires: 11/9/88.  
STATE OF NORTH CAROLINA  
COUNTY OF Dare

The foregoing certificate(s) of E. Paul Breaux, Jr.  
a Notary Public of Dare Co., NC  
are certified to be correct.

This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Dennis A. Fry  
Register of Deeds  
By: Barzella McMurran  
Assistant/Deputy  
Register of Deeds

EXHIBIT A TO DECLARATION OF UNIT OWNERSHIP

MARINER'S LANDING CONODOMINIUM

Survey entitled "Mariner's Landing Condominiums" located on lots 4 and 5, Block 2, Section 5, Hollywood Beach, Nags Head, Dare County, North Carolina prepared by George W. Midgette, land surveyor, dated November 19, 1985 and filed in the Dare County Registry is Plat Cabinet B, Slide 387 and in Dare County Unit Ownership Book 2, Pages \_\_\_\_.

## EXHIBIT C TO DECLARATION OF UNIT OWNERSHIP

## MARINER'S LANDING CONDOMINIUM

Percentage of Undivided Interest in Common and Limited  
Common Areas for Each Condominium Unit

<u>Condominium Unit No.</u>	<u>Undivided Interest</u>
<u>1</u>	<u>.23</u>
<u>2</u>	<u>.27</u>
<u>3</u>	<u>.23</u>
<u>4</u>	<u>.27</u>



BOOK 438 PAGE 660

ARTICLES OF INCORPORATION  
OF  
MARINER'S LANDING CONDOMINIUM ASSOCIATION, INC.

I, the undersigned, being a natural person of full age, do make and acknowledge these Articles of Incorporation for the purpose of creating a nonprofit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Nonprofit Corporation Act," and several amendments thereto do hereby set forth:

ARTICLE I.

The name of the corporation is Mariner's Landing Condominium Association, Inc.

ARTICLE II.

The period of duration for the corporation shall be perpetual.

ARTICLE III.

The purposes for which this corporation is organized are:

(a) To acquire, construct, maintain and operate common areas and/or recreation facilities in a resort residential development known as Mariner's Landing on land situated in Nags Head, Nags Head Township, Dare County, North Carolina;

(b) To enforce any and all covenants, restrictions and agreements applicable to the common areas and condominium units in the development and particularly the Declaration of Unit Ownership or similar declaration which may hereafter be made with respect to the development and which may hereafter be recorded in the Dare County Registry;

(c) To make and perform any contracts and do any acts and things, and exercise any powers suitable, convenient, proper or incidental for the accomplishment of any objects enumerated

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(d) To have any and all powers, rights and privileges which a corporation organized under the laws of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina entitled "Nonprofit Corporation Act", by law may now or hereafter exercise.

ARTICLE IV.

The corporation shall have members as provided in the by-laws.

ARTICLE V.

Except for the initial Board of Directors whose names are set forth in these Articles of Incorporation, the Board of Directors shall be elected or appointed as provided in the by-laws.

ARTICLE VI.

The corporation shall have all the powers granted corporations under the laws of the State of North Carolina. However notwithstanding anything herein to the contrary, the corporation shall exercise only such powers as are in furtherance of the exempt purposes of organizations set forth in the subsection of Section 501(c) of the Internal Revenue Code of 1954 under which the corporation chooses to qualify for exemption, as the same now exists, or as it may be amended from time to time.

ARTICLE VII.

No part of the net earnings of the Corporation shall inure to the benefit of any officer, director or member of the Corporation; and upon dissolution of the Corporation, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefor, be distributed for the purposes similar to those set forth in Article III hereinabove or to charitable, religious, scientific, literary or educational organizations which would then qualify under the provisions of Section 501(c) (3) of the Internal Revenue Code of 1954 and its regulations as they now exist or as

may be amended from time to time.

ARTICLE VIII.

The address of the initial registered office of the corporation is 1500 Croatan Highway, Kill Devil Hills, North Carolina 27948; the name of the initial registered agent at such address is John G. Gaw, Jr., Dare County, North Carolina.

ARTICLE IX.

The number of directors constituting the initial Board of Directors shall be 3 and the names and addresses of the persons who are to serve as directors until the first meeting of the corporation or until their successors are elected and qualified, are:

<u>NAME</u>	<u>ADDRESS</u>
Louis C. Peron	3333-102 Virginia Beach Blvd. Virginia Beach, VA 23452
John I. Bowman	3333-102 Virginia Beach Blvd. Virginia Beach, VA 23452
George McGuire	3333-102 Virginia Beach Blvd. Virginia Beach, VA 23452

ARTICLE X.

In the event of the dissolution of the Association, no member shall be entitled to any distribution or division of its remaining property or its proceeds, and the balance for all money and other property received by the Association from any source, after the payment of all debts and obligations of the Association, shall be used or distributed exclusively for the purposes within the intendment of Section 501(c) of the Internal Revenue Code as the same now exists or as it may be amended from time to time.

ARTICLE XI.

The name and address of the incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
John G. Gaw, Jr.	P. O. Box 1895 Sun Professional Building 1500 Croatan Highway Kill Devil Hills, NC 27948

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

\_\_\_\_\_  
John G. Gaw, Jr. (SEAL)

NORTH CAROLINA

STATE OF NORTH CAROLINA

I, the undersigned notary public, do hereby certify that  
JOHN G. GAW, JR. personally appeared before me this day and  
acknowledge the due execution of the foregoing instrument for the  
purposes therein expressed.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 1985.

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

My Commission Expires \_\_\_\_\_

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BY-LAWS  
OF  
MARINERS LANDING CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

Names and Offices

Section 1. Name. The name of the Corporation shall be Mariners Landing Condominium Association, Inc.

Section 2. Offices. The principal office of said Association shall be in Kill Devil Hills, North Carolina. The Association may also have offices at such other places as the Board of Directors may from to time appoint or the purposes of the Association may require.

ARTICLE II

Definitions

The following words when used in these By-Laws (unless the context shall otherwise require), shall have the following meaning:

(a) The "Association" shall mean Mariners Landing Condominium Association, Inc., its successors and assigns.

(b) The "Development" shall mean the real property described in the Declaration of Unit Ownership.

(c) The "Common Areas" shall mean all those areas of land, (hereinafter defined), including the facilities being constructed thereon, owned by the Association and described in the Declaration of Unit Ownership recorded in the Dare County Registry.

(d) "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any unit, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(e) The "Developer" shall mean Mariners Landing Partnership, its successors and assigns.

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(f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Section 10 of the Declaration recorded in the Dare County Registry.

(g) Condominium unit shall have the same meaning as set forth in the Declaration of Unit Ownership.

(h) The "Declaration" shall mean the Declaration of Unit Ownership of Mariners Landing Condominium Association, Inc.

### ARTICLE III

#### Objectives

The objectives of the Association shall be (a) to repair, maintain and operate the Common Property of the Association, (b) to enforce any and all covenants, restrictions and agreements applicable to the Common Areas and the Units in the Development and particularly the Declaration and amendments thereto declaration as may be made, and which hereafter may be recorded in the office of the Register of Deeds of Dare County, North Carolina and (c) to make and perform any contracts and do any acts or things, and exercise any powers suitable, convenient, proper or incidental for the accomplishment of any of the objectives enumerated herein.

### ARTICLE IV

#### Membership and Voting Rights in the Association

Section 1. Membership. Every person who is an owner of any condominium unit which is subject to the Declaration of Unit Ownership shall be a member of the Association.

Section 2. Voting Rights. The Association shall have one class of voting membership.

Members shall be all Owners. Each Member shall be entitled to one vote for each condominium unit in which he holds the interest required for membership by Section 1 of this Article IV. In no event shall more than one vote be cast in the Association with respect to any such condominium unit.

When a purchaser of a condominium unit takes title thereto from the Developer, the purchaser becomes a Member of the Association and the membership of the Developer with respect to that unit shall cease.

Section 3. Suspension of Membership. The rights of membership are subject to the payment of annual and special assessments levied by the Association. The obligation for payment of assessments is imposed upon each owner. The obligation for payment of assessments, of all owners subject to the Declaration's assessments, becomes a lien upon the unit against which such assessments are made as provided by Section 22 of the Declaration. If a member fails to make payment of any annual or special assessment levied by the Association within thirty (30) days after same shall become due and payable, the voting rights of such member and such member's right to use the Association's facilities and common area may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended after notice and hearing, for violation of any rules and regulations established by the Board of Directors governing the use of common areas.

#### ARTICLE V

##### Assessments

The obligations with respect to Assessments are governed by Section 22 of the Declaration, as the same may be amended from time to time.

#### ARTICLE VI

##### Meetings

Section 1. Annual Meetings. The annual meeting of Members for the election of directors, the presentation of the annual financial report of the Association and for the transaction of such other business as the Board of Directors may determine, shall be held at the principal office of the Association on the first Saturday in May, or at such other time and place as may be fixed by the Board of Directors, but in no event later than June 30.

Section 2. Special Meetings. Special meetings of Members of all dwelling units in the development (or any one of them) for any purpose may be called at any time by (i) the President of the Association, or (ii) any three (3) directors of the Association, and (iii) shall be called by the Secretary of the Association forthwith upon receipts of the written request of Members of the Association entitled to cast three-fourths of all votes of the

entire Membership. Special meetings shall be held solely for such purpose or purposes as are set forth in the notice or waiver of notice or the meeting.

Section 3. Special Meetings for the Election of Directors.

(a) If for a period of one (1) month after the date fixed herein for the annual meeting of Members, there is a failure of the Members of any one condominium unit to elect a director, the Board of Directors shall call a special meeting of the Members of that condominium unit for the election of a director. If such special meeting is not called by the Board within two (2) weeks after the expiration of such period or if it is called but there is a failure to elect such directors for a period of two months after the expiration of such period, Members entitled to cast fifty (50%) percent of the total number of votes entitled to be cast in an election of directors may, in writing, demand the call of a special meeting for the election of directors specifying the date and month thereof, which shall not be less than two (2) nor more than four (4) weeks from the date of such written demand. The Secretary of the Association upon receiving the written demand shall promptly give notice of such meeting, or, if he fails to do so within five (5) business days thereafter, any Member signing such demand may give such notice. The meeting shall be held at the principal office of the Association or at such other place as may be fixed in the notice of meeting.

(b) At any such special meeting called on the demand of Members, notwithstanding the provisions of these By-Laws, members attending, in person or by proxy, and entitled to vote in an election of directors shall constitute a quorum for the purpose of electing directors, but not for the transaction of any other business.

Section 4. Notice and Waiver of Notice of Annual and Special Meetings. Notice of the time, place and purpose or purposes of every meeting of the Members shall be served (except as provided in Section 3, Article VI of these By-Laws), either personally or by mail, not less than ten (10) nor more than fifty (50) days before the meeting, upon each person who appears upon the books of the Association as a Member or if mailed, such notice shall be directed to the Member at his address as it appears on the books of the Association, unless he shall have filed with the Secretary of the Association a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. The notice provided for herein is not indispensable and any meeting of Members shall be deemed validly called for all purposes if all members are represented thereat in person or by



proxy, or if a quorum is present and waivers of notice of the time, place, and purpose of such meeting shall be duly executed in writing either before or after said meeting by those members not so represented or not given such notice. The attendance of any Member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

Section 5. Quorum. At any meeting of Members the presence in person or by proxy of fifty (50%) percent of Members entitled to vote thereat shall be necessary to constitute a quorum for the transaction of business, except as otherwise expressly provided by law, by the Articles of Incorporation of the Association, the Declaration, or elsewhere in these By-Laws. In the absence of a quorum, or when a quorum is present, a meeting may be adjourned from time to time by a vote of a majority of Members entitled to vote present in person or by proxy, without notice other than by announcement at the meeting and without further notice to any absent Member. After reconvening an adjourned meeting at which a quorum had been present, any business may be transacted which might have been transacted at the meeting as originally scheduled.

Section 6. Voting. If a quorum is present the affirmative vote of a majority of Members represented at the meeting shall be the act of all members, unless the act of a greater number is expressly required by law or by the Articles of Incorporation of the Association, the Declaration, or elsewhere in these By-Laws. Any Member may vote either in person or by proxy appointed by an instrument executed in writing by such Member or his duly authorized attorney-in-fact and delivered to the Secretary of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless the Member executing it shall have specified therein its duration. Every proxy shall be revocable at the pleasure of the person executing it, or his personal representatives or assigns. Upon direction of the presiding officer or upon demand of a Member, the vote upon any business before a meeting shall be by ballot, but otherwise any such vote need not be by ballot.

Section 7. Action Without a Meeting. Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent setting forth the action so taken, signed by all Members entitled to vote thereon.

Section 8. Inspectors of Election. The Board of Directors in advance of any meeting of Members may appoint one or more

inspectors of election to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a Members' meeting may, and on the request of any Member entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed as inspector fails to appear or act, the vacancy may be filled by the Board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability, and the oath so taken shall be signed by the inspector before the person presiding at the meeting and shall be filed with the Secretary of the Association. No director, or candidate for director at a meeting, one of the purposes of which is to elect directors, shall act as inspector thereat.

