

DECLARATION OF UNIT OWNERSHIP OF THE QUAY CONDOMINIUM

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SECTION

DECLARATION OF UNIT OWNERSHIP

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REGISTERED  
DEPT. OF REVENUE

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NORTH CAROLINA

DARE COUNTY

THIS DECLARATION OF UNIT OWNERSHIP, made this 1st day of September, 1983, by SEAWATCH LTD, a North Carolina Partnership, hereinafter called "Declarant", on behalf of itself, its Grantees, successors and assigns;

## W I T N E S S E T H :

THAT WHEREAS, the Declarant is the owner of certain real property situated in the Town of Nags Head, Dare County, North Carolina, described in Exhibit "I", which is attached hereto and made a part hereof; and

WHEREAS, the Declarant hereby establishes by this Declaration a plan under Chapter 47A of the General Statutes of North Carolina for the individual ownership of the real property estates consisting of the units in the structure placed on the real property described in Exhibit "I",

The Declarant for itself, its successors and assigns, reserves the right herein, but shall not be obligated, to submit additional property to the provisions of the Unit Ownership Act and to the provisions of this Declaration, for an additional 18-unit condominium by the filing of Amendments to this Declaration in the office of the Register of Deeds of Dare County, North Carolina and the property which may be subject to such additional declarations is described in Exhibit "II" attached hereto and made a part of this Declaration.

A. Phase I Condominium is more fully described as follows:

The improvements will be constructed by the Developer substantially in accordance with plans therefor prepared by Best and Associates, Inc., Raleigh, North Carolina which are on record in the Dare County Registry File Unit Ownership Book 2, Pages 163-175; and the Specifications which are attached hereto as Exhibit "III". The Phase I Condominium will include three apartment buildings containing six units each. Each building will be constructed with eight inch masonry firewalls between each apartment with brick exterior finished walls. Each unit will have a ground floor carport, utility storage and entrance foyer. The second and third floors will contain living and bedroom areas with exterior decks as shown on the architectural plans. The Phase I Condominium will also include landscaping, a tennis court, exterior parking and walkways/gazebos substantially as shown on the plans.

B. Phase II Condominium is more fully described as follows:

The improvements will be constructed by the Developer substantially in accordance with plans therefor prepared by Best and Associates, Inc., Raleigh, North Carolina which are on record in the Dare County Registry File Unit Ownership Book 2, Pages 163-175, and the Specifications which are attached hereto as Exhibit "II". The Phase II Condominium will include three apartment buildings containing six units each. Each building will be constructed with eight inch masonry firewalls between each apartment with brick exterior finished walls. Each unit will have a ground floor carport, utility storage and entrance foyer. The second and third floors will contain living and bedroom areas with exterior decks as shown on the architectural plans. The Phase II Condominium will also include landscaping, a swimming pool, an office building, exterior parking, and walkways/gazebos, substantially as shown on the plans.

Section 1, Description of Apartments

A. Each building shall contain six apartment units which will be substantially identical to each other and built from the same typical floor plan.

A three bedroom unit shall contain approximately 1677 square feet of heated living space and consist of the following:

- (1) Ground floor - carport, enclosed storage and entrance foyer.
- (2) Second floor - living room with fireplace, dining area, wet bar, kitchen, one full bath, one bedroom, and balconies from living room and bedroom.
- (3) Third floor - two bedrooms, two full baths, two vanity/dressing areas, laundry room, and balconies from each bedroom.

Details of the above mentioned floor plans are on record in the Dare County Registry, File No. \_\_\_\_\_; Unit Ownership Book 2, Page 163-175.

RESERVATION: The Declarant reserves the absolute right to reverse the second and third floor arrangement, both as to the interior and exterior of the building in Phase II. This reservation shall be accomplished by an amendment to this Declaration requiring only the signature of the Declarant and the lender; and by the filing of an amendment to the architectural plans indicating the apartments which have a reverse arrangement from the original building as to the second and third floor, which such amendment shall be filed of Record.

B. Each apartment building shall be designated and identified by the use of the capital letter shown on each building site shown on the survey on record in the Dare County Registry, Unit Ownership Book 2, Page 163, by Wesley M. Meekins, Jr., RLS, dated August 31, 1983, entitled "The Quay - Master Unit Layout", and each apartment within each building shall be numbered from (1) to (6), from left to right when facing the entrance of the building.

C. The dimensions and boundaries of the apartment units shall be in accord with those plans and specifications of Best and Associates, Inc., wherein the dividing line between such units are delineated on said plans and illustrated thereon.

## Section 2, Shares - Each Unit's Share of Common Areas and Share of Common Expenses

### A. Phase I

Units A - 1 and 6	5.5865%	11.1730%
Units B - 1 and 6	5.5865%	11.1730%
Units C - 1 and 6	5.6080%	11.2160%
Units A - 2, 3, 4, 5	5.5365%	22.1460%
Units B - 2, 3, 4, 5	5.5365%	22.1460%
Units C - 2, 3, 4, 5	5.5365%	22.1460%
		<hr/> 100.00 %

B. When Phase II is by Declaration Amendment added to the project, the Shares shall be as follows:

Units A - 1 and 6	2.7933%	5.5866%
Units B - 1 and 6	2.7933%	5.5866%
Units C - 1 and 6	2.7933%	5.5866%
Units D - 1 and 6	2.7933%	5.5866%
Units E - 1 and 6	2.7933%	5.5866%
Units F - 1 and 6	2.81390%	5.6278%
Units A - 2, 3, 4, 5	2.7683%	11.0732%
Units B - 2, 3, 4, 5	2.7683%	11.0732%
Units C - 2, 3, 4, 5	2.7683%	11.0732%
Units D - 2, 3, 4, 5	2.7683%	11.0732%
Units E - 2, 3, 4, 5	2.7683%	11.0732%
Units F - 2, 3, 4, 5	2.7683%	11.0732%
		<hr/> 100.00 %

(1) For accounting purposes the unit owners shall be billed monthly for 1/18th (in Phase I) and 1/36th (in Phase II) of the annual common expenses established. At least once annually and at the end of the fiscal year, the minute fraction differentiating the individual unit's share shall be billed to and paid by the respective unit owners.

