

This instrument prepared by Stevens, McGhee, Morgan, Lennon & Toll, LLP

**STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A"**

**SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, A North Carolina Limited Liability Company**, hereinafter called "DECLARANT" and/or "DEVELOPER", being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act", and to that end does hereby publish and declare that all of the said property to be known as "MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A" is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following conditions, covenants, restrictions, uses, limitations and objections, all of which shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, Declarant, further states that MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A" and the MARINA CLUB AT SOUTH HARBOUR VILLAGE UOA, INC. shall also be subject to the Master Declaration of Covenants, Conditions and Restrictions of South Harbour Master Property Owners Association, Inc. and/or the South Harbour Master POA, Inc. (The "Master Declaration") and have all rights and obligations as all other members in South Harbour Master Property Owners Association, Inc., including the obligation to pay assessments to the Master Association and right to use the amenities of the Master Association.

1. **DEFINITIONS.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

A. "Act" or "North Carolina Condominium Act" means the statutory provisions set forth in Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act, under which the condominium is established.

B. "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against the unit owners by the Association.

C. "Association" means the MARINA CLUB AT SOUTH HARBOUR VILLAGE UOA, INC., the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration. The words "Corporation" and "Association," as used in the Articles of Incorporation, the By-Laws, and this Declaration shall have the same meaning and may be used interchangeably.

D. "Board of Directors" or "Board" means the Board of Directors of the Association, and "Director" means a member of the Board.

E. "By-Laws" means the By-Laws for the government of the condominium, as they exist

from time to time. A copy of the initial By-Laws are hereto attached as Exhibit "E" and made a part hereof by reference.

F. "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the property.

G. "Common Areas and Facilities" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in Section 5.

H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

I. "Common Profits" means the balance of all revenue of the Association remaining after deduction of common expenses.

J. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

K. "Condominium Documents" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

L. "Declarant" and "Developer" each mean SOUTH HARBOUR VILLAGE ASSOCIATES, LLC., its successors, and assigns.

M. "Declaration" means this instrument as it may be from time to time amended or supplemented.

N. "Development rights" means any right or combination of rights reserved by declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.

O. "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

P. "Limited Common Areas, Elements, and Facilities" means and includes those common areas, elements, and facilities which are reserved for the use of a certain unit or units, to the exclusion of other units, as more specifically defined herein.

Q. "Master Association" shall mean and refer to South Harbour Master Property Owners Association, Inc., and/or South Harbour Master POA, Inc., and/or South Harbour Village Master Association, Inc., of which Marina Club at South Harbour Village UOA, Inc. (the "Association") shall be a member and shall be subject to the Master Declaration pursuant to Chapter 47-F of the General Statutes of North Carolina.

R. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

S. "Plans" shall mean and refer to the plans and specifications of the condominium prepared by Sherwin Cribb, Registered Land Surveyor, recorded under the name of the condominiums in the Unit Ownership file in the Office of the Register of Deeds of Brunswick County, in Condominium Plat Book 9

at Pages 34 and 35 and attached hereto as Exhibit "B", sheets 1 and 2, and incorporated herein by reference.

T. "Property" means and includes the land described in Section 2 of this Declaration together with any buildings and improvements located thereon as well as any lands annexed and made subject to this Declaration pursuant to the terms hereof.

U. "Shared Common Areas," "Shared Common Properties," and/or "Shared Common Amenities" shall mean and refer to all real and personal property, which may be owned by a third party but which may be made available for use by the owners of the condominium in consideration of the payment of prorated charge for such use.

V. "Special Declarant rights" means rights reserved for the benefit of a Declarant to complete improvements indicated on plats and plans filed with the declaration; to exercise any development right ; to maintain sales offices, management offices, signs advertising the condominium, and models; to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium; to make the condominium part of a larger condominium; or to appoint or remove any officer of the association or any executive board member during any period of Declarant control.