#### ARTICLE VII

##### Board of Directors

Section 1. Management of the Affairs of the Association. The management of the affairs of the Association shall be vested in a Board of Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or By-Laws directed or required to be exercised or done by the members.

Section 2. Election of Directors. The Board of Directors shall consist of not less than four (4) nor more than five (5) directors and the number of persons constituting the whole Board of Directors shall be fixed from time to time by resolution of the members of the corporation with one director being elected from each condominium unit. The initial Board of Directors shall consist of three (3) directors. All subsequent Boards shall consist of an owner from each condominium unit and in the event of a five member board, the fifth member need not be a member of the Association. Directors shall be at least twenty-one years of age. Except as otherwise provided by law or in these By-Laws, the directors shall be elected at each annual meeting of Members by a plurality of votes cast.

Section 3. Vacancies. Vacancies in the Board of Directors resulting from death, resignation or removal may be filled without notice to any Members by a vote of a majority of the remaining directors present at the meeting at which such election is held, even though a quorum is not present, which election may

be held at any regular meeting of the Board of Directors of any special meeting thereof called for such purpose. A director elected to fill a newly created directorship shall serve in office during the unexpired portion of the term of his predecessor and until his successor is elected and qualified.

Section 4. Meetings. Meetings of the Board of Directors, regular or special, shall be held in the State of North Carolina. The first meeting of the Board of Directors following the annual meeting of Members shall be held not later than one (1) week after the annual meeting of Members. Thereafter, regular meetings of the Board of Directors shall be held not less than annually. Meetings may be held upon such notice, or without notice, and at such time and place, as shall be determined by the Board. Special meetings of the Board of Directors may be called by the President, at such time and place as he shall determine, on five (5) days notice to each director, either personally or by mail or by telegram; special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of directors. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting, except where otherwise required by law or by these By-Laws. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business except as otherwise expressly provided by law or by the Articles of Incorporation of the Association, or by the Declaration or elsewhere in these By-Laws. The act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by the Articles of Incorporation of the Association, or by the Declaration or elsewhere in these By-Laws. If a quorum shall not be present at any meeting of directors, the directors present may adjourn the meeting from time to time, without notice or other than announcement at the meeting, until a quorum shall be present. At all meetings of the Board of Directors, each director shall be entitled to one vote.

Section 5. Resignation and Removal. Any director may resign at any time by written notice delivered or sent by certified or registered mail, return receipt requested to the President or Secretary of the Association. Such resignation shall take effect at the time specified therein, and, unless

specifically requested, acceptance of such resignation shall not be necessary to make it effective.

Any director may be removed from office with or without cause by members of the Association at a meeting duly called for that purpose or with cause by the Board.

Section 6. Compensation. No salary or other compensation for services shall be paid to any director of the Association for services rendered as such director, but this shall not preclude any director from performing any other service for the Association and receiving compensation thereof.

Section 7. Other Committees. From time to time the Board of Directors may appoint, from among the Directors, Members, and other persons, other committees for any purpose or purposes with such powers as are conferred by the resolution of appointment and as are permitted by law. the President of the Association shall be an ex-officio member of all committees so appointed.

Section 8. Annual Report. The Board of Directors shall present at the annual meeting of Members a report of the financial and other affairs of the Association during the preceeding year. The Board of Directors shall provide all Members, at the expense of the Association and within four (4) months of the end of year, a copy of an annual audited financial statement of the Association prepared by an independent certified public accountant.

#### ARTICLE VIII

##### Officers

Section 1. Election. The Board of Directors, at its first meeting after the annual meeting of Members, shall elect from their number a President and Vice President, and shall elect a Secretary and Treasurer, each officer to hold office until the meeting of the Board of Directors following the next annual meeting of Members and until their successors are elected and qualified. The Board may from time to time appoint such other officers as it considers desirable to hold office at the pleasure of the Board. Any two of such offices, except those of President and Secretary, may be held by the same person.

The first Board of Directors succeeding the initial Board shall elect the officers at its first meeting.

Section 2. Assistants. The Board of Directors may at any time or from time to time appoint one or more Assistant Secretaries and one or more Assistant Treasurers to hold office at the pleasure of the Board. Such assistants, if any, in order of their seniority or in any other order determined by the Board of Directors shall, in the absence or disability of the Secretary or Treasurer, as the case may be, perform the duties and exercise the powers of the Secretary or Treasurer, as the case may be, and shall perform such other duties as the Board of Directors or the Secretary or Treasurer, as the case may be, shall prescribe.