- C. So long as Developer is the record owner of one or more apartment units on which construction has been completed but remain yet unsold, and Developer is in the process of offering and showing such apartment units for sale, including a "model" or "demonstration" unit, Developer shall not be liable or responsible for a fractional share of the common expenses for the Condominium attributable to the unsold apartment units. However, if Developer should utilize or cause to be used, any such apartment unit as an office, for sales or otherwise, or if Developer shall lease or let to any persons, firm or corporation any such apartment unit, then Developer shall be liable and responsible for the common expenses of the Condominium to the same extent as if said apartment unit had been purchased by any individual, firm or corporation from Developer.

### Section 3, Common Elements and Facilities

#### A. Phase I Condominium

- (1) The land subject to the Unit Ownership Act, except those portions over which an apartment building is situated.
- (2) The roads, streets, driveways, sidewalks, parking areas and landscaping.
- (3) One tennis court, fences, nets and related facilities.
- (4) All sewer lines serving each building from the point of connection to each unit to the Nags Head Village Service Co., Inc., and manholes which are located along the right of way of Virginia Dare Trail.
- (5) All water lines, meters, cut-offs, mains and related facilities except those retained and owned by the Town of Nags Head.
- (6) Anything situated on the land hereinable described as the Phase I Condominium that is not hereafter described as a limited common element or a part or portion of any apartment unit.

#### B. Phase II Condominium

- (1) All common elements of the Phase I Condominium
- (2) The land subject to the Unit Ownership Act except those portions over which an apartment building is situated.
- (3) The roads, streets, driveways, sidewalks, parking areas and landscaping.
- (4) All sewer lines serving each building from the point of connection to each unit to the Nags Head Village Service Co., Inc. manholes which are located along the right of way of Virginia Dare Trail.
- (5) All water lines, meters, cut-offs, mains and related facilities except those retained and owned by the Town of Nags Head.
- (6) The office building including all furnishings, equipment and related facilities.
- (7) The swimming pool.

- C. DEFINITIONS: Said definitions being used herein and as shown on Exhibit VI, attached hereto and made a part of this Declaration.

Section 4, Limited Common Elements and Facilities

- A. The exterior walls, roof, the exterior portion only of the fireplace chimney, interior boundary walls, foundations, concrete parking area and sidewalks under each building on the ground floor, and structural floor and roof systems of any apartment building shall be limited common elements, and shall apply to each unit as shown on Plans and Specifications.
- B. The exterior decks and steps as shown on the architectural plans shall be limited common areas appurtenant to the apartment unit to which they are attached and shall be an exclusive easement running to the owner of each appurtenant apartment unit, as shown on Plans and Specifications.

Section 5, Maintenance and Alteration of Apartments

- A. The apartment unit owner shall maintain, repair and replace at his/her sole expense, all portions of his/her apartment unit including, but not limited to, all doors, windows, glass, screens, electric panels, electric wiring, electric outlets and fixtures, heaters, hot water heaters, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections, interior surfaces of all walls, floors and ceilings and all other portions of his/her apartment unit. The apartment unit owner shall also maintain, repair and replace at his/her sole expense the air conditioning compressor or condensing unit, refrigerant and electrical lines appurtenant to his apartment unit and the area within the enclosure of his/her patio. In addition, the apartment unit owner shall maintain, repair and replace at his/her sole expense the sewer and water lines serving his/her unit and the fixtures on the exterior of his/her apartment unit including, but not limited to, storm doors and windows and his/her patio gate. The apartment unit owner shall also be solely responsible for unstopping clogged sewer lines when the stoppage occurs in the service lines serving his/her apartment.
- B. No apartment unit owner shall make any material alteration, addition or modification to the exterior of his apartment unit without the prior written consent of the Board of Directors of the Association.
- C. Neither an apartment unit owner nor the Association shall make any alteration in the portions of any apartment building which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of the apartment building, or impair any easement, without first obtaining approval in writing of all the owners within the Condominium Project in which such work is to be done and the approval of the Board of Directors of the Association.

Section 6, Maintenance, Alteration and Operation of Common Elements

- A. The maintenance, alteration and operation of the common elements and the limited common elements (except those limited common elements which shall be maintained by the apartment unit owners as provided in Section 5, Paragraph A above) shall be the responsibility and the expense of the Association.
- B. After the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no alteration or further improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than 75% of the common elements and any such alteration or improvement shall not directly interfere with the rights of any apartment owner, without first obtaining his written consent. There shall be no change in the shares and rights of an apartment unit owner in the common elements which are altered or further improved, whether or not the apartment unit owner contributes to the cost thereof.

Section 7, Assessments

- A. Assessments against apartment unit owners for common expenses shall be made pursuant to North Carolina General Statutes Section 47A-12 and the By-laws of the Association and shall be allocated as set forth in Sections 7 and 9 of the By-Laws of the Association.
- B. Any sum assessed by the Association for the share of the common expenses chargeable to any unit, and remaining unpaid for a period of thirty (30) days or longer, shall constitute a lien on such apartment unit when filed for record in the office of Clerk of Superior Court of Dare County by the Association under the provisions of Article 8 of Chapter 44 of the North Carolina General Statutes and any amendments or supplements thereto. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, (b) all sums unpaid on deed of trust and other encumbrances recorded against the unit prior to the docketing of this lien, and (c) materialmen's and mechanics' liens. The sum constituting said lien shall include an entire year's assessment or the unpaid balance thereof together with interest thereon at the highest rate permitted by law or such other penalties as the Board of Directors of the Association may impose.
- C. A lien created pursuant to Paragraph B above may be foreclosed by suit by the Board of Directors of the Association, acting on behalf of the apartment unit owners, in like manner as a foreclosure of a deed of trust or mortgage of real property. The Board of Directors of the Association, acting on behalf of the apartment unit owners, shall have power to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. In the alternative, the Board of Directors of the Association, acting on behalf of the apartment unit owners, may maintain a suit to recover a money judgment for the sum constituting the lien pursuant to Paragraph B above. The unit owner shall be responsible for all court costs, interest and reasonable attorneys' fees incurred in the collection, by foreclosure or otherwise, of said lien.

Section 8, Association - The operation of the Condominium shall be by The Quay Owners Association, Inc., herein called the Association, a Non-Profit Corporation under the laws of North Carolina which shall be organized and shall fulfill its functions pursuant to the following provisions:

- A. The members of the Association shall be the apartment owners.
- B. The Association shall be incorporated under the articles of incorporation in the form attached as Exhibit "IV", but the articles of incorporation may be amended as permitted by law without amending this Declaration.
- C. The initial By-laws of the Association shall be in the form attached as Exhibit "V", but may be amended as therein provided or as permitted by law by filing an amendment to this Declaration.
- D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such member's apartment unit.
- E. Whenever the decision of an apartment unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting. Where any unit is owned as tenants in common or as tenants by the entirety, said tenants may determine between or among themselves how the vote they are entitled to shall be cast, but the Chairman of a meeting of the Association shall not accept any division of a vote that said owners would otherwise be entitled to cast if said tenants do not unanimously agree between or among themselves of how their vote should be cast.

Section 9, Insurance

- A. Insurance policies upon the Condominium property covering the items described in Paragraph B of this Section shall be purchased by the Association for the benefit of the Association and the apartment unit owners and their mortgages as their interest may appear. Such policies and endorsements shall be issued in the name of and deposited with the Board of Directors of the Association as Trustee for each of the apartment unit owners in the percentages of interest of each apartment unit owner established in this Declaration in Section 2.
- B. Insurance shall cover the following:
  - (1) All buildings and improvements upon the land and all personal property included in the common elements in an amount equal to the maximum insurable replacement value without deduction for depreciation, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire, flood or other hazards covered by a standard extended coverage endorsement, and such other risks as are customarily covered with respect to buildings similar to the buildings on the land, such as vandalism and malicious mischief.
  - (2) Public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association, and with a cross liability endorsement to cover liabilities of the apartment unit owners as a group to an apartment unit owner.
  - (3) Workmen's compensation as required by law.
  - (4) Insurance coverage shall be provided to protect the Directors of the Association from any and all liability arising out of the performance of their duties.
  - (5) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.
- C. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except such additional insurance as may be desired by a unit owner under Paragraph F herein.
- D. The Board of Directors of the Association, acting on behalf of the apartment unit owners, is hereby irrevocably appointed agent for each apartment owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.
- E. All apartment unit owners and mortgagees of apartment unit owners may request copies of each insurance policy purchased by the Association, showing the name of the insurance trustee, the name of the insurance company, the policy number, the effective date and the expiration date of the policy, the total amount of the policy and the name and address of the insurance agent issuing the policy. The copy shall also provide that the apartment unit owner and the mortgagee of each apartment unit owner shall be furnished notice of any change in or cancellation of the policy with thirty (30) days prior written notice before the effective date of said change or cancellation.
- F. Each apartment unit owner shall have the right to insure his own apartment unit for his own benefit, though this provision will not alter or vary the requirement that the Association purchase insurance on all buildings and improvements in the Condominium. Any apartment unit owner that has made, or does make, permanent improvements, which have been approved in writing by the Association, within his/her apartment unit that have become or will become affixed to the realty, and who desires additional specific contingent insurance on such improvements, may request the Association's insurance trustee to include this coverage as a separate item in the Association's policy's standard Improvements and Betterments clause, the premiums for said additional coverage to be paid for in advance by the apartment unit owner at his/her own expense and said premium shall not be a portion of the common

expenses of the Association. The Association's insurance trustee may not unreasonably deny such a request, but it shall be liable for failure to see that such additional insurance is properly issued.

- G. The Association will not purchase or obtain insurance to cover the personal property of each apartment unit owner, nor will the Association purchase or obtain insurance to cover the individual liability of an apartment unit owner for injuries and damages suffered by anyone or anything within an apartment unit if said injuries or damages are not a liability of the Association.

#### Section 10, Repair and Replacement of Destroyed Property

- A. Damage to or destruction of any one or all of the buildings and/or improvements shall be promptly repaired and restored by the Board of Directors of the Association using the proceeds of insurance for that purpose. If there is a deficiency in the proceeds of the insurance policies, the apartment unit owners shall be assessed, as a common expense, the difference between the amount of the insurance proceeds and the amount necessary to repair, rebuild or replace the damaged building or improvement to its original condition.
- B. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures or buildings, which plans are recorded in Unit Ownership Book 2, Page 163-175, of the Public Registry of Dare County, North Carolina.
- C. Because of the horizontal development of The Quay Condominium, in the event an apartment building is totally destroyed, the Board of Directors of the Association is hereby directed to promptly cause the erection of an identical building to be commenced, using the proceeds of insurance for that purpose. If there is any deficiency in the insurance proceeds for complete restoration, the difference shall be borne by all the apartment unit owners in the Condominium as a common expense.
- D. Only in the event of a destruction of two-thirds (2/3) of all apartment buildings situated on land subjected to the Unit Ownership Act, shall the provisions of North Carolina General Statutes Section 47A-25 become operative. This provision shall in no way derogate from North Carolina General Statutes Section 47A-16 providing for termination of unit ownership.
- E. Any proceeds remaining from any insurance policies after damages for which proceeds have been paid for repair or restoration, and such repair or restoration has been completed, shall be paid to the Association to be applied to common expenses.
- F. If damage occurs only to those part of an apartment unit for which the responsibility of maintenance and repair is that of the apartment unit owner as provided in Section 5.A., then the apartment unit owner shall be responsible for construction and repair after casualty.

#### Section 11, Use Restrictions

- A. Each of the apartment units shall be occupied only by a family, its servants and guests, or tenants and their servants and guests, as a residence, or vacation or resort retreat, and for no other purpose. No apartment unit may be used for any commercial or professional purpose, provided, however, this restriction shall not prohibit any unit owner from renting, leasing or letting his unit for any period of time.
- B. The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the apartment 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 clotheslines, except inside the patio area out of the view of any other apartment unit, is prohibited. No apartment unit owner shall permit any use of his/her apartment unit, or of the common elements,



No immoral, improper, offensive, or unlawful use shall be made of the Condominium property or any part thereof. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modifications, 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, tent, barn, storage shed, garage, tree house or other similar outbuilding or structure shall be placed on the property at any time, either temporarily or permanently. This restriction shall not apply to the Developer, or his contractor and subcontractors, until such time as all apartment units have been constructed and sold.
- E. No signs (including but not limited to "for sale", "for rent", or the unit owner's name) shall be erected or maintained on any apartment unit or any portion of the common elements, 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 previously adopted sign format adopted by the Board of Directors to indicate the apartment unit owner's name.
- F. Until the Developer has completed and sold all of the apartment units, neither the apartment unit owners, nor the Association, nor the use of the Condominium property shall interfere with the completion of the contemplated improvements and the sale of the apartment units. The Developer may make such use of the unsold apartment units and common areas as may facilitate such completion and sale, including but not limited to the maintenance of a sales office, the showing of the property and the display of signs.
- H. All utilities serving the Condominium property (including but not limited to electrical utility service, telephone service, television coaxial cable service, water, sewage and drainage) shall be located underground along and under easements heretofore reserved in Paragraph B of Section 17 of this Declaration. The use of exterior radio or television antennas on the roof or outside of any building is expressly prohibited. Each apartment unit owner shall be responsible for all charges and assessments made by any utility company or municipal agency for service furnished each individual apartment unit. Charges and assessments for utilities furnished to the common elements shall be a common expense borne by the Association.
- I. The terms and conditions of those agreements between Seawatch Ltd., Nags Head Village Service Company, Inc., Nags Head Village Owners Association, the Town of Nags Head, are incorporated herein by reference as if fully set forth herein.
- J. Reasonable regulations concerning the use of the Condominium 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 apartment unit owners upon request.
- K. In the event of a violation or 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 apartment 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.
- L. No property subject to this Declaration of Unit Ownership shall be used, purchased, owned, or sold on a "time-sharing" or "interval ownership" basis, or on any other basis substantially similar to such form of ownership, or designed so as to produce similar results. For this

purpose "time-sharing" means a combination of (1) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by a declaration or by a deed conveying the time-share estate, coupled with (2) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein. For this purpose "interval ownership" means a combination of (1) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recording schedule, with the series thus establishing recurring regularly until the term expires, coupled with (2) a vested undivided fee simple interest in the remainder in that unit the magnitude of that interest having been established by a declaration or by a deed creating the interval estate.

#### Section 12, Compliance and Default

- A. Each apartment unit owner shall be governed by and shall comply with the terms of this Declaration, by the By-Laws of the Association and the regulations adopted pursuant thereto, and by such documents and regulations as they may be amended from time to time. A default shall entitle the Association, or other apartment unit owners, to the relief described in Paragraph B of this Section in addition to the remedies provided by the Unit Ownership Act.
- B. An apartment 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 thier guests, tenants, employees, agents or lessees. This provision shall apply even though the maintenance, repair or replacement would otherwise be a common expense to be paid by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of an apartment unit or its appurtenances.
- C. The failure of the Association or any apartment unit owner to enforce any covenant, restriction or other provision of this Declaration, the By-Laws of the Association or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

#### Section 13, Amendments - This Declaration may be amended by the Association in the following manner:

- A. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the members of the Association at which a proposed amendment is to be considered.
- B. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by any member of the Association. Directors and members not present in person or by proxy at any meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by (1) not less than 66 2/3% of the entire membership of the Board of Directors and by not less than 66 2/3% of the votes of the entire membership of the Association; or (11) not less than 80% of the votes of the entire membership of the Association.
- C. No amendment shall discriminate against any apartment unit owner or against any apartment unit or class or group of apartment units unless the apartment unit owners so affected shall consent. No amendment shall change any apartment unit nor the share in the common elements appurtenant to it, nor increase the apartment unit owner's share of the common expenses, unless the record owner of the apartment unit and all record owners of liens thereon shall join in the execution of the amendment. All unit owners shall be bound to abide by any amendment so adopted. All unit owners must consent to and join in such amendment.