W. "Unit" or "Condominium Unit" means a part of the property, which is to be subject to private ownership, as designated on the Exhibits attached to this Declaration and as further defined in the Act.

X. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, which owns a unit but does not refer to the Trustee or cestui que trust unless and until there has been a transfer of title pursuant to foreclosure or any proceedings in lieu of foreclosure.

2. DESCRIPTION OF PROPERTY. All of that certain tract or parcel of land with the building and improvement thereon erected, or to be erected, situate, lying and being in the Town of Oak Island, Brunswick County State of North Carolina, and being more particularly described in Exhibit "A" attached hereto and incorporated by reference hereby as though fully incorporated herein.

Declarant submits only that portion of the land described in Exhibit "A" attached hereto upon which SECTION A of Marina Club Condominiums are to be constructed. The property hereby submitted is more particularly described by that Condominium Plat recorded in the Brunswick County Registry in Condominium Plat Book 9 at Pages 34 and 35, Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "D" attached hereto and made part hereof to the coverage of this Declaration. If Declarant chooses to expand the property dedicated to Condominium ownership, the expansion will contain a maximum of Twenty-eight (28) units in addition to those in Section "A". The Developer also retains the right, subject to the maximum number of additional units above noted, to add contiguous, or nearly contiguous, tracts to the project at its sole discretion.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary condominium plats as required by law. Each amendment to the Declaration shall be called a "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby shall not require consent or ratification of any unit owner.

Further terms, conditions, liabilities, and rights concerning expansion into further phases of development, are to be found in Section 34, Expansion of Condominium, of this Declaration.

3. DESCRIPTION OF BUILDING. The Declarant has constructed, or will construct, upon the

property described in Exhibit "A" attached hereto, a single two unit building to be used for residential purposes as herein provided. A plat or survey of the property showing the location of said building is attached hereto and made a part hereof as Exhibit "B". The building is more particularly described in the plans thereof, a copy of which plans are attached hereto as Exhibit "B" and made a part of hereof, showing all particulars of the building as required by law.

In general, the building has two to two and one half stories built on concrete foundation and constructed primarily of wood frame with composite material and/or wooden exteriors. The building will contain two units with three bedrooms, each unit containing approximately 1700 square feet of enclosed area. Further, each unit shall contain two and one half (2 1/2) bathrooms, a kitchen, a dining room-living area-great room, and a deck or balcony.

In addition, the buildings will have two (2) parking spaces per unit, walkways, stairs, landscape areas, and other appurtenances and facilities. All parking shall be only in designated parking spaces, and not in other parts of the streets and common areas.

#### 4. UNIT DESIGNATION AND DESCRIPTION.

A. DESIGNATION. The unit designation of each unit, its location and dimensions, is set forth in Exhibit "B" hereto attached and made a part hereof. Each unit is identified by Section. For example, the units in the first section (Section "A") shall be designated as follows:

Unit A-101 (downstairs) and

Unit A-201 (up-stairs)

Further, each unit shall be assigned a street address by the appropriate local authority.

B. DESCRIPTION. The legal description of each unit shall consist of the Section number and a unit number which identifies such unit as shown on the plats hereto attached as Exhibit "B." Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, subject to such encroachments as are contained in the buildings, whether the same now exist or may be caused or created by construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as appurtenance to the ownership of each said unit conveyed, an undivided interest in the common areas and facilities. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be as set forth in Exhibit "C" attached hereto and made a part hereof. The percentage of undivided interest in the common areas and facilities that is appurtenant to each unit has been determined by a ratio formulated upon the approximate relation that the square footage of each unit at the date of the Declaration bears to the then square footage of all the units having an interest in the common areas and facilities. The Declarant has determined the square footage of each unit and the square footage of all of the units, and its determination shall be binding upon all units and unit owners. Except as provided in Sections 27 and 34, below, the percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

#### 5. COMMON AREAS AND FACILITIES.

A. The common areas and facilities generally shall mean and refer to all of the real property, described in Section 2, and all of the improvements and facilities thereon which are not units, as hereinabove defined, and which are not items of personal property owned, held and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

- (1) All of the real property more particularly described in Section 2 of this

Declaration, with the stated exception of all units.

(2) All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except non-load bearing partition walls wholly within a unit) of the buildings.

(3) All stairways, stairwells and stairs and their components, if any, which give access to more than one unit.

(4) All yard and garden areas, parking and drive areas, sidewalks, and any other amenities.

(5) All installations of and facilities, apparatus, conduits, and equipment for the provisions of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, and cable TV, if any, supplied for the common use and convenience of the unit owners, and which are not defined as part of the units, herein below.

(6) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.

B. (1) The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated there from and shall pass with the title to the unit, whether or not separately described.

(2) A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

C. The undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit "C" and is attached hereto and made a part hereof.

6. LIMITED COMMON AREAS, ELEMENTS, AND FACILITIES. The limited common areas and facilities appurtenant to each unit are as follows:

A. Decks accessible only from a particular unit, and outside unit entries at ground level; other areas shown on one or more of the attached exhibits as limited common areas and/or limited common elements.

B. All non-load bearing walls located entirely within the unit

C. All materials, including but not limited to, studs, sheetrock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on the inside surfaces of perimeter walls, floors and ceilings of the unit.

D. All doors, windows, screens, ventilation fans and vents located entirely within the unit or extending into the unit from the perimeter walls, floors or ceilings thereof.

E. All ducts and related components and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the

portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

F. The limited common areas and facilities, which are appurtenant to any unit(s), shall not be separated there from and shall pass with title to any unit(s), whether or not separately described.

#### 6.1 SHARED COMMON AREAS, AMENITIES AND/OR FACILITIES

Declarant may construct a club house, pool and tennis court, and other facilities, which if built, may be Shared Common Amenities and/or Shared Common Areas for the use by all members of homeowner, property owner, or unit owner associations which are members of the Master Association. It is understood and agreed that the Shared Common Amenities and/or Shared Common Areas are NOT provided for the exclusive use of the units owners of Marina Club at South Harbour Village Condominiums or Association members but that all members of the Master Association may have the right to use such shared common facilities. The Association may, subject to the approval of the Master Association, impose uniform standards for mail collection facilities (which may be a central facility or individual receptacles), waste disposal containers, newspaper boxes, mailboxes, and other common features typically installed in condominium developments. The Owner of each unit shall comply with all such standards adopted by the Association.

#### 7. MEMBERSHIP AND VOTING RIGHTS

A. Every Owner of a Unit, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Unit, which is subject to assessment.

B. The Association shall have two classes of voting memberships

1. Class "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in the Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

2. Class "B". The Class B member shall be the Declarant and shall be entitled to three (3) votes for each unit constructed. The Class B membership shall automatically terminate upon the happening of either of the two following events, whichever occurs earliest:

(a) Upon the closing of the sale of 75% of all units in all sections, both by section basis and an overall basis in the development, or

(b) Ten years after the sale of the first unit, or December 1, 2012.

C. Notice and Quorum for Action. There shall be written notice of any meeting called for the purpose of taking any action authorized by this Declaration, which notice shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting until such time as quorum is met. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting or less than ten (10) days following the preceding meeting. Once quorum has been met at a meeting, it may not be destroyed by a member or members thereafter leaving

the meeting, and quorum shall continue to exist until the meeting is properly adjourned.

Notwithstanding anything to the contrary, after control of the Association has been transferred from the Declarant to the Unit Owners, the approval of at least 2/3rds of all Unit Owners is required to amend the Covenants or Mortgage, convey or encumber the Common Area.

8. USE.

A. Residential Use

Except as may be otherwise provided herein, the buildings and each of the units shall be used only for residential and lodging accommodation purposes, which shall include the rental of any units by the owner(s) thereof for residential purposes pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings by persons owning or occupying such units. Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her unit and such right shall be appurtenant to and run with his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The uses contemplated by this paragraph cannot be changed, amended or modified without the written consent of the owners of all units; however, so long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales or rental offices, models or other usage for the purpose of selling or renting units within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. The use by Declarant as such shall not be a violation of the use restrictions contained in the declaration, rules and regulations or other condominium documents. Declarant reserves the right to use any unsold unit for such purposes as its sole discretion, and to locate, or relocate, the units at will.

B. Further restrictions as to use:

Section 1. Nuisances. No noxious or offensive activity shall be carried on within any unit or common area, limited common area, and/or shared common area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the rest of the development.

Section 2. Junk Vehicles. No inoperable vehicles or vehicle without current registration, license tag, and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

Section 3. Outside Furniture. No furniture shall be permitted in the common area, limited common area, and/or shared common area, except as may be approved in writing by the Association. No furniture shall be permitted on the front porch of each unit except as may be approved in writing by the Association.

Section 4 For Sale or For Rent Signs Prohibited. No "For Sale" or "For Rent" signs or any other signs shall be permitted on any unit or in the common areas and facilities, except that the Developer or its designee may place "For Sale" or "For Rent" or "Directional Signs" for as long as Developer shall retain ownership of any unsold units in the development.

Section 5. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain in any parking space, at any time, unless with the express written consent of the Association.

Section 6. Animals. No animals, livestock or poultry of any kind shall be kept or maintained in any dwelling, other upon any common area, limited common area, or shared common area, except that dogs, cats or other normal household pets (specifically excluding any and all snakes and other reptiles) may be kept or maintained by a unit owner, provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times

properly leashed and personally escorted. If any pet shall be determined by the Board of Directors to be a nuisance, the Board shall have full authority to have such pet permanently expelled from the development. **It is the intent of this Section that no tenant(s), renter(s), guest(s), or invitees may have or keep pets of any kind in any unit or in or upon any common area, limited common area, or shared common area .**

Section 7. Outside Antennas. No outside radio or television antennas or satellite dishes shall be permitted within the development unless permission for the same has been granted by the Board of Directors of the Association or it's architectural control committee.

Section 8. Window Coverings. All drapes, curtains or other similar materials hung at window, or in any manner so as to be visible from the outside of any building erected upon any lot, shall be of a white or neutral background or material, unless the Board of Directors approves another color.

Section 9. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any unit or building shall be clear, white or non-frost lights or bulbs.

Section 10. Leasing Restrictions. Nothing contained herein shall prohibit leasing or renting of a unit; provided, however, that no unit shall be leased or rented for a period of less than thirty (30) consecutive calendar days. The Board of Directors may require Owners who lease their units to insert provisions in the lease, which would require the tenant to abide by the Association Documents and allow enforcement of the Association Documents directly against the tenant as well as the Owner. Even in the absence of such lease provision, these covenants shall be fully enforceable against any and all persons occupying any unit.

Section 11. Trash Receptacles. The Association shall adopt such rules as it deems needed regarding trash receptacles within the development.

### C. Property Rights

1. Owners' Easements Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common area, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- a. The right to limit the number of unrelated occupants of two bedroom units to four (4) people, and the total number of occupants to Six (6) people, or the maximum allowed by the ordinances of Town of Southport, whichever is less, and to limit the number of unrelated occupants of three bedroom units to six (6) people, and the total number of occupants to Eight (8) people, or the maximum allowed by the ordinances of Town of Southport, whichever is less; and
- b. The right to the Association to limit the number of guests of members;
- c. The right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, by an Owner for any period during which any assessment against this Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- \* d. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed necessary by the Developer or agreed to by a two-thirds (2/3) majority of all the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members as defined hereinafter agreeing to such dedication or transfer has been recorded; however, until such time as the Declarant has conveyed the Common Areas to the Association, the Declarant may, in its sole discretion, