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**DECLARATION OF CONDOMINIUM**  
**FOR**  
**MARSHES LIGHT MARINA CONDOMINIUMS**



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**DECLARATION OF CONDOMINIUM**  
**FOR**  
**MARSHES LIGHT MARINA CONDOMINIUMS**

**THIS DECLARATION OF CONDOMINIUM** for Marshes Light Marina Condominiums (this "Declaration") is made this 30th day of July, 2007 by Marshes Light, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

**BACKGROUND STATEMENT**

Declarant is the developer of that property situated within the historic town of Manteo on Roanoke Island, North Carolina as more particularly described within the Master Declaration of Covenants, Conditions and Restrictions for Marshes Light (the "Master Declaration") which Master Declaration provides for Marshes Light to be developed in phases of Neighborhoods consisting of residential and commercial uses which may include by way of example and not limitation: individually owned single-family lots and residential condominiums and townhomes, condominiums and cottages all with mixed retail and residential uses. The Neighborhood of Marshes Light Marina Condominiums shall consist of up to five (5) buildings of residential units, subject to Declarant's right to redesignate such unit types and subject to the





right to combine and/or subdivide the units, as hereinafter set forth. The Declarant has deemed it desirable to create an incorporated owners association which will be delegated and assigned powers of maintaining and administering the common elements and facilities within the Buildings; of administering and enforcing the covenants and restrictions created in this Declaration; and of levying, collecting and disbursing the assessments and charges created in this Declaration; of collecting and holding replacement reserves as agent for the Unit Owners; and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the condominium units and to promote the recreation, health, safety and welfare of the Owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

## STATEMENT OF DECLARATION

**NOW THEREFORE**, the Declarant hereby declares that all of the property described in Section 2.1 below (the "Submitted Property") shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Submitted Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Submitted Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

## ARTICLE I

### Definitions

1.1 Definitions. The terms defined in Section 47C-1-103 of the North Carolina Condominium Act shall be deemed to have the meanings therein specified whenever they appear in the Condominium Instruments unless the context otherwise requires and except to the extent, if any, that such definitions are changed below. In addition, the other terms defined below shall be deemed to have the meanings specified whenever they appear in the Condominium Instruments unless the context otherwise requires. These definitions shall apply whether or not the defined terms are capitalized.

1.2 "Act" shall mean and refer to the North Carolina Condominium Act, which is Chapter 47C of the North Carolina General Statutes, as amended.

1.3 "Additional Real Estate" shall mean and refer to the following parcels of land on the Marshes Light Site Plan approved by the Town of Manteo for which a



Conditional Use Permit has been issued: that parcel of land constituting a footprint of 6,650 square feet identified as Building 15; that parcel of land constituting a footprint of 6,650 square feet identified as Building 16; and that parcel of land constituting a footprint of 6,958 square feet identified as Building 17.

1.4 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for Marina Unit Owners' Association, Inc. filed in the office of the Secretary of State of North Carolina and in the office of the Register of Deeds of Dare County, North Carolina, as the same may be amended from time to time.

1.5 "Assessment" shall mean and refer to the share of the Common Expenses from time to time assessed against a Condominium Unit and its Owner by the Association in the manner herein provided.

1.6 "Association" shall mean and refer to Marina Unit Owners' Association, Inc., a North Carolina non-profit association incorporated under Chapter 55A of the General Statutes of North Carolina for the purpose of exercising the powers of the Association under the Act and the Condominium Instruments, a copy of the Articles of Incorporation are attached hereto as Exhibit "D".

1.7 "Board of Directors" or "Board" shall mean and refer to the board of directors of the Association, which is the governing body of the Association.

1.8 "Building" shall mean and refer to a structure in which the Units and a portion of the Common Elements are located on the Submitted Property.

1.9 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time, a copy of the initial Bylaws being attached hereto as Exhibit "C", and incorporated herein by reference, and all amendments to such bylaw which may from time to time be adopted.

1.10 "Common Elements" shall mean and refer to the portions of the Submitted Property which are not included in the Units, as more fully set forth in Section 3.6, provided, however, if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated exclusively to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. The land beneath the footprint of a Building as shown on the Site Plan is the only real estate that is a part of the Common Elements of the Condominium. Property beyond the footprint of the Condominium Building is a part



of the property of Marshes Light as more particularly described within the Master Declaration and said property is not a part of the Common Elements of the Condominium.

1.11 "Common Element Interest" shall mean and refer to the percentage assigned to each Unit by this Declaration, which establishes each Unit's: (a) appurtenant undivided ownership interest in the Common Elements; (b) liability for Common Expenses; (c) interest in surplus funds of the Association; and (d) vote in the Association.

1.12 "Common Expenses" shall mean and refer to all sums lawfully assessed against the Unit Owners by the Association; expenses of administration, maintenance, repair or replacement of the Common Elements (including any Limited Common Elements) together with any allocations to reserves; expenses agreed upon as Common Expenses by the Association, expenses declared common expenses by the provisions of the Act, this Declaration or the Bylaws; and expenses owed to the Marshes Light Master Association.

1.13 "Condominium" shall mean and refer to the Marshes Light Marina Condominiums as established by the submission of the Submitted Property to the terms of the North Carolina Condominium Act.

1.14 "Condominium Instruments" shall mean and refer to this Declaration, the Bylaws, the Plat and the Plans, including any and all exhibits, schedules, certifications and amendments thereof, as they may exist from time to time.

1.15 "Condominium Unit" shall mean and have the same definition as "Unit" in Section 1.47 below.

1.16 "Declarant" shall mean and refer to initially Marshes Light, LLC, a North Carolina limited liability company, which is the fee simple owner of the Property submitted to the Act and has executed this Declaration and any successors in interest, or any party to which it assigns its rights as Declarant under this Declaration.

1.17 "Declarant Control Period" shall mean and refer to the period prior to the earliest of: (i) One hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than the Declarant; (ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; (iii) two (2) years after any development right to add new Units



was last exercised; or (iv) the date specified by the Declarant in a notice to the Association that the Declarant Control Period is to terminate on that date..

1.18 "Declaration" shall mean and refer to this Declaration of Condominium as it may be amended in the future.

1.19 "Default Assessment" shall mean and refer to the Assessments levied by the Association pursuant to Section 10.6 below.

1.20 "Default Rate" shall mean and refer to an annual rate of interest that is lesser of (i) five percent above the prime rate of interest charged by the Association's bank, or such other rate as shall have been established by the Board of Directors, and (ii) the maximum rate permitted by the Act or other applicable law.

1.21 "Director" shall mean and refer to a member of the Board of Directors of the Association.

1.22 "Dispute" shall mean and refer to Sections 18.2 and 18.3 and any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or Bylaws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (ii) alter or add to a Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or Bylaws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.

1.23. "First Mortgagee" shall mean and refer to the holder, guarantor, and insurer of a Mortgage or a beneficiary under a Deed of Trust.

1.24 "Institutional Mortgagee" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.



1.25 "Limited Common Elements" shall mean and refer to those parts of the Common Elements which are Limited Common Elements within the meaning of the Condominium Act and which are reserved for the exclusive use of one or more, but less than all, of the Units and the Unit Owners. The Limited Common Elements existing at the time of the recordation of this Declaration are shown on the Plans, but shall also consist of any other portions of the Condominium which serve and benefit less than all of the Units.

1.26 "Limited Common Expenses" or "LCE" shall mean and refer to expenses separately assessed against one (1) or more but less than all of the Units. Except where the context requires otherwise, Common Expenses shall include Limited Common Expenses unless specifically noted and any reference within the Condominium Instruments to "LCE" shall refer to all classes of LCE.

1.27 "Majority Vote" shall mean and refer to a simple majority [more than fifty percent (50%)] of the votes actually cast in person or by proxy at a duly called and held meeting at which a quorum is present, with the allocations of votes among Owners in accordance with Section 4.3 Any specified percentage vote means that percentage vote with respect to the votes actually cast in person or by proxy at a duly held meeting at which a quorum is present. Any specified percentage vote of the Mortgagees means a vote by the Mortgagees of Units to which such percentage of the total number of votes appertain.

1.28 "Management Agent" shall mean and refer to that person initially employed by the Declarant during the Declarant Control Period and the Association thereafter to perform obligations, duties and services relating to the management and maintenance of the Property and the maintenance of reserve funds in compliance with the provisions of this Declaration and the Bylaws.

1.29 "Master Bylaws" shall mean and refer to the Bylaws of Marshes Light Master Association, Inc., a North Carolina non-profit association.

1.30 "Master Declaration" shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions for Marshes Light.

1.31 "Management Agreement" shall mean and refer to any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Property.

1.32 "Member" shall mean and refer to any Unit Owner.



1.33 "Mortgage" shall mean and refer to a mortgage, deed to secure debt, deed of trust, security agreement or other instrument conveying a lien upon or security title to a Condominium Unit as security for a debt or for the performance of an obligation.

1.34 "Occupant" shall mean and refer to any person, including, without limitation, any guest, invitee, tenant, lessee or family member of an Owner, occupying or otherwise using or visiting a Unit.

1.35 "Officer" shall mean and refer to an officer of the Association.

1.36 "Person" shall mean and refer to a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity or any combination thereof.

1.37 "Plans" shall mean and refer to the elevations and floor plans of the Condominium Building prepared by Mary Johnson of Coastal Design/Highland Design and recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Dare County, North Carolina.

1.38 "Plat" shall mean and refer to the "Condominium Plat" survey for the Condominium prepared by Quible and Associates which depicts the location of the Buildings and the Units which Condominium Plat is filed with the Plans.