- D. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Office of the Dare County Register of Deeds.

#### Section 14, Agent for the Service of Process

C. Howard Cliborne, whose address is Post Office Box 596, Nags Head Dare County, North Carolina, 27959, is hereby designated as the agent upon whom service of process may be made in any action or proceeding brought against the Condominium.

#### Section 15, Termination

- A. This Condominium may be terminated by all of the apartment unit owners executing an instrument for that purpose to be recorded in the Dare County Registry. Said instrument must also include the consent of all holders of liens on apartment units, or must include the consent of all holders of liens on apartment units that his or its lien may be transferred to the percentage of the undivided interest of the apartment unit owner subsequent to termination.
- B. When a termination has been effected as herein provided, all the property previously subject to the Unit Ownership Act shall be deemed to be owned by all of the apartment unit owners as tenants in common, including those parcels of land over which an apartment unit is situated. Each tenant's undivided interest shall be that percentage of the undivided interest previously owned by such apartment unit owner in the common elements and facilities.

#### Section 16, Severability

The invalidity in whole or in part of any covenant or restriction, or any section, subsection, paragraph, sentence, clause, phrase or word, or other provision of this Declaration, or the By-Laws and regulations of the Association, shall not affect the validity of the remaining portions thereof.

#### Section 17, Miscellaneous Provisions and Declarant's Rights

- A. Encroachment Easement - The entire condominium property including the common areas and individual apartments shall be subject to easements for encroachments which now exist or hereafter may exist, caused by the settlement or movement of the building, or caused by minor inaccuracies in construction or reconstruction, which encroachments shall be permitted to remain undisturbed and which easements shall run in favor of the apartment owners, the Association, and the Declarant.
- B. The Declarant reserves the right to grant such easements for utility service, drainage, pedestrian and vehicular traffic, or otherwise, as may be considered by the Declarant, or its successors or assigns, desirable for the use of the property of the condominium for the purposes herein stated or to provide utility service, drainage, pedestrian and vehicular access to and from the adjoining property of the Declarant. In conjunction with the reservation as aforesaid, the Declarant expressly reserves a perpetual easement over all driveways and parking areas constituting a part of the common properties plus such areas as may be needed to connect said driveways and parking areas with U.S. Highway 158 Business, and adjoining property of Declarant, location of such driveways and parking areas to be chosen by the Declarant, or its successors and assigns. Such easement shall be considered an easement appurtenant to said property and all portions thereof and to run with said property and all portions thereof.

- C. Parking - Inasmuch as each apartment owner has parking space beneath the apartment unit which is a part of the individual condominium unit for the exclusive use of the owner of such unit, remaining parking areas are considered common properties and the Association may from time to time adopt regulations as necessary for the use of the common parking areas. The parking area beneath each unit is the parking space for such unit, as shown on Plans and Specifications and Plat.
- D. Waiver of Partition - No owner or other person or entity acquiring any right, title and interest in any apartment unit shall seek or obtain through any legal procedure, judicial partition of the apartment unit at any time. If however, any individual apartment units shall be owned by two or more persons as tenants in common or as joint tenants, herein shall prohibit judicial sale of the entire apartment in lieu of partition as between co-tenants or joint tenants.
- E. Right of Entry into Condominium Units in Emergencies - In the case of any emergency originating in or threatening any condominium unit, regardless of whether the owner or his lessee is present at the time of such emergency, the Board of Directors of the Association, 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 cause of such emergency and such right of entry shall be immediate.
- F. Right of Entry for Maintenance of Common Property - Whenever it may be necessary to enter any condominium unit for the purpose of performing any maintenance, alteration or repair to any portion of the common property, the owner of each condominium unit shall permit other owners or their representatives or the duly authorized agent of the Association or the managing agent, to enter such condominium unit for such purposes, provided that the entry shall be only at reasonable times and with reasonable advance notice.
- G. Right of Association to Alter, Improve Common Property and Assessments Therefor - The Association 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/her condominium unit, provided such alterations and improvements are approved by the Board of Directors of the Association and an affirmative vote of 75% of the membership of the Association, and the cost of such alteration and improvement shall be a common expense to be assessed and collected from all owners of the condominium units. However, where any alterations or improvements are exclusively or substantially for the benefit of owner or owners of certain condominium units requesting the same, then the cost of such alteration or improvement 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 in such portion as may be determined by the Board of Directors of the Association.
- H. Association to Maintain Registry of Owners and Mortgagees - The Association shall at all times maintain a registry setting forth the name or names of all owners 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 Association in writing of his interest in such condominium unit, together with such recorded information that shall be pertinent to identify the interest by which such purchaser or transferee has acquired his interest in any condominium unit and his address. Further, the owner of each condominium unit shall notify the names of the parties holding any mortgage or mortgages on any condominium, and such other necessary information so as to

identify the mortgagee and the mortgagee's address for purposes of notice in the event of any breach of an obligation of the condominium. The Association shall register and maintain in its files all pertinent information relating thereto for purposes of notice.

- I. All references to the Developer in the establishment of the Owners Association before March 31, 1984, refers to Phase I in all cases. The turnover for Phase II will be provided in the amended Declaration, bringing Phase II into the terms of this original Declaration.
- J. The Association on behalf of Unit Owners, shall become a member of the Nags Head Village Owners Association for the purpose of administering common areas of Nags Head Village, as required by the Town of Nags Head.

Spruillco, Ltd., Trustee, and Home Savings and Loan Association join in this Declaration for the sole purpose of consenting to the submission of all that portion of the property herein described in the Unit Ownership Act which is described in a deed of trust from Seawatch Ltd., a Partnership to Spruillco, Ltd., Trustee, for the benefit of Home Savings and Loan Association duly recorded in Book 335, at Page 1022 of the Public Registry of Dare County, North Carolina and Spruillco, Ltd., Trustee, and Home Savings and Loan Association agree that the land conveyed in the aforementioned deed of trust shall be subject to the provisions of this Declaration, for the purposes of creating a condominium form of ownership of said land, but in no way shall this joinder affect the validity of the lien of the aforementioned deed of trust, it being expressly retained on all the property therein described.

IN WITNESS WHEREOF, Seawatch Ltd., Spruillco, Ltd., Trustee, and Home Savings and Loan Association have caused this instrument to be executed by their duly authorized corporate officers and partnership parties in their respective corporate and partnership capacities this day and year first above written.

SEAWATCH LTD., A NORTH CAROLINA PARTNERSHIP

By: HSL INVESTORS, INC., a Partner

By: Sho H. PS, Jr.  
President

ATTEST:

Danille R. Greene  
Secretary

(CORPORATE SEAL)

By: K G CONSTRUCTION, INC., a Partner

By: Charles C. Boone  
President

ATTEST:

Debra B. Clifton  
Secretary

(CORPORATE SEAL)

SPRUILLCO, LTD., A NORTH CAROLINA CORPORATION

By: Richard D. Rose  
(Vice) President

ATTEST:

William S. Clifton  
Secretary

(CORPORATE SEAL)

HOME SAVINGS AND LOAN ASSOCIATION

By: Sho H. PS, Jr.  
President

ATTEST:

Danille R. Greene  
Secretary

(CORPORATE SEAL)

NORTH CAROLINA  
DADE COUNTY  
Wash

I, Carol C. Pelt, a Notary Public of the County and State aforesaid, certify that Danille R. Greene personally came before me this day and acknowledged that he/she is Secretary of HSL Investors, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by Danille R. Greene, as its Secretary, on behalf of the corporation in its capacity as a partner in Seawatch Ltd., a North Carolina Partnership.

Witness my hand and notarial seal, this the 15<sup>th</sup> day of September, 1983.

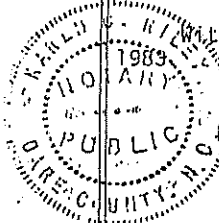
NOTARIAL SEAL

Carol C. Pelt  
Notary Public  
My commission expires: 7/25/86

CAROL C. PELT  
NOTARY PUBLIC  
NASH COUNTY, N. C.

NORTH CAROLINA  
COUNTY OF DARE

I, Karen C. Riley, a Notary Public of the County and State afore-  
said, certify that Helen C. Liborne personally came before me this day and  
acknowledged that he/she is Secretary of K G Construction, Inc., and  
that by authority duly given and as the act of the corporation, the foregoing  
instrument was signed in its name by its President, sealed with its  
corporate seal, and attested by her, as its  
Secretary, on behalf of the corporation in its capacity as a partner in Seawatch  
Ltd., a North Carolina Partnership.



Witness my hand and notarial seal, this the 10th day of October

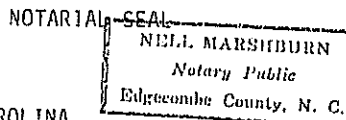
NOTARIAL SEAL

Karen C. Riley  
Notary Public  
My commission expires: 10-26-86

NORTH CAROLINA  
COUNTY OF Edgemore

I, Nell Marshburn, a Notary Public of the County and State afore-  
said, certify that William S. Chubb, Jr. personally came before me this  
day and acknowledged that he/she is Asst. Secretary of Spruillco, Ltd., A  
North Carolina Corporation, and that by authority duly given and as the act of  
the Corporation, the foregoing instrument was signed in its name by its Vice  
President, sealed with its corporate seal and attested by him/her as its Asst.  
Secretary.

Witness my hand and notarial seal, this the 4th day of October  
1983.



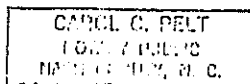
Nell Marshburn  
Notary Public  
My commission expires: 1-24-85

NORTH CAROLINA  
COUNTY OF Nash

I, Carol C. Pelt, a Notary Public of the County and State afore-  
said, certify that Quincey K. Stines personally came before me this  
day and acknowledged that he/she is Secretary of Home Savings and Loan  
Association, and that by authority duly given and as the act of the Corporation,  
the foregoing instrument was signed in its name by its President,  
sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and notarial seal, this the 12th day of September,  
1983.

NOTARIAL SEAL



Carol C. Pelt  
Notary Public  
My commission expires: 7/25/86

NORTH CAROLINA  
DARE COUNTY

The foregoing certificates of Carol C. Pelt, a Notary Public of Nash County,  
North Carolina, Karen C. Riley, a Notary Public of Dare County, North Carolina,  
and Nell Marshburn, a Notary Public of Edgemore County, North Carolina,

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.

Alvin L. Wise

REGISTER OF DEEDS FOR DARE COUNTY

By \_\_\_\_\_ Deputy/Assistant Register of Deeds

RECORDED: October 13, 1983

## EXHIBIT I

All that certain parcel of land situated in the Town of Nags Head, Nags Head Township, Dare County, North Carolina, adjoining U.S. Highway 158 Business known as Virginia Dare Trail, Atlantic Ocean, other lands of the Florence Epstein Estate and a seventy foot parcel of land owned by the town of Nags Head, extending from said highway to the Atlantic Ocean and more particularly described as follows:

Beginning at an existing concrete monument in the Southwest corner of property conveyed to the Town of Nags Head at a 70 foot right of way, running thence from said beginning point North 63 deg. 25 min. 54 sec. East a distance of 450 feet more or less to the high water mark of the Atlantic Ocean; thence turning and running Southerly along the high water mark of the Atlantic Ocean a distance of 346.10 feet to a point; thence turning and running South 63 deg. 28 min. 02 sec. West a distance of 450 feet more or less to an iron pipe situated in and on the Eastern margin of U.S. Highway 158 Business known as Virginia Dare Trail; said point being on a course of South 26 deg. 30 min. 15 sec. East a distance of 346.10 feet from the point of beginning; thence turning and running North 26 deg. 30 min. 15 sec. West and along the Eastern margin of the aforesaid highway right of way a distance of 346.10 feet to the concrete monument at the point or place of beginning.

Said lands being shown on a map or plat entitled "The Quay" bearing date of August 31, 1983, by W. M. Meekins, Jr. and Associates, duly recorded in Unit Ownership Book 2, Page 163, of the Public Registry of Dare County, North Carolina.



## EXHIBIT II

All that certain parcel of land situated in the Town of Nags Head, Nags Head Township, Dare County, North Carolina, adjoining the Atlantic Ocean, U.S. Highway 158 Business known as Virginia Dare Trail, other lands of the Florence Epstein Estate, property of the Quay, Phase I, and more particularly described as follows:

Beginning at an iron pipe situated in and on the Eastern margin of U.S. Highway 158 Business known as Virginia Dare Trail, said beginning point being situated on a course of South 26 deg. 30 min. 15 sec. East a distance of 346.10 feet from a concrete monument situated in the Southwest corner of a parcel of land owned by the Town of Nags Head designated as a 70 foot right of way, running thence from said beginning point North 63 deg. 28 min. 02 sec. East a distance of 450 feet more or less to the shore of the Atlantic Ocean; thence turning and running in a Southerly direction along the shore of the Atlantic Ocean 286.20 feet to a point; thence turning and running South 63 deg. 29 min. 45 sec. West 450 feet more or less to a concrete monument situated on the Eastern margin of the aforesaid highway right of way; thence turning and running along the Eastern margin of the aforesaid highway right of way North 26 deg. 30 min. 15 sec. West a distance of 286.10 feet to the point or place of beginning.

Said parcel of land being designated by the number 11 on a plat entitled "The Quay" prepared by W. M. Meekins, Jr. and Associates dated August 31, 1983, and duly recorded in Unit Ownership Book 2, Page 163, of the Public Registry of Dare County, North Carolina.

## EXHIBIT III

THE QUAY  
SPECIFICATIONS FOR NEW CONSTRUCTION

1. **PILINGS:**  
Provide 108 30,000 pound pilings, per building, driven to a depth of maximum resistance as shown on plans. Maximum piling penetration - 20 feet below foundation.
2. **FOUNDATIONS:**  
Each wall area shall have a continuous concrete beam poured over each piling and connected along the entire wall length with a network of 3/4", 7/8" and 1" steel re-bars installed as per plans. Concrete design mix shall be 3,000 psi minimum compressive strength. Termite protection YES
3. **MASONRY WALLS:**  
Each unit shall be partitioned from the adjoining unit with a 8" wall of 75% solid masonry units conforming to Section 716.2 of the N.C. Building Code and shall be approved to have a 4 hour fire resistance rating. Each party wall between living units extend a minimum of 3 feet above the roof line in accordance with the Town Nags Head Zoning Ordinance for Townhouse construction within Nags Head Village. All end walls outside of each living area shall be brick veneer or solid brick construction. Masonry reinforcement shall be standard wire construction every other block course and with 7/8" and 3/4" re-bars every 4 feet along the entire length for the full height of the wall. At each floor level a continuous bond beam shall be laid the length of the wall to be filled with 3,000 pound concrete and 2 5/8" steel rods. Steel bolts shall be installed under the 5/8" rods to anchor floor plates.
4. **EXTERIOR WALLS:**  
Wood frame: Grade and species - SYP #2 Studs: 2 x 4 16" O/C. Headers as required for openings. Sheathing to be exterior grade sheetrock with waterproof surface. Exterior finish surface to be Dryvit Outsulation as manufactured by Dryvit System Inc.
5. **FLOOR & ROOF FRAMING:**  
Shall be in accordance with "Design Criteria for Trusses Rafters". Material shall be #2 SYP and in size 2" x 14" placed 2 feet O/C in accordance with plans for floor trusses. Roof Trusses shall be on 24" centers, 58'7" in length. Blocking to be furnished as required.
6. **SUBFLOORING:**  
Material shall be 3/4" plywood with tongue and grooved edges. Each joint shall be properly glued and nailed to floor joists. Foyer, utility and carport area - to be 4" poured in place concrete with wire mesh reinforcement.
7. **ROOFING:**  
Sheathing shall be 1/2" plywood deck covered with required layers of 15# felt. Shingles shall be a minimum of 235 lbs. per 100 square feet of Class A fire resistive fiberglass material providing "hold down" features against wind damage per coastal requirements of the N.C. Building Code. Flashing to be 26 gauge galvanized and provided as required by drawings.
8. **EXTERIOR TRIM & FINISH:**  
All fascia boards at roof will be stained, all other wood on balconies, trim, and steps shall be #2 SYP salt-treated without stain. Utility and carport walls shall be stained and/or painted as required. All balcony decks to be finished with lightweight concrete surfaces.
9. **EXTERIOR DOOR AND WINDOWS:**  
Entrance door shall be 3'0" width steel benchmark door with full length glass sidelight. Windows shall be 3'0" X 6'0" Bennings #451 with insulated glass. Patio doors shall be Carvel wood doors as manufactured by "Peachtree" and shall be 9'0" X 6'8" on the east side and 6'0" X 6'8" on the west side of the building. The east side openings shall have installed on the exterior an Aluminum Accordion shutter as manufactured by Bernardo Shutter Corporation.

10. INTERIOR WALL AND CEILING SURFACES:  
All block and room partition walls and ceilings to have 1/2" sheetrock, with smooth finished taped joints, installed.
11. INSULATION:  
Outside walls to have fiberglass batt insulation equivalent rating R-19.  
Ceiling above second floor and floor of first floor to have fiberglass batt insulation equivalent rating - R-30.
12. PAINT AND WALLPAPER:
- | Rooms                     | Wall Finish                       | Ceiling Finish      |
|---------------------------|-----------------------------------|---------------------|
| Kitchen                   | Wallpaper                         | Drop Acrylic Panels |
| Baths                     | Wallpaper                         | Blown               |
| Vanity Area               | Wallpaper                         | Blown               |
| Living Room               | Wallpaper                         | Blown               |
| Dining Room               | Wallpaper                         | Dropped and Blown   |
| All other rooms and halls | Painted with primer and two coats | Blown               |
13. INTERIOR DOORS AND TRIM:  
Doors to be flush type 1 3/8" thick, birch wood with natural finish. Door trim and base to be finished natural in sizes shown on drawings. Bath and vanity areas to have mirrors, towel bars and paper holders as required.
14. CABINETS:  
Kitchen and Bath cabinets shall be prefinished base and counter tops as shown on drawings and installed by supplier.
15. FLOORS:  
Foyer to be tiled. Kitchen, bath and vanity areas to be Sun Dial Solarian or equivalent. All other floor areas to be covered with 1/2" #2 carpet pad and 100% plush nylon carpet.
16. APPLIANCES:  
Following items will be furnished each unit:
- (a) 18 cubic foot refrigerator with icemaker and energy saver switch
  - (b) Self-cleaning free-standing range
  - (c) Multi-cycle Energy-saver Dishwasher
  - (d) Micro-wave oven with combination exterior vented hood
  - (e) Heavy Duty Automatic Washer with multi selections for water and speed
  - (f) Heavy Duty Energy-saver Dryer with Temperature and Time cycle selection
  - (g) Under counter 45 lb. ice maker at wet bar
  - (h) 1/HP Sound Shield Disposal
17. FIREPLACE:  
Fireplaces to be installed as per Heatilator Model FP36 or equivalent with brick hearth and wood mantel
18. ELECTRICAL:  
A 200 AMP Main Breaker panel with individual breakers and circuits as shown on the electrical diagram of the plans.  
Fixtures shall be furnished as detailed in the plans with ceiling, vanity lights and exhaust fans in all baths. Each bedroom and the living room will be furnished a 52" ceiling fan. Outside lights, foyer and hall lights will be furnished as required. A dining room fixture may be provided by owner and a credit of \$75.00 will be allowed.
19. HEATING AND AIR CONDITIONING:  
Each unit will be furnished a 2 1/2 Ton Rheem Heat Pump unit. End units will be furnished a 3 Ton unit. All supply and return ducts will be insulated. Thermostats to be provided and installed.

20. PLUMBING:  
All water lines below grade to be Type K copper and above, Type L copper. Sewer Lines to be Schedule 40 ABS pipe. Stops to be provided at all sinks and one master cutoff/drain valve at ground level. Fixtures to be American Standard water closets; Owens Corning Fiberglass Tub/Showers (Master Bath - Owens Corning Whirlpool Tub/Shower); Delta Faucets; Precast Marble Vanity/Bowltops; and 52 gallon quick recovery, energy-saver water heater. Double stainless steel Kitchen Sink and single stainless steel bar sink.
21. LANDSCAPING:  
In accordance with plans of McNelly Associates, Landscape architects.
22. WARRANTY:  
(a) Prior to occupancy and closing Buyer may inspect unit and provide a corrections list but not earlier than 2 weeks before closing.  
(b) After date of occupancy, Owner must furnish a list of discrepancies for correction with 30 days.  
(c) After 30 days, only items covered by manufacturers and/or suppliers warranties may be presented for correction.