Section 3. Qualifications; Removal and Vacancies. Officers (other than the President or Vice-President) need not be Members of the Association. Any officer elected or appointed by the Board of Directors pursuant to the provisions of Sections 1 and 2 of this Article VIII may be removed by the Board of Directors at any time, with or without cause. Vacancies occurring in any office may be filled by the Board of Directors at any time.

Section 4. Duties of President and Vice President. The President shall be the chief executive and operating officer of the Association and shall preside at all meetings of the Members and of the Board of Directors. The President or the Vice President may sign the name of the Association on all certificates and contracts and other instruments which are authorized from time to time by the Board of Directors. The President, subject to the control of the Board of Directors, shall have general management of the affairs of the Association and perform all the duties incidental to the office. If the President is absent from the State of North Carolina or is unable to act, the Vice President shall have the powers and perform the duties of the President.

Section 5. Duties of Treasurer. Subject to the control of the Board of Directors, the Treasurer shall have the care and custody of all funds and securities of the Association, and all books and records relating thereto and shall deposit such funds in the name of the Association in such bank or trust companies as the Board of Directors may determine, and he shall perform all other duties incidental to this office. If so required by the Board of Directors, he shall, before receiving any such funds, furnish to the Association a bond with a surety company as surety, in such form and amount as the Board of Directors from time to time shall determine. The premium upon such bond shall be paid by the Association. The duty of the Treasurer to maintain accounts for funds may be delegated to the management firm by contract and in such event, the management firm, not the

Treasurer, must be bonded in an amount and form approved by the Board but at the expense of the Association.

Section 6. Duties of Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and of the meetings of the Members. He shall attend to the giving and serving of all notices of the Association, and shall be empowered to affix the corporate seal to all written instruments authorized by the Board of Directors of these By-Laws. He shall also perform all other duties incidental to his office. He shall cause to be kept a record book containing the names, alphabetically arranged, and addresses, of all Members and the date they became such.

Section 7. Compensations. No salary or other compensations for services shall be paid to any officer of the Association for services rendered as such officer, but this shall not preclude an officer of the Association from performing any other service for the Association and receiving compensation therefor.

#### ARTICLE IX

##### Financial Matters

Section 1. Depositories. Unless delegated to the management firm the Board of Directors shall select such depositories as it considers proper for the funds of the Association. All checks and drafts against such deposited funds shall be signed and countersigned by the person specified.

Section 2. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, in addition to those specified in these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or render it liable for any purpose or to any amount.

Section 3. Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors of the Association.

ARTICLE X

Indemnification of Directors,  
officers and Employees

Section 1. Right to Indemnification. Any person made a party to any action, suit or proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he, his testator or interstate, is or was a director or officer of the Association, shall be indemnified by this Association, to the extent permitted and in the manner provided by law, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with an appeal therein, except in relation to matters as to which such director or officer is adjudged to have breached his duty to the Association under the Laws of the State of North Carolina, but such indemnification shall in no case include:

(1) Amounts paid in settling or otherwise disposing of a threatened action, suit or proceeding, or a pending action, suit or proceeding, with or without court approval, or

(2) Expenses incurred in defending a threatened action, suit or proceeding, or a pending action, suit or proceeding, which is settled or otherwise disposed of without court approval.

Any person, made, or threatened to be made, a party to an action, suit or proceeding other than one by or in the right of the Association to procure a judgment in its favor, whether civil or criminal, including an action, suit or proceeding by or in the right of any other corporation of any type or kind, domestic or foreign, which any director or officer of the Association served in any capacity at the request of the Association, or served such other corporation in any capacity, shall be indemnified by this Association against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein, if such director or officer acted, in good faith, for the purpose which he reasonably believed to be in the best interests of the Association and in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, convictions or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act in good faith, for a purpose which he reasonably believed to be in the

best interest of the Association, or that he had reasonable cause to believe that his conduct was unlawful.

Section 2. Other Rights, Payment. Any such right of indemnification as set forth in Section 1 of Article X of these By-Laws shall not be deemed exclusive or any other rights to which any such director or officer may be lawfully entitled apart from the provisions of Laws of the State of North Carolina. Any amount payable by reason of indemnity under this Article shall be determined and paid in accordance with the Laws of the State of North Carolina or in any other lawful manner.

#### ARTICLE XI

##### Dissolution

In the event the Association is dissolved in accordance with the provisions of the Association's Articles of Incorporation and the assets, both real and personal, of the Association are dedicated to a governmental authority, the covenants and restrictions contained in the Declaration, other than those applying to assessments, shall remain in full force and effect. It shall be a requirement of the Association, prior to its dissolution, to establish an appropriate authority or corporation for enforcing said covenants and restrictions.

In the event that such dedication to a governmental authority is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In such event the covenants and restrictions contained in the Declaration, including those applying to assessments, shall remain in full force and effect. No such disposition of the Corporation's properties shall be effective to divest or diminish any right or title or any member vested in him under the Declaration and deed applicable to his property unless made in accordance with the provisions of the Declaration and deed.

#### ARTICLE XII

##### Construction

In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles of Incorporation of the Association shall control; and in the case of any conflict between the Declaration and these By-Laws,



the Declaration shall control.

ARTICLE XIII

Amendments

These By-Laws may be amended or repealed in conformity with the Articles of Incorporation of the Association and the Declaration by the affirmative vote of two-thirds of the Directors present at any meeting of the Board of Directors and by the affirmative vote of a majority of the membership entitled to vote for the election of directors, provided, however, that no such amendment or repeal adopted by the Board of Directors shall become effective until thirty (30) days after notice thereof shall have been transmitted to the Members of the Association. The notice of any meeting of Members and the Board of Directors at which such action shall be considered shall contain a notice of the proposed amendment, or repeal. Any by-law adopted by the Board of Directors may be amended or repealed by the Members.

I certify the foregoing to be the By-Laws of Mariner's Landing Homeowners Association, Inc., as adopted at the first meeting of the Directors on \_\_\_\_\_.

  
Secretary

## EXHIBIT F

DESCRIPTION OF UNITS

1. The improvements on the survey titled "Mariner's Landing Condominiums" dated November 19, 1985 and prepared by George W. Midgette, Jr., land surveyor, and shown as a part of Exhibit "B", have been constructed by the developer substantially in accordance with the plans therefore, which plans are attached as exhibits to the original Declaration and specifications for Mariner's Landing Condominiums. The condominiums consists of four separate detached buildings with each building having three levels (including the ground level) with habitable floors on levels 2 and 3. Units are designated as units 1,2,3, and 4 and are wooden stick frame construction. The kitchen, living/dining room and a bath are located on the second floor (first habitable level) and 4 bedrooms, bath and closets are located on the first floor (second habitable level). Each dwelling unit is built over an open space with the girder and floor joist system being supported by piers and pillasters. The ceiling, walls, and floor are insulated and asphalt shingles are on the roof. Each condominium unit has an enclosed storage area on the ground level. Decks are attached to each unit at the first floor.

2. All air conditioning and heating units, hot water heaters, septic tanks and septic disposal systems and electric meters whether located inside or outside of the condominium unit (including common and limited common areas) which serve one condominium unit exclusively shall be deemed part of the unit.

\* The lower vertical boundary of each condominium unit is a horizontal plane (or planes) the elevation of which coincides with the lower ends of the foundation pilings in the ground and the upper vertical boundary is the diagonal plane (or planes) the elevation of which coincides with the point of intersection of the planes formed by each exterior perimeter wall surface and the exterior surface material of the roof. The lateral boundaries of each condominium unit are the vertical plane (or planes) the location of which coincides with the finished surface of the exterior perimetric walls (including windows and doors) where the same intersect the exterior finished surface of the roof and the lower portion intersects the lower most ends of the foundation pilings. Details of said floor plans are incorporated herein by reference as exhibits to the original Declaration.

3. Each condominium unit shall be designated and identified by the use of the number on each building structure on the survey attached hereto and incorporated herein by reference as a part of Exhibit "B" prepared by George W. Midgette, Jr., and dated November 19, 1985.

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EXHIBIT G

MARINER'S LANDING CONDOMINIUM

ARCHITECT'S CERTIFICATE

The undersigned certifies that he is a licensed professional architect licensed as such by the State of North Carolina, and that the plans for MARINER'S LANDING CONDOMINIUM being filed simultaneously with this <sup>Exhibit</sup> ~~amendment~~ in the Office of the Register of Deeds of Dare County, North Carolina fully depict the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built.

This the 12 day of DECEMBER, 1985.

BY: Wayne Ormead  
Licensed Professional Architect

NORTH CAROLINA  
DARE COUNTY

Subscribed and sworn to before me  
this the 12th day of December, 1985.

Louise A. Moore  
Notary Public

My Commission Expires: 6/26/90

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