1.39 "Property" shall mean and refer to the real property submitted to the Act by this Declaration as more fully described in attached Exhibit "A" and in the Plats and Plans filed in the Unit Ownership File in the Office of the Register of Deeds of Dare County, North Carolina and including all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.40 "Rules of Conduct" shall mean and refer to the Initial Condominium Rules attached to the Bylaws as Appendix "A" and included in the Bylaws by reference as part thereof and those other rules of conduct adopted from time to time by the Board of Directors ("Rules of Conduct"), that are deemed necessary for the enjoyment of the Common Elements and Limited Common Elements, respectively, provided they are not in conflict with this Declaration and the Bylaws and the Master Declaration and Master Bylaws of Marshes Light.

1.41 "Schedule of Unit Information" shall mean and refer to the schedule attached hereto as Exhibit "B", which schedule shows for each Unit its Identifying



Number, undivided interest in the Common Elements, number of votes in the Association, and share of liability for Common Expenses.

1.42 "Site Plan" shall mean and refer to Sheets C-3 and C-4 of those plans captioned "Site Plan Historic Manteo a 20.72 Acre Parcel of Land in Manteo" dated March 2005, revised 4/11/05 prepared by Quible & Associates P.C. which Site Plan was approved by the Town of Manteo in connection with the issuance of a Conditional Use Permit and which Site Plan depicts the location of Buildings: 13, 14, 15, 16 and 17 being the Neighborhood of Marshes Light Marina Condominiums.

1.43 "Special Assessment" shall mean and refer to an Assessment levied pursuant to Section 10.5 below on an irregular basis.

1.44 "Special Declarant Rights" shall mean and refer to the rights reserved herein and in the Bylaws for the benefit of the Declarant, as follows: to complete the improvements indicated on the floor plans; to maintain sales offices, management offices, models and signs advertising the Condominium; to use easements through the Common Elements; to elect, appoint or remove members of the Board during the Declarant Control Period and to enter into a contract for the appointment of the management agent for the Condominium.

1.45 "Submitted Property" means the property lawfully submitted to the provisions of the Act and the Condominium Instruments from time to time by the recordation of Condominium Instruments in accordance with the Act. The Submitted Property is the land described in Exhibit "A" and shown on the Plat, together with all improvements thereon and all rights and easements appurtenant thereto.

1.46 "Successor Declarant" shall mean and refer to any party or entity Declarant and assigns any or all of its rights, obligations, or interests as Declarant and evidenced by an assignment of record in the Office of the Register of Deeds of Dare County, North Carolina, designating such party as Successor Declarant, assigned by the transferor and the transferee. Upon such recording, Declarant's rights and obligations under the Declaration shall cease and terminate to the extent provided in such document.

1.47 "Unit" and/or "Condominium Unit" shall mean and refer to a portion of the Condominium intended for independent ownership and use, as more fully set forth and shown on the Plat and Plans consisting of enclosed rooms in the Building and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. For the purpose of defining a Unit, the terms set forth below shall be defined as follows:



1.47.1 "Unfinished Wall" shall mean and refer to the sheetrock which constitutes the interior face of a wall of a Unit.

1.47.2 "Unfinished Ceiling" shall mean and refer to the concrete slabs, unfinished sheetrock or other structural materials which constitute the ceiling of a Unit.

1.47.3 "Unfinished Floor" shall mean and refer to the concrete slab which constitutes the floor of a Unit.

Unit shall include the drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, sub-flooring or floor covering, windows and window frames and glass, doorsteps, stoops, and interior doors and door frames. A Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. A Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services to the Unit and located within the unfinished walls, ceilings and floors; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the Unit but serving more than one Unit.

1.48 "Unit Owner" shall mean and refer to the same meaning as Owner and means one or more persons, including the Declarant, who own a Condominium Unit. This term does not include a Mortgagee in his capacity as such, but shall include any person, firm, corporation or entity capable of holding title to real estate in North Carolina.

1.49 "Vote" shall mean and refer to the vote in the Association appertaining to each Condominium Unit

## ARTICLE II

### Creation of the Condominium

2.1 Submission to the Act. Declarant hereby submits Buildings 13 and 14 of the Marshes Light Marina Condominiums to the Act as more particularly described on Exhibit "A" (the "Submitted Property"). The Submitted Property includes two (2) buildings with each building containing 10 units. The Property and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged and deeded in trust subject to the Act





and the Condominium Instruments. Every person acquiring or having any interest in the Property, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed to in writing, shall take such interest subject to the Act and to the Condominium Instruments and shall be deemed to have agreed thereto.

2.2 Name and Location. The name of the Condominium is "Marshes Light Marina Condominiums." The Condominium is located in the development of Marshes Light situated within the historic Town of Manteo on Roanoke Island, North Carolina.

2.3 Governing Provisions. The Condominium, the Association and each Unit Owner shall be governed by the Act, the Condominium Instruments, and any Rules of Conduct adopted by the Association pursuant to the Condominium Instruments, and the Master Declaration.

2.4 Declarant's Right to Add Additional Real Estate. Declarant expressly reserves the right to add the Additional Real Estate to the Condominium. All or part of the additional real estate identified and described on **Exhibit "A-1"** may be added to the Condominium. Declarant shall have no right or obligation of any kind to add any or all of the additional real estate which may be added in phases. The method of adding the Additional Real Estate to the Condominium shall be pursuant to the Declarant recording an amendment to the Declaration pursuant to Section 47C-2-110 of the Act. The maximum number of Additional Units that may be created within the Additional Real Estate is 24 Units for a total of 44 Units. All such Units will be restricted exclusively to residential use. All restrictions in this Declaration and the Bylaws affecting use, occupancy and alienation of Units will apply to any and all additional Units that may be created within the Additional Real Estate. In the event Declarant adds the Additional Real Estate, then such election will increase each Unit Owner's prorated share of Common Expenses and assessments to one over the number of Units actually constructed and added to the condominium regime. As more particularly described on **Exhibit "B"**.

### **ARTICLE III**

#### **Description of the Condominium**

3.1 Submitted Property. The Submitted Property is described on **Exhibit "A"** and shown on the Plat, and it includes all improvements thereon and all rights and easements appurtenant thereto. The improvements include two (2) buildings with each building containing ten (10) Units. The initial number of Units created in



the Condominium is twenty (20) Units. The Condominium may be expanded by the adding of Additional Real Estate as described in Section 2.4 above.

3.2 Location of the Buildings. The locations and dimensions of the Buildings in which the Units are contained are shown on the Plat and the Plans.

3.3 Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Plans and those numbers are set forth in **Exhibit "B"**.

3.4 Condominium Units. There are a total of twenty (20) Units with ten (10) Units in each Building. Each Condominium Unit consists of the Unit together with its undivided interest in the Common Elements. The Schedule of Unit Information attached hereto as **Exhibit "B"** sets forth for each Condominium Unit: its identifying number and undivided interest in the Common Elements, Vote(s) in the Association, and share of liability for Common Expenses.

Each Condominium Unit shall constitute for all purposes a separate parcel of real property which may be owned in fee simple and which, subject to the provisions of the Act and the Condominium Instruments, may be conveyed and encumbered like any other property. The undivided interest in the Common Elements for each Condominium Unit shall not be altered except as expressly provided by the Act and this Declaration. Such undivided interest shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner shall automatically be a member of the Association, as well as a member of the Master Association which Memberships shall continue during the period of Ownership of the Condominium Unit by such Unit Owner.

3.5 Unit Boundaries. Each Unit shall include all the space within the boundaries thereof. The parametrical or vertical boundaries of each Unit are the vertical planes of the interior surfaces of the metal framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the Common Elements, and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors, if any. The parametrical Unit boundaries include the sheet rock on the Unit side of the walls, with the framing being a part of the Common Elements, and they are extended to their intersection with each other and the upper and lower horizontal boundaries of the Unit. The lower horizontal boundary of each Unit is the plane of the upper surface of the sub-floor of that Unit, and the upper horizontal boundary of each Unit is the lower



surface of the ceiling joists of the Unit, with such sub-floor and framing being a part of the Common Elements. The upper and lower boundaries of each Unit include the wood, dry-wall, plaster or other material forming the ceiling or floor, as may be applicable, on the Unit side of such sub-floor or framing as the case may be and extend to their intersection with the parametrical boundaries of the Units. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit, including without limitation, portions of the heating and air-conditioning system and the hot water heater are deemed to be a part of each Unit. As provided in N.C.G.S. §47C-2102, if any chutes, flues, ducts, conduits, wires, pipes or any other apparatus lies partially within or partially outside of the designated boundaries of a Unit, any portions thereof which serve only that Unit shall be deemed a Limited Common Element of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Further, any fan coil unit mounted above the ceiling of a Unit and the air-conditioning/heating unit located outside the Unit but serving that Unit only shall be deemed to be a part of that Unit. In interpreting the Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any Plat or Plans, regardless of settling or lateral movement of the Building and regardless of minor variance between the boundaries shown on the Plans or in a deed and those variances between the boundaries shown on the Plans or in a deed and those of the Unit. If an Owner acquires an adjoining Unit, thereby becoming the common owner of adjoining Units, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved and subject to the Board's approved Rules of Conduct) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or in part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium, is damaged, destroyed, or endangered. The alterations permitted by the preceding sentence shall not be deemed an alteration or relocation of boundaries between adjoining Units, nor an alteration of the allocated interest in the Common Elements, vote assigned to each Unit, share of liability for Common Expense assessments or other appurtenant rights or interests as such appears on the Schedule of Unit Information attached hereto as **Exhibit "B"**.

3.6 **Common Elements.** The Common Elements consist of all portions of the Condominium other than Units. Certain portions of the Common Elements are



Limited Common Elements, as set out in Section 3.7. The Association and the Owners agree that said Common Elements shall not be subject to partition or division except as set out as follows:

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

3.7 Limited Common Elements. The Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of those persons who are entitled to the use of one or more (but less than all) of the Units. Limited Common Elements are not separate and apart from the Common Elements in general, but are limited only with respect to the exclusive use thereof by the Unit or Units to which they are assigned. Limited Common Elements are assigned as follows and not otherwise:

3.7.1 The: exterior stairways, steps, breezeways, walkways, parking areas underneath buildings, landings, railings and beams associated therewith which serve a building, which are appurtenant to each Unit having any of the foregoing, shall be Limited Common Elements assigned to the Unit or Units having direct access thereto or direct use thereof. If a walkway, steps or other means of access to the door of a Unit is assigned to serve one or more (but less than all) of the Units, then it shall be a Limited Common Element appurtenant to the Unit or Units so served. Each Unit shall also have as a Limited Common Element that portion of the HVAC situated outside the Unit which services their Unit and that Storage Unit located on the ground floor and designated on the Condominium Plat.

3.7.2 All portions of the Common Elements on which there is located any portion of the heating and air-conditioning system exclusively serving a particular Unit or Units shall be a Limited Common Element assigned to that Unit or Units.



3.7.3 The Board of Directors of the Association shall have the ultimate power and responsibility for determining whether Limited Common Areas in need of repair are to be the obligation of the entire Association or the obligation of the Owners of the Units which those Limited Common Elements serve. The Board may, by majority vote, determine the amount and levy any special assessments for repairs of Limited Common Elements consistent with its determination pursuant to this paragraph.

3.8 Undivided Interest of Owners in the Common Elements. The percentage interest in the Common Elements (the "Common Elements") allocated to each Unit is proportionate to that Unit's percentage of square footage to the total square footage within the Building and is set forth in Exhibit "B" attached hereto. The percentages of undivided interest in the Common Elements allocated to each Unit shall not be changed except with: (i) the unanimous written consent of the Owners of the Units whose undivided interest in the Common Elements are changed, together with the consent of the Mortgagees of such Units; and (ii) the consent of the holders of sixty-seven percent (67%) of the votes in the Association, and the consent of fifty-one percent (51%) of the Mortgagees, unless such change affects less than all Units, is approved by the Owners and Mortgagees of such Units, and is specifically authorized elsewhere in this Declaration or in the Bylaws.

3.9 Restraint Upon Separation and Partition of Common Elements.

3.9.1 The Allocated Interests in the Common Elements which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described.

3.9.2 The Allocated Interests in the Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

3.9.3 The Allocated Interest in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements shall lie.

3.9.4 Any actual or attempted conveyance, encumbrance, partition or separation affecting the Common Elements or a Unit shall be subject to the terms of this Declaration.

3.10 Marshes Light Master Association, Inc. The Submitted Property is part of a larger community and development known as **Marshes Light** which community



is governed by a property owners' association known as Marshes Light Master Association, Inc. (hereinafter "MLMA") to which each Unit Owner shall be a member and assessed for expenses. The duties of MLMA include the duty to provide for the preservation of value and the amenities of Marshes Light and to insure that all improvements within Marshes Light are in conformance with the architectural guidelines as administered by the Architectural Review Board and to insure and maintain the overall integrity of the development and to own, maintain, repair and replace streets, boardwalks, utility facilities, landscaping and signage which facilities are not part of the Common Elements of Marshes Light Marina Condominiums. All Unit Owners of Marshes Light Marina Condominiums are also members of MLMA. Each Unit is hereby allotted one vote in MLMA and such vote will be as a Class A member as such is defined in Section 6.03 of the Master Declaration for Marshes Light.

MLMA shall have the right and power to maintain and improve all the facilities of Marshes Light including streets and parking areas and to charge each member a pro rata share of the cost of such maintenance and improvements.

In the case of all costs, expenses, and charges which are hereby made payable by the Unit Owners' Association to the MLMA, the amount to be borne by each Unit Owner shall be equal to the Unit Owner's percentage interest in the Common Elements of the Condominium. The amounts of all such charges, costs and expenses which will be charged by the MLMA to the Unit Owners' Association shall be determined by that formula set forth in Section 7.06 of the Master Declaration.

The MLMA shall not be deemed a Master Association as that term is defined in Section 47C-2-120 of the Act. The MLMA shall have, in addition to those powers, duties, and obligations herein specifically enumerated, all the powers enumerated in the Bylaws of the MLMA, which may be invoked to the extent the MLMA deems it necessary to act on its own behalf or on behalf of the Unit Owners. In the event of any conflict between this Declaration and the By-Laws of the MLMA, the By-Laws of the MLMA shall prevail.

The MLMA is hereby granted the absolute right to appoint, designate and hire the managing entity which will provide management services for all Neighborhoods (as defined in Section 1.33 of the Master Declaration) in Marshes Light.



## ARTICLE IV The Association

4.1 Organization of Association. A North Carolina non-profit corporation known and designated as Marina Unit Owners' Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act.

4.2 Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium Unit. No owner, whether one or more persons, will have more than one membership per Condominium Unit owned, but all of the persons owning each Condominium Unit will be entitled to rights of membership and use and enjoyment appurtenant to such ownership.

4.3 Voting Rights. The total number of votes in the Association shall be allocated to the Units and Members in accordance with each Unit having one vote per Unit, irrespective of the physical dimensions of the Unit.

4.4 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration and the Act, the Association shall be responsible for the administration and operation of the Property and for the exclusive management, control, maintenance, repair, replacement and improvement of the Common Elements (including facilities, furnishings and equipment related thereto) and any Limited Common Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The expenses, costs and fees of such management operation, maintenance and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees. The Board of Directors will exercise for the Association all powers, duties and authority vested in or obligated to be taken by the Association and not reserved to Declarant or the other Members by this Declaration, the other Condominium Instruments, the Act or the Master Declaration of MLMA.

4.5 Owner's Negligence. In the event that the need for maintenance, repair or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner, or by any member of an



Owner's family, or by an Owner's guests, invitees, licensees or tenants, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then the failure to so repay shall be a default by the owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment enforceable in accordance with Section 11.6 below.

4.6 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in the Bylaws, to file liens for unpaid assessments, and to adopt, promulgate and enforce such rules of conduct governing the use of the Units and Common Elements as the Board of Directors may deem to be in the best interest of the Association in accordance with the Bylaws. In the administration of the operation and management of the Condominium, the Association, subject to the provisions of N.C.G.S. §47C-3-105 and §47C-3-112, shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules of conduct governing the use of the Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C.G.S. §47C-3-102, including the right to assign future assessments, assessment rights and income of the Association.

4.7 Notice of Membership. Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded deed, vesting the person with the interest required to make him a Member. At the same time, the Member will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Condominium Instruments. In the event of any change in the facts reported in the original written notice, including any change of ownership, the member will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Member.

4.8 Owner's and Association's Addresses for Notices. All Owners of each Condominium Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Condominium Unit shall furnish such registered address to the Secretary of the





Association within five days after transfer of title to the Condominium Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Condominium Unit or by such persons as are authorized by law to represent the interests of all Owners of the Condominium Unit.

#### 4.9 Rules of Conduct.

4.9.1 Board's Power. From time to time and subject to the provisions of the Condominium Instruments, the Board of Directors may adopt, amend and repeal Rules of Conduct governing among other things and without limitation, the use and rental of the Condominium Units and the use of the Common Elements. A copy of the Rules of Conduct in effect will be distributed to each Member, and any changes in the Rules of Conduct will also be distributed within a reasonable time following the effective date of change.

4.9.2 Enforcement. The Board of Directors will provide for enforcement of the Association rules as set forth in the Bylaws. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of the rules.

#### 4.10 Delegation by Association Board.

4.10.1 Delegation to Manager. The Association, acting through the Board, may employ or contract for the services of a Manager to act for the Association and the Board and the officers according to the powers and duties delegated to the Manager pursuant to the Bylaws or resolution of the Board. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

4.10.2 Committees. The Association, acting through the Board, may delegate any of its rights, duties or responsibilities to any committee or other entity that the Board may choose to form.

4.10.3 Limitation. Any delegation by the Board under this Article V is subject to compliance with the Act and the Bylaws and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Condominium Instruments and the Act.

#### 4.11 Acquiring and Disposing of Personal Property. The Association



may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Condominium Unit. A conveyance of a Condominium Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

4.12 Capital Improvement Fund. The Association will establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Section 7.4 below for maintenance, repair or replacement of the Common Elements that must be replaced on a periodic basis and for any other facilities made available to the Association that must be replaced on a periodic basis with contribution from the Association.

4.13 Working Capital Account. The Association will also administer a working capital account funded as provided in Section 10.4.

4.14 Implied Rights and Obligations. The Association will perform all of the duties and obligations imposed on it expressly by the Condominium Instruments, together with every other duty or obligation reasonably to be implied from the express provisions of the Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Condominium Instruments, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Condominium Instruments, or (iii) reasonably necessary to effectuate any such right or privilege.

4.15 Appointment of Officers and Directors by Declarant. Until the expiration of the Declarant Control Period and subject to the limitations of the Act, Declarant will retain the exclusive powers to appoint and remove Directors and officers of the Association. Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove Directors and officers of the Association before the end of the Declarant Control Period by providing a notice to that effect to the Association and otherwise complying with the procedures for termination of this Special Declarant Right, as set forth in the Bylaws. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Declarant Control Period, Declarant may require throughout the period of the Declarant Control Period (had it not been voluntarily terminated) that specified actions of the



Association or the Board, as described in an instrument executed and recorded by Declarant in the Office of the Register of Deeds of Dare County, North Carolina, be approved by Declarant before those actions become effective. After the Declarant Control Period, the Directors and the officers of the Association will be elected as provided in the Bylaws.

## ARTICLE V

### Easements

5.1 Preamble. In addition to the easements created by the Act, the easements described in this Article V from each Owner to each other Owner, to the Association and to the Declarant are hereby granted, reserved and established, subject to and in accordance with the following terms and conditions:

5.2 Use and Enjoyment of Common Elements. Subject to the Special Declarant Rights reserved to Declarant in this Declaration and the provisions of N.C.G.S. §47C-3-112, all of the Common Elements, except the Limited Common Elements, shall be and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Condominium Units, subject to the following provisions and limitations:

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

5.3 Structural Support. Every portion of a Unit or the Common Elements which contributes to the structural support of another Unit or the Common Elements shall be burdened with an easement of structural support. No Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.

5.4 Utilities. To the extent that any utility line, pipe, wire or conduit serving any Unit or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit or the Common Elements shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit or Common Elements served by the same and the Association.



5.5 Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, an easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event that the Building, any Unit, any adjoining Unit, or any adjoining portion of the Common Elements shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation proceedings, and then be repaired or reconstructed, encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such repair or reconstruction, shall be permitted, and easements for such encroachments and the maintenance, repair and replacement thereof shall exist. This easement is intended to apply to only the extent necessary and does not deprive another of a substantial property right of use.

5.6 Encroachment Easements. Whenever building lines, or private plantings encroach upon the Common Elements, the Owner of the affected Unit is hereby granted a perpetual easement for the use of that portion of the Common Elements which is burdened with the encroachment.

5.7 Maintenance and Repair. There shall be an easement in favor of the Declarant, the Association and the Unit Owners through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement of Units and the Common Elements. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

5.8 Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agency and employees (including, but not limited to any manager employed by the Association) to enter upon the Property or any portion thereof and to enter or take access through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and operation of the Condominium and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representatives and employees, such access through such Owner's Unit as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon advance notice to and with



the permission of the Owner or Occupant of a Unit directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Elements for the installation, maintenance, repair and replacement of utilities, roads and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

5.9 Declarant's Easements. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, which easements shall exist as long as reasonably necessary for such purpose.

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

5.11 Sales Activity. For as long as there are any Units owned by the Declarant, the Declarant, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association property for guest accommodations, model apartments and sales, to show model Units in the Common Elements to prospective purchasers and tenants of Units, and to erect on the Property and signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium.

5.12 Association Rights. The Association, the Board and the Managing Agent shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate to the performance of their duties and functions which they are obligated or permitted to perform under this Declaration

5.13 Emergency Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Condominium in the performance of their official duties including any property manager of the Condominium.



5.14 Agreement to Grant Additional Easements. If additional easements between portions of the Condominium are reasonably necessary to effectuate the purposes of this Declaration, provided said proposed additional easements will not unreasonably interfere with the use and occupancy of any portion of the Condominium burdened by the proposed additional easements, unreasonably affect access to, or the operation of, any portion of the Condominium burdened by the proposed additional easements or unreasonably increase the operating cost of, or create any other additional expense for, the portion of the Condominium burdened by the proposed additional easements, each Owner, and its applicable Mortgagee, hereby agrees to use its best efforts to agree upon, determine and grant such additional easements. No abandonment of any of the easements created by this Declaration shall be deemed to exist in the absence of a written agreement by the Owners whose property is benefited by the easement being abandoned; provided, however, that each Owner agrees to execute such a written agreement promptly upon demand of the other Owners at such time as any such easements created by this Declaration are no longer needed and not reasonably anticipated to be needed in the future in connection with construction, reconstruction or restoration as permitted by this Declaration. There shall be no merger of the easements created by this Declaration and fee title to any portion of the Condominium in the absence of a written agreement executed by the holders of all such interests.

5.15 Easements Appurtenant. Easements, uses and rights created herein for an Owner shall be appurtenant to its Unit, and all conveyances of and any other instruments affecting title to a Unit will be deemed to grant and reserve the easements, rights and uses provided for herein, even though no specific reference to such easements, uses and rights appears in any such instrument. Each Owner, whose Unit is subject to an easement created by this Declaration, may use the Easements granted herein for the purposes permitted in this Declaration not inconsistent with such easement and shall also have the right to temporarily interrupt the use of such easements as may be necessary in order to perform repair work to the Units, provided that the temporary interruption does not materially interfere with the use and occupancy of another Unit.

## ARTICLE VI

### Occupancy and Use Restrictions

6.1 Occupancy. Each Unit shall be used solely for residential purposes and no trade or business of any kind may be carried on therein (the lease or the rental of any Unit for transient residential purposes shall not be considered to be carrying on a trade or business).



6.2 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Property, nor shall any use be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Property by its residents, occupants or guests. No activity specifically permitted by this Declaration shall be deemed a nuisance.

6.3 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, roles, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of the Condominium Instruments, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.

6.4 Antennae Satellite Dish. No Unit Owner shall install any receiving or transmitting device which requires any exterior protrusion whatsoever, nor shall any antennae, satellite dish or other receiving or transmitting device be located on any terrace or decks which are visible from the exterior of the Building.

6.5 Balconies. All balconies and decks which are Limited Common Elements shall be maintained in a neat and orderly appearance by the Owner of the Unit for which it is intended. Balconies and decks shall not be used for storage. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas of same that are normally and customarily used for a residential balcony area. Grills or other cooking units are strictly prohibited on all balconies. There shall be no exterior protrusions from the Unit onto the balconies and no flags or pennants of any kind shall be allowed to be attached to the balconies.

6.6 Odors. Unit Owners shall not permit any offensive odors originating from their Unit to permeate any portion of the Condominium owned by any other Unit Owner; provided, however, that Unit Owners recognize that it is difficult to control odors within the certain food preparation and garbage storage areas due to the nature of the use of those areas and, although reasonable steps to minimize odors from those areas will be taken, the provisions of this section shall be interpreted to give due consideration to the difficulty in controlling odors in these areas.



6.7 Increased Insurance Costs. No Unit Owner shall use its portion of the Condominium in a manner that will increase the cost of insurance for the other Unit Owner unless the Unit Owner making such use reimburses the other Unit Owner for the increased insurance costs.

6.8 Prohibited Uses. No Unit Owner shall use its Unit for any matter which emits obnoxious noise or sound levels which would disturb guests of the Condominium; and each Unit Owner will conduct its use in a manner which does not unreasonably interfere with the other Unit Owner.

6.9 Hazardous Materials. No Unit Owner agrees that it will not generate, use, store or dispose of any hazardous materials or substances on or from any portion of the Condominium except in full compliance with all legal requirements and each Unit Owner shall indemnify and hold the other Unit Owner, its officers, directors, Mortgagees, agents, employees and representative harmless from and against all claims, losses, damages, expenses and liabilities (including reasonable attorneys' fees at all tribunal levels and in connection with all proceedings, whether or not suit is instituted) arising from or in connection with the breach by the indemnifying Unit Owner of the foregoing agreement.

6.10 Occupants Bound. All provisions of the Declaration and of any use restrictions and Rules of Conduct promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Unit.

6.11 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Association.

6.12 Signs. No signs of any kind shall be displayed to the public view on or from any portion of any Residential Unit except, (i) during the Declarant Control Period, signs of Declarant or its affiliates or assigns and (ii) signs required by law. The size, number, design and location of which shall be approved by the Board.

6.13 Animals and Pets. No animals of any kind shall be kept, raised or bred on any portion of the Property, except not more than one dog or cat may be kept by an Owner. The Rules of Conduct may regulate, permit or prohibit the kind and number of such pets from time to time.





6.13.1 Containment. Pets must be contained in a Unit or on the balcony that is assigned to a Unit as a Limited Common Element. Such pets may not be permitted to run at large at any time.

6.13.2 Leashes. Pedestrians within Marshes Light who are accompanied by pets permitted under this Declaration must have the pets under the pedestrians' direct control by use of a leash not to exceed 10 feet in length.

6.13.3 Noise. Owners of pets within Marshes Light will be required to take all steps necessary to control excessive barking or other disturbances caused by their pets.

6.13.4 Feces. Owners of pets shall be responsible for the clean up and sanitary disposal of their pet's waste.

6.14 Rules of Conduct. In order to assure the peaceful and orderly use and enjoyment of the Units and Common Elements of the Association, the Unit Owners may from time to time adopt, modify, and revoke in whole or in part by a vote of the Members present in person or represented by proxy whose aggregate interest in the Common Elements constitutes fifty-one (51%) percent of the total interest, at any meeting duly called for the purpose, such reasonable rules of conduct, to be called Rules of Conduct, governing the conduct of persons on said property of the Association as it may deem necessary. Such Rules of Conduct, upon adoption, and every Amendment, modification, and revocation thereof, shall be delivered promptly to each Owner by posting same with postage prepaid addresses to the Owner at the last registered address of the Owner and shall be binding upon all Unit Owners and the occupants of Units in the Condominium. Until expiration of the Declarant Control Period, the Declarant shall establish the Rules of Conduct. The following shall constitute the initial Rules of Conduct for the Condominium:

6.14.1 Residents shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, televisions and amplifiers that may disturb other residents.

6.14.2 No Unit Owner shall:

(a) Post any advertisements or posters of any kind in or on the Condominium except as authorized by the Association;

(b) Hang garments, towels, rugs, or similar objects from the windows or balconies or from any of the facades of the Condominium;



(c) Clean dust mops, rugs or similar objects from the windows or terraces by beating on the exterior part of the Condominium;

(d) Throw trash or garbage outside the disposal installation provided for such purpose in the service areas;

(e) Act so as to interfere reasonably with the peace and enjoyment of the residents of the other Units in the Condominium;

(f) Maintain any pets which cause distress to Unit Owners through barking, biting, scratching or damaging of property. No more than one (1) pet may be maintained in any one Unit. Aggressive breeds as determined by the Board are prohibited. No pet weighing more than fifty (50) pounds shall be permitted.

(g) Operate or utilize any charcoal or gas grills, either permanent or portable, on the balcony or in the close proximity of the Units.

(h) Operate, park, or store on the Condominium any recreational vehicles homes, trucks, commercial vans or boats.

6.14.3 The maximum number of vehicles maintained on the Common Elements of Marshes Light for each Unit is two (2) vehicles.

6.14.4 No maintenance or repair of a vehicle is permitted within the Condominium which includes oil changes, washing, waxing and similar related vehicles services.

6.14.5 Each Unit Owner shall be responsible financially and otherwise for the actions or inaction of said Unit Owners' tenants or guests to include violation of the Condominium Instruments and Rules of Conduct.

6.14.6 No Unit Owner, resident, or lessee shall install wiring for electrical or telephone installations, televisions or radio antenna, air conditioning fixtures, or similar objects outside of his or her Unit or which protrudes through the walls or the roof of his or her Unit.

6.14.7 During the Declarant Control Period, the Declarant may amend, delete or add to the Rules of Conduct at its sole discretion and said



amendments or additions shall be effective upon distribution in writing to the Owners.

6.15 Enforcement. The Association, or the Board acting on behalf of the Association, may take such action as it deems advisable to enforce these Occupancy and Use Restrictions as provided in this Declaration. In addition, the Association and the Board shall have a right of entry on any part of a Unit or the Common Elements for the purposes of enforcing this Article, and any costs incurred by the Association or the Board in connection with such enforcement which remain unpaid 30 days after the Association has given notice of the cost to the Owner and otherwise complied with the Act shall be subject to interest at the Default Rate from the date of the levy by the Association or the Board through the date of payment in full by the Owner, and shall be treated as a Default Assessment enforceable as provided in Section 10.6 below.

## **ARTICLE VII**

### **Property Rights Of Owners**

7.1 Owner's Easements of Access and Enjoyment. Every Owner has a perpetual, non-exclusive easement for use and enjoyment of the General Common Elements, which easement is appurtenant to and shall pass with the title to every Condominium Unit, subject to the following provisions:

7.2 Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Elements to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable Rules of Conduct of the Association and the other Condominium Instruments.

7.3 Easements for Encroachments. The Condominium, and all portions of it, are subject to easements hereby created for encroachments (so long as such encroachments exist) between Condominium Units and the Common Elements as follows:

7.3.1 In favor of all Owners so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

7.3.2 In favor of each Owner of each Unit so that the Owner shall have no legal liability when any part of his or her Unit encroaches upon the Common Elements or upon another Unit;



7.3.3 In favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments. Encroachments referred to in this Section 7.3 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of any Building, by error in the Condominium Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Condominium. Such encroachments shall not be considered to be encumbrances upon any part of the Condominium.

7.4 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements herein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Subject to the provisions of Section 4.5 above, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of Owners shall be a Common Expense.

7.5 Combination of Units. The Owner of a Unit may acquire title to the adjacent Unit and combine the two Units into one Unit, subject to the requirements of the Association, the Act and the Zoning Ordinance of the Town of Manteo. Every agreement and recorded instrument for the combination of Units will make adequate provision for the preservation of easements previously established with respect to the Units. Further, the voting rights and liability for payment of Assessments related to such Units will not be adjusted or reallocated.

## ARTICLE VIII

### Special Declarant Rights and Additional Reserved Rights

8.1 General Provisions. Until the expiration of the Declarant Control Period, Declarant will have the following Special Declarant Rights with respect to all of the Property:

8.1.1 Construction and Completion of the Condominium. The right to construct and complete each Building and the Units contained therein the



Condominium including those Buildings which may be added on the Additional Real Estate;

8.1.2 Sales Activities. The right to maintain a sales office, signs advertising the Condominium and up to one model Condominium Unit in each Building. The offices, model Unit and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Unit and signs will remain the property of Declarant and may be removed from the Condominium by Declarant at any time during or promptly after the expiration of the Declarant Control Period.

8.1.3 Association Directors and Officers. The right to appoint any officer or director of the Association, as provided in this Declaration or the Bylaws, but subject to the limitations of the Act.

8.1.4 Contract with a Management Agent. The right to enter into a Contract with either an affiliate of Declarant or a third party for the purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance and management of the Condominium.

8.1.5 Rules of Conduct. The right to promulgate and amend any Rules of Conduct.

8.2 Supplemental Provisions Regarding Declarant's Rights. Declarant reserves the right to amend this Declaration in connection with the exercise of any development rights or any other Special Declarant Rights to the extent permitted by the Act, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in any other provisions of this Declaration.

8.3 Limitation on Special Declarant Rights. The Special Declarant Rights reserved by Declarant shall terminate no later than the earlier of: (i) one hundred twenty (120) days after the conveyance of seventy-five percent (75%) of the Units, including Units which may be created pursuant to the Special Declarant Rights and the Declarant's right to add Additional Real Estate, to Owners other than a Declarant, (ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after the Development Right to add new Units was last exercised.

8.4 Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the improvements within the Condominium that has not been



represented as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing, and construction, regardless of whether they have become fixtures.

#### 8.5 Interference with Special Declarant Rights.

8.5.1 Neither the Association nor any Unit Owner may take any action or adopt any Rules of Conduct that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

8.5.2 In relation to Declarant's exercise of any Special Declarant Right, the provisions of the Declaration which prohibit or require approval of construction of or additions or alterations to any improvements shall not be applicable.

8.6 Assignment of Declarant's Rights and Duties. Any and/or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person which will assume any and/or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and to the extent thereof, Declarant shall be relieved from all liabilities, obligations, and duties hereunder. Declarant may limit and restrict the rights and powers which are assigned to any person, corporation, or association in the instrument which assigns such rights. The term "Declarant" as used herein includes all such assignees and their successors and assigns, subject to such restrictions or limitations as may be imposed in the instrument assigning such rights.

8.7 Easements. All rights of easements set forth in Article V above.

### ARTICLE IX

#### Maintenance Responsibility

9.1 Owner's Rights and Duties with Respect to Interiors. Each Owner shall have the exclusive right and duty to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries, including without limitation painting of interior surfaces. The Unit Owner shall not cause any structural modifications or alterations without first obtaining the written consent of the



Association, which consent may be withheld in the sole discretion of the Board of Directors.

9.2 Responsibility of the Owner. The Owner at the Owner's expense shall maintain and keep in repair the interior of the Condominium Unit, including the fixtures and utilities located in the Condominium Unit to the extent current repair shall be necessary in order to avoid damaging other Condominium Units or the Common Elements. All fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Owner of that Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Building, or impair any easement or hereditament. An Owner shall not be responsible for repair occasioned by casualty occurring outside a Unit, unless such casualty is due to the act or negligence of the Owner, or guests, invitees, or tenants of such Owner, as provided in Section 4.5 above. An Owner is responsible for all repair resulting from a casualty occurring within, or affecting the Unit. No Owner shall alter any Common Elements without the prior written consent of the Association.

9.3 Responsibility of the Association. The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve as a Common Expense all the Property not required in this Declaration to be maintained and kept in good repair by an Owner or by Declarant.

## ARTICLE X

### Assessments

10.1 Creation of Lien and Personal Obligation for Assessments. Declarant, by creating the Condominium Units pursuant to this Declaration, hereby covenants, and each Owner of any Condominium Unit, by accepting a deed for a Condominium Unit, whether or not it shall be so expressed in such deed or other instrument of transfer, is deemed to covenant to pay to the Association: (1) Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements, to fund the Capital Improvement Fund contemplated under Section 10.4 below and to generally carry out the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Condominium Unit for the Owner's failure to perform an obligation under the Condominium Instruments or because the



Association has incurred an expense on behalf of the Owner under the Condominium Instruments.

All Assessments, together with fines, interest, costs, reasonable attorneys' fees and other charges allowed under the Act, shall be a charge on the Unit and shall be a continuing lien upon the Condominium Unit until paid subject to the provisions of Section 47C-3-116 of the Act.

Each such Assessment, together with fines, interest, costs, and reasonable attorneys' fees and other charges allowed under the Act, shall also be the personal and individual obligation of the Owner of such Condominium Unit as of the time the Assessment falls due, and two or more Owners of a Condominium Unit shall be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment or leasing of his Condominium Unit or by waiver of the use or enjoyment of the Common Elements. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment liens provided in this Declaration.

10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of the Condominium, and for the improvement and maintenance of the Condominium and of the services and facilities located on the Condominium. Proper uses of the Assessments shall include, but are not limited to, the following:

10.2.1 Repairing, replacing, renovating and maintaining any of the Common Elements not made the responsibility of the Owners by Section 4.4, Section 4.5 and Section 9.2 above, or other provisions of this Declaration;

10.2.2 Installing, maintaining, and repairing underground utilities upon, across, over, and under any part of the Condominium which are not conveyed to and accepted by utility companies including phone, cable and wi-fi services;

10.2.3 Furnishing garbage, trash pickup, gas, water and wastewater services to the Condominium;

10.2.4 Obtaining and maintaining insurance in accordance with the provisions of Article XI below;

10.2.5 Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements, and other purposes;





10.2.6 Carrying out all other powers, rights, and duties of the Association specified in the Condominium Instruments; and

10.2.7 Generally, addressing any other expenses necessary to meet the primary purposes of the Association.

### 10.3 Annual Assessments.

10.3.1 Association Budget. The Board of Directors shall prepare a budget and prepare Annual Assessments before the close of each fiscal year of the Association and submit the budget to the Association as required by the Act. Annual Assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Elements; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Common Elements; routine renovations within the Common Elements; wages; common water and utility charges for the Common Elements; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the supplementing of the Capital Improvement Fund for general, routine maintenance, repairs, and replacement of the Common Elements on a periodic basis, as contemplated under Section 10.2. Within thirty (30) days after adoption of any proposed Budget, the Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the Annual Budget which date shall be not less than fourteen (14) nor more than thirty (30) days after the mailing of copies of such Annual Budget or summary thereof to the Unit Owners. There shall be no requirement that a quorum be present at the meeting. The Annual Budget is ratified unless at that meeting a majority of all the Unit Owners reject the Annual Budget. In the event the proposed Annual Budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify (i.e. fail to reject by a majority of all Unit Owners) a subsequent budget proposed by the Board of Directors.

10.3.2 Apportionment of Annual Assessments. Generally, each Owner shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this Declaration, shall be assessed to the Condominium Units in proportion to the respective undivided interests in the Common Elements appurtenant to the Units, as shown on the Schedule of Unit Information attached as Exhibit "B", subject to the following provisions. Any



Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit or Units to which that Limited Common Element is assigned, equally, or in any proportion the Board of Directors reasonably determines. Any Common Expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited. The total Annual Assessments of the Association shall be apportioned among all Condominium Units as provided in this Section 10.3 and shall not be apportioned between Common Elements and Limited Common Elements.

10.3.3 Collection. Annual Assessments shall be collected in periodic installments as the Board may determine from time to time, but until the Board directs otherwise, they shall be payable monthly in advance on the first day of each calendar month. The Association shall have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year, however specifically excluding herefrom any amounts deposited in the Capital Improvement Fund of the Association. Any such excess funds not refunded will be applied to the next installment(s) of Annual Assessments due.

10.3.4 Date of Commencement of Annual Assessments. The Annual Assessments shall commence as to all Condominium Units no later than 60 days after the date of the first conveyance by Declarant of a Condominium Unit to an Owner. The first Annual Assessment shall be prorated according to the number of months remaining in the calendar year.

10.4 Capital Improvement Fund. The Board in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements, which capital improvement and replacement fund (the "Capital Improvement Fund") shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of the Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board, be expended for current operation and maintenance.



## 10.5 Special Assessments.

10.5.1 Determination by Board. Subject to the budget procedures required by the Act, the Board of Directors may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement within the Property or any facilities located in the Property, including the necessary fixtures and personal property related to it, or to make up any shortfall in the current year's budget.

10.5.2 Apportionment and Collection of Special Assessments. The Board will apportion Special Assessments among the Condominium Units and collect payment according to the same guidelines as set forth for Annual Assessments in Section 10.3.2.

10.5.3 Notice. Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

10.5.4 Member Approval. If any Special Assessment levied is to be used for the construction of facilities (as opposed to repair and reconstruction of existing facilities in the Property), and if the total amount of the Special Assessments levied for such construction exceeds 10% of the gross annual budget for the Association for that year, then the use of Special Assessments for that construction will require the approval of Owners representing at least 67% of the votes in the Association. The use of Special Assessments pursuant to this Section for constructing any Common Elements shall not apply to the construction of any Common Elements to be completed by Declarant in development of the Property.

10.6 Default Assessments. All monetary fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Condominium Instruments, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Condominium Instruments, and any expense (including without limitation reasonable attorneys' fees) incurred by the Association as a result of the failure of an Owner to abide by the Condominium Instruments, constitutes a Default Assessment, enforceable as provided in this Declaration below and in accordance with the Act.

10.7 General Remedies of Association for Nonpayment of Assessment. Any installment of an Annual Assessment or a Special Assessment which is not paid within the time period established from time to time by the Board shall be delinquent. If such an Assessment installment becomes delinquent, or if any Default Assessment is



levied, the Association, in its sole discretion, may take any or all of the following actions:

10.7.1 Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

10.7.2 Charge interest from the date of delinquency at the Default Rate;

10.7.3 Suspend the voting rights of the Owner during any period of delinquency;

10.7.4 Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

10.7.5 Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

10.7.6 File a statement of lien with respect to the Condominium Unit and foreclose as set forth in more detail below.

The remedies provided under this Declaration shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

10.8 Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except (a) the lien for real estate taxes on that Condominium Unit, and (b) the lien of a mortgage securing sums unpaid to a First Mortgagee or other lien or encumbrance recorded prior to the perfection of said lien for Assessments. Except as provided in Section 10.9 hereof and Section §7C-3-116 of the Act, the sale or transfer of any Condominium Unit shall not affect the Assessment lien.

10.9 Deed in Lieu of Foreclosure. Notwithstanding anything contained in this Declaration or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Condominium Unit by virtue of any deed in lieu of Foreclosure of a First Mortgage, such First Mortgagee shall not be liable for, nor shall such Condominium Unit be subject to a lien for, any Assessment chargeable to such Condominium Unit on account of any period prior to the time such First Mortgagee shall so acquire title to such Condominium Unit; provided, however, that Common Expenses collectible thereafter



from all Owners, including such First Mortgagee, shall be paid as set forth in this Declaration. The provisions of this Section 10.9 are in addition to, and not in lieu of, the provisions of Section 47C-3-116(f) of the Act.

10.10 Statement of Assessment Status. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, 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 Association for such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

10.11 Initial Contribution to Working Capital Fund. Upon the sale and closing of the purchase of each Unit by the Declarant to a person other than Declarant, the purchaser of each Unit shall pay a non-refundable contribution to the working capital of the Association in an amount of \$300.00 to be assessed against such Unit for the first year of operation of the Condominium. The contribution to working capital may be utilized to reimburse the Declarant the costs of premiums for insurance purchased by the Declarant for the benefit of the Condominium and the Association.

10.12 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

## ARTICLE XI

### Insurance

11.1 Authority to Purchase. Except as provided in Section 11.12 below, all insurance policies relating to the Condominium shall be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Managing Agent and Declarant shall not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable cost.



11.2 Notice to Owners. The Board of Directors shall promptly furnish to each Owner written notice of materially adverse changes in, cancellation or termination of, insurance obtained on behalf of the Association under this Article, such notice to be delivered to all Owners by such methods as required by the Act. The notice (which may be issued in the form of a subpolicy relating to a master policy, if the Board of Directors obtains a master policy), shall specify the insurance coverage in effect on the Owner's Condominium Unit.

11.3 General Insurance Provisions. All such insurance coverage obtained in accordance with this Article shall conform to any minimum requirements of the Act, and, to the extent not inconsistent with the Act, the following provisions:

11.3.1 As long as Declarant owns any Condominium Unit, Declarant shall be protected by all such policies in the same manner as any Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims against Declarant as the developer of the Condominium.

11.3.2 Depending on the area within the Condominium (whether Common Elements or one or more Condominium Units) damaged or destroyed and covered by an insurance claim submitted on behalf of the Association, the deductible amount, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments allocable to all of the Condominium Units or to only some of the Condominium Units, if the claims or damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners, or as an item to be paid from working Capital Improvement Fund established by the Board of Directors. The Association may enforce payment of any amount due from an individual Owner toward the deductible as a Default Assessment in accordance with Sections 10.6 above.

11.3.3 Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage obtained by the Board of Directors pursuant to this Article shall be a Common Expense to be paid by regular Annual Assessments. In accordance with Section 11.3.2 above, the Board of Directors shall make appropriate allocations of the cost of any insurance carried by the Association for the benefit of a particular Owner.

11.4 Property Damage Insurance. The Association shall obtain



and maintain in full force and effect property damage insurance on all insurable improvements located on or constituting part of the Condominium (including, without limitation, the Common Elements and the Units, together with, unless the Board of Directors directs otherwise, the fixtures, equipment and other personal property initially installed in the Units and replacements thereof up to the value of those initially installed by Declarant, but not including, furniture, wall coverings, improvements, additions or other personal property supplied or installed by Owners), together with all fixtures, building service equipment and common personal property supplies of the Association, and heating equipment and other service machinery contained therein and covering the interests of the Owners and their Mortgagees, as their interests may appear. The insurance shall be carried in an amount equal to full replacement value (i.e. 100% of the current replacement cost exclusive of land, foundation, excavation, depreciation on personal property and other items normally excluded from coverage), and shall include a replacement cost endorsement and an agreed amount endorsement waiving the requirement of coinsurance. Such insurance shall afford protection against at least the following:

11.4.1 Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard "all-risk" endorsement including but not limited to sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage;

11.4.2 Such other risks as shall customarily be covered with respect to projects similar in construction, location and use to the Condominium. The Board shall obtain property damage insurance covering all personal property owned by the Association.

11.5 Provisions Common to Property Damage Insurance. In contracting for the policy or policies of insurance obtained pursuant to Section 11.4 above, the Board of Directors which shall make reasonable efforts to secure coverage, if the Board deems such coverage advisable, provides the following endorsements (or equivalent): (a) cost of demolition; (b) contingent liability from operation of building (building ordinance or law endorsement); (c) increased cost of construction; (d) agreed amount or elimination of co-insurance clause; and (e) inflation guard (if available).

Prior to obtaining any policy of property damage insurance or any renewal thereof, and at such other intervals as the Board of Directors may deem advisable (but in any event, at least once every other year), the Board of Directors shall obtain an appraisal from a general contractor or such other source as the Board may determine, of the then current replacement cost of the property (exclusive of the land,



excavations, foundations and other items normally excluded from such coverage) the Association, without deduction for depreciation, for subject to insurance carried by the purpose of determining the amount of property damage insurance to be secured pursuant to this Article XI.

A certificate evidencing coverage under the policy of property damage insurance, together with proof of payment of premiums and any notice issued under Section 11.2 above, shall be delivered by the insurer to the Association and upon request, to any Owner or Mortgagee. The Mortgagee of a Condominium Unit shall also be entitled to receive upon request a certificate confirming the renewal of any existing property damage insurance at least 10 days before the expiration of the then current policy, and to receive notice promptly of any event giving rise to a claim under such policy arising from damage to such Condominium Unit.

11.6 Liability Insurance. The Association shall obtain and maintain in full force and effect commercial general liability insurance (including bodily injury, libel, slander, false arrest and invasion of privacy coverage) and property damage insurance with such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Association, the Manager, and the employees and agents of the Association and the Manager against any liability to the public or the owners (and their guests, invitees, tenants, agents and employees) arising out of or incident to the ownership, existence, operation, management, maintenance or use of the Common Elements and any other areas under the control of the Association. Declarant shall be included as an additional insured in Declarant's capacity as an Owner or Director. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

Such comprehensive policy of public liability insurance shall include the following:

11.6.1 Coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, bailee's liability, garagekeeper's liability, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to projects similar to the Property in construction, location, and use.

11.6.2 A cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.





11.6.3 A "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner because of the negligent acts of the Association or another Owner.

The Board of Directors shall review the coverage limits at least once every two years, but, generally, the Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Condominium and in no event shall such coverage be less than \$1,000,000 for all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than \$2,000,000.

At the election of the Board of Directors, the Board may also contract for commercial general liability insurance covering each Owner with respect to the ownership and use of the Condominium Units, as necessary or convenient to allow the Board, the Managing Agent and the Association to perform their respective duties in connection with the Common Elements. Notice of such coverage shall be given to the Owners as necessary to keep the Owners currently informed.

11.7 Fidelity Insurance. Fidelity insurance shall be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association, regardless of whether such person receives compensation for services. Such insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. In addition, if responsibility for handling funds is delegated to a Managing Agent, such insurance shall be obtained by the Managing Agent for the Managing Agent and its officers, employees, and agents, as applicable, and shall contain the same coverages that are provided under the fidelity insurance obtained by the Association.

11.8 Flood Insurance. The Association shall maintain flood insurance on the Building and all improvements upon the Land, the Common Elements, and all personal property of the Condominium (except personal property of the Condominium Unit Owners).

11.9 Provisions Common to Property Damage Insurance, Liability Insurance, Fidelity Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the provisions of this Article above shall be subject to the following provisions and limitations:



11.9.1 The named insured under any such policies shall include Declarant, until all the Condominium Units have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article XI who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Unit's Mortgage.

11.9.2 Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

11.9.3 In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees.

11.9.4 The policies shall provide that coverage shall not be prejudiced by: (i) any act or neglect of any Owner (including an Owner's family, tenants, servants, agents, invitees and guests) when such act or neglect is not within the control of the Association; or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; or (iii) conduct of any kind on the part of an Owner (including the Owner's family, tenants, servants, agents, invitees and guests) or any Director, officer, employee or Managing Agent of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter.

11.9.5 The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be cancelled in the middle or at the end of any policy year or other period of coverage or substantially modified or reduced (including cancellation for nonpayment of premiums) without at least 30 days' prior written notice mailed to the Association and to each Owner and First Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.



11.9.6 The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Board of Directors, the Association, the Managing Agent, and any Owner or their respective agents, employees, or tenants, and in the case of Owners, members of their households, and of any defenses based upon co-insurance.

11.9.7 The policies described in this Article shall provide that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the physical damage policy or policies purchased by the Board shall be deemed primary coverage, and any individual Owners' policies shall be deemed excess coverage.

11.10 Personal Liability Insurance of Officers and Directors. To the extent obtainable at a reasonable cost, appropriate officers' and directors' personal liability insurance shall be maintained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.

11.11 Other Insurance. The Association may obtain insurance against such other insurable risks of a similar or dissimilar nature as it deems appropriate with respect to the Association's responsibilities and duties.

11.12 Insurance Obtained by Owners. It shall be the responsibility of each Owner, at such Owner's expense, to maintain property damage insurance on such Owner's personal property and furnishings and public liability insurance covering such Owner's Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Condominium Unit as the Owner, in the Owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the owner as if the amount were a Default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners (including Declarant, should Declarant be the Owner of any Condominium Unit).



The Board of Directors may require an Owner who purchases additional insurance coverage for the Owner's Condominium Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within 30 days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

## ARTICLE XII

### Casualty Damage

12.1 The Role of the Board of Directors. Except as provided in Section 12.6 the event of damage to or destruction of all or part of any Condominium Unit, Common Elements, or other property covered by insurance written in the name of the Association under Article XI, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Condominium, including, without limitation, the floor coverings, fixtures, and appliances initially installed therein by Declarant, and replacement thereof installed by the Owners up to the value of those initially installed by Declarant, but not including any furniture, furnishings, fixtures, equipment, or other personal property supplied or installed by the Owners in the Condominium Units unless covered by insurance obtained by the Association.

12.2 Estimate of Damage or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Condominium, unless such damage or destruction shall be minor, the Board of Directors shall obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Condominium damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed part of the Condominium to substantially the same condition in which it existed immediately prior to the damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of that part of the Property damaged or destroyed. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.



12.4 Funds for Repair and Reconstruction. Subject to the provisions of Section 12.6 below, the proceeds received by the Association from any hazard insurance carried by Association shall be used for the purpose of repair and reconstruction. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 10.5 above, levy, assess, and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. The cost of repair and reconstruction in excess of insurance proceeds and reserves is a Common Expense.

12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. Such fund shall be applied by the Association as attorney-in-fact for such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact to cause the repair and restoration of the improvements. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, or if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of Common Expenses under Section 10.3.2 above, first to the Mortgagees and then to the Owners, as their interests appear.

12.6 Decision Not to Rebuild. Any portion of the Condominium for which insurance is required pursuant to the provisions of this Declaration or the Act which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (i) The Condominium is terminated pursuant to Article XIX below and the Act;
- (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (iii) Owners representing at least 80% of votes in the Association, including the vote of every Owner of a Condominium Unit or assigned Limited Common Element that will not be rebuilt and including, during the Declarant Control Period, the vote of Declarant, the vote of at least 51% of First Mortgage Holders



(based on one vote for each mortgage owned), and any other votes required by the Act, vote not to repair and reconstruct the Condominium;

(iv) Prior to the conveyance of a Unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Condominium rightfully demands all or a substantial part of the insurance proceeds.

If the entire Condominium is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all the Units, as set forth on Exhibit "B". If Unit Owners vote not to rebuild any Unit, that Unit's allocated interests automatically shall be reallocated upon the vote as if the Unit had been condemned pursuant to N.C.G.S. §47C-1-107(a), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation. Unless otherwise prohibited, any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

12.7 Priority of Repair. When the damage is to Common Elements, Limited Common Elements and Condominium Units, the insurance proceeds will be applied first to the costs of repairing the Common Elements, secondly to the cost of repairing the Condominium Units, and thirdly to the cost of repairing the Limited Common Elements.

12.8 Notice of Damage or Destruction to First Mortgagees. In the event that any portion of the Property encompassing more than one Unit is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

### ARTICLE XIII

#### Association as Attorney-In-Fact

13.1 Appointment. Each Owner hereby irrevocably appoints the



Association as the Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for purposes of dealing with the Property upon its damage or destruction as provided in Article XII, or a complete or partial taking as provided in Article XIV below. In addition, the Association, or any insurance trustee or substitute insurance trustee designated by the Association, is hereby appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under Article XI above and to represent the Owners in any condemnation proceeding under Article XIV below including: the collection and appropriate disposition of the proceeds of such insurance or any condemnation award; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

#### **ARTICLE XIV**

##### **Condemnation**

14.1 Consequences of Condemnation. In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Condominium, the same shall be repaired or restored, and/or the awards paid on account thereof shall be used and applied in accordance with N.C.G.S. §47C-1-107.

14.2 Reorganization. In the event a partial taking results in the taking of a Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Condominium Units. Thereafter, subject to the provisions of the Act, the Association shall reallocate the ownership and assessment ratios determined in accordance with this Declaration and the Act, according to the same principles employed in this Declaration at its inception and as required under the Act and the Board of Directors of the Association shall amend this Declaration accordingly.

14.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article XII.



14.4 Notice of Condemnation. In the event that any portion of the Condominium shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

## ARTICLE XV

### Rights Reserved To First Mortgagees

15.1 Rights of First Mortgagees to Examine Books and Records. Any First Mortgagee, and any insurer or guarantor of loan secured by a mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Instruments, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any First Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

15.2 First Mortgagee's Rights to Notice. If any First Mortgagee, or any guarantor or insurer of a loan secured by a First Mortgage, has served written notice of its desire to receive notices upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Mortgage that it holds, guarantees, or insures, which notice designates the place to which notices are to be given by the Association to such party, then such party shall have the right to receive from the Association prompt written notice of the following:

15.2.1 Default under any of the terms provisions of the Condominium Instruments by any Owner owning a Unit encumbered by a First Mortgage held, insured, or guaranteed by such party.

15.2.2 Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a First Mortgage held, insured or guaranteed by such mortgagee.

15.2.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

15.2.4 Any proposed action by the Association, the Board of





Directors, or the Owners, which under the terms of the Condominium Instruments requires the consent of all or any portion of the First Mortgagees.

The failure of any First Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Instruments wherever First Mortgagee approval is required shall constitute an approval by that mortgagee of the proposed addition or amendment.

### 15.3. First Mortgagees' Rights.

15.3.1 Rights of First Mortgagee to Insurance Proceeds or Condemnation Awards. With respect to first mortgages held by or for the benefit of First Mortgagees, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its first mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

15.3.2 Payment of Taxes and Insurance. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. First Mortgagees making such payments shall be owed reasonably prompt reimbursement from the Association.

15.3.3 Payment of Assessments. First Mortgagees shall be entitled to cure any delinquency of the Owner of the Condominium Unit encumbered by the First Mortgagee in the payment of assessments of which the First Mortgagee has received notice under Section 15.2 above. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

15.4 Title Taken by First Mortgagee. Any First Mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, shall be liable for all Assessments due and payable as of the date title to the Condominium Unit vests in the First Mortgagee under the statutes of North Carolina governing foreclosures. Except as provided in the Act, such First Mortgagee shall not be liable for any unpaid dues and charges attributable to the Condominium Unit which accrue prior to the date such title vests in the First Mortgagee.



15.5 Enforcement. The provisions of this Article are for the benefit of all First Mortgagees and their successors, and may be enforced by any of them by any available means.

## ARTICLE XVI

### Ad Valorem Taxes

16.1 Ad Valorem Taxes. Pursuant to the provisions of N.C.G.S. §47C-1-105, each Unit and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. No part of the Condominium nor any of the Common Elements shall be deemed to be a parcel for separate tax listing purposes.

## ARTICLE XVII

### Enforcement of Covenants

17.1 Violations Deemed a Nuisance. A violation of this Declaration or any other of the Condominium Instruments is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these covenants will be available.

17.2 Compliance. Each Owner or other occupant of any part of the Condominium will comply with the provisions of the Condominium Instruments as the same may be amended from time to time.

17.3 Failure to Comply. Failure to comply with the Condominium Instruments will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

17.4 Who May Enforce. Any action to enforce the Condominium Instruments may be brought by Declarant, the Board or the Managing Agent in the name of the Association on behalf of the Owners, or any aggrieved Owners. Such an action may



be brought against the Declarant, the Board, the Managing Agent, the Association or any Owner.

17.5 Cumulative Remedies for Default-Self-Help. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit pursuant to any terms, provisions, covenants or conditions of the Condominium Instruments, 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.

In addition to other rights set forth in the Condominium Instruments, the Board shall have the right: (i) to enter a Unit or Limited Common Element appurtenant thereto, on which or as to which such violation or breach exists and summarily to abet and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Condominium Instruments, and the Board shall not thereby be deemed guilty in any manner of trespass, (ii) to use self-help to remove or cure any violation of the Condominium Instruments (including, without limitation, the towing of vehicles); or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction or improvements may be altered or demolished, except in emergencies, judicial proceedings shall be instituted by the Association against such defaulting Owner or its tenant.

17.6 Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

17.7 No Waiver. The failure of the Board of Directors, Declarant, the Managing Agent, or any aggrieved Owner to enforce the Condominium Instruments will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Condominium Instruments at any future time.

17.8 No Liability. No member of the Board of Directors, the Declarant, the Manager or any Owner will be liable to any other Owner for the failure to enforce any of the Condominium Instruments at any time.

17.9 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Condominium Instruments, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Condominium



Instruments or the restraint of violations of the Condominium Instruments, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees as may be incurred and allowed by N.C.G.S. §47C-3-116(e)

## ARTICLE XVIII

### Enforcement; Mediation; Arbitration

18.1 Actions by Owners. If the Association, Board of Directors, or any Owner shall fail to perform any obligation imposed upon them by the Condominium Instruments, and such failure shall cause an immediate risk of substantial economic loss to any Owner, or shall significantly jeopardize the physical condition of the Property, or any part thereof, then any Owner shall have the right to perform such obligation and to exercise any authority otherwise delegated to the Board, or any other Owner, necessary to perform such obligation. If an obligation so performed was the obligation of an Owner, the reasonable cost of performing such obligation shall be immediately due and payable from the Owner who has failed to perform the obligation to the Owner who performed it. If an obligation so performed was the obligation of the Association or the Board of Directors, the reasonable cost of performing such obligation shall be a Common Expense.

18.2 Mediation. Each Owner, by accepting a deed to a Unit, agrees that any Owner or the Association may require that any Dispute among the Owners or before the Board of Directors or before the Association be submitted to non-binding mediation, prior to pursuing any other remedies. The fees and expenses of mediation shall be paid by the participants and shall not be a Common Expense unless all Owners so agree in writing.

18.3 Arbitration. Each Owner, by accepting a deed to a Unit, agrees that any Owner or Association may require that any Dispute between the Owners or before the Board of Directors or before the Association be submitted to binding arbitration pursuant to the Uniform Arbitration Act set forth in N.C.G.S. §1-567.1 et seq. as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing.

18.4 Civil Suit. Any Owner may also bring a civil action against any other Owner, or against the Association, or against the Board of Directors, or any one of more of them to enforce any obligation imposed hereunder.



## ARTICLE XIX

### Termination

19.1 Amendments Proposed by Association. An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association 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 Association, or other officer of the Association in the absence of the President who shall either:

(a) call a Special Meeting of the members of the Association for a date not 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 to each member written 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 fourteen (14) 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 State Mail addressed to the member at his Post Office address as it appears on the records of the Association, 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 Association, 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 at least sixty-seven percent (67%) of the votes in the Association which are allocated to Unit Owners in the Condominium in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association 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 deeds hall be recorded in the Register of Deeds Office of Dare County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this 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 Association 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 Association 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 Association prior to such meeting or at such meeting; or

(b) as an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. To be effective, the written agreement must be executed by Unit Owners of Units to which at least sixty-seven percent (67%) of the votes of the Association are allocated. Once approved, the amendment or amendments shall be transcribed, executed, recorded and a copy sent to all Owners as specified above.

19.2 Amendments by Declarant. A Declarant may amend the Declaration as set forth herein and in the Act without the consent of any other person or the Association to exercise Development Rights.

19.3 Amendments Requiring Declarant Consent. During the Declarant Control Period reserved by the Declarant to exercise Development Rights, this Declaration may not be amended without the prior written consent of the Declarant. Except to the extent expressly permitted by the Act or other provisions of this Declaration (in compliance with the Act), no amendment may create or increase Special Declarant Rights, create or increase Development Rights, increase the number of Units, change the boundaries of any Unit, change the allocated interest of any Unit, or change the uses to which any Unit is restricted in the absence of unanimous consent of the Unit Owners.

## ARTICLE XX

### Miscellaneous Provisions

20.1 Severability. This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

20.2 Captions. The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

20.3 Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.



20.4 Limitation of Liability. Neither the Association nor any officer or member of the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Condominium Instruments if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

20.5 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

20.6 Law Controlling. This Declaration and the Condominium Instruments shall be construed and controlled by and under the laws of the State of North Carolina.

20.7 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act. Specific language shall control over general language. Throughout this Declaration, wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

20.8 Joinder of Trustee and Beneficiary. Trustee and Lender join in the execution of this Declaration to consent to the terms of the same and subordinate the lien of any deed of trust to the Trustee for the benefit of Lender encumbering the Property to the provisions of this Declaration.




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MARSHES LIGHT LLC, a North Carolina  
limited liability company

BY: BODDIE-NOELL ENTERPRISES, INC.  
Its Manager

By:  (SEAL)  
Charles J. Hayes, Jr., Attorney-in-fact





**TRUSTEE:**

BB&T COLLATERAL SERVICE ORPORATION

By: William M. Nowell (SEAL)  
Name: William M Nowell  
Title: City Executive/Vice Pres.

**BENEFICIARY:**

BRANCH BANKING AND TRUST COMPANY

By: Duncan L. McGoogan (SEAL)  
Name: Duncan L. McGoogan  
Title: Senior Vice President

STATE OF NORTH CAROLINA  
COUNTY OF Edgecombe

I, the undersigned, a Notary Public of the County and State aforesaid, certify that William M. Nowell personally came before me this day and acknowledged that he/she is (title) Vice President of BB&T Collateral Services Corporation., 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 (title) Vice President and attested by him/her as its (title) Vice President.

Witness my hand and official seal, this 1<sup>st</sup> day of August, 2007.

Michelle L. Nixon  
Notary Public  
Edgecombe County, NC  
My Commission Expires July 28, 2008

Michelle L. Nixon (SEAL)  
Notary Public  
My Commission expires: 07/28/2008

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Duncan L. McGoogan personally came before me this day and acknowledged that he is Senior Vice President of Branch Banking and Trust Company., 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 Senior Vice President and attested by him as its Senior Vice President.

Witness my hand and official seal, this 31<sup>st</sup> day of July, 2007.

KRISTEENA M. BEADLEY  
NOTARY PUBLIC  
NASH COUNTY, NC

Kristeena M Beasley (SEAL)  
Notary Public  
My Commission expires: 12/08/09



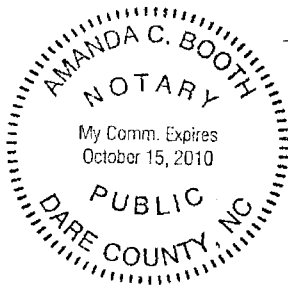
6225820

Page: 66 of 91  
08/09/2007 11:40ASTATE OF NORTH CAROLINA  
COUNTY OF DARE

I, AMANDA C. BOOTH, a Notary Public for the aforesaid County and State, do hereby certify that Charles J. Hayes, Jr., personally appeared before me this day, and acknowledged that he is Attorney-in-Fact for Boddie-Noell Enterprises, Inc., a North Carolina corporation, the Manager of Marshes Light, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the Company in its capacity as Manager of said Company, he executed the foregoing instrument, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Dare, State of North Carolina, in Book 1102, Page 449 and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said Charles J. Hayes, Jr. acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and on behalf of the said Boddie-Noell Enterprises, Inc., acting as Manager of Marshes Light, LLC.

Witness my hand and official seal, this 8 day of August, 2007.



Amanda C. Booth (SEAL)  
Notary Public

My Commission expires: 10/15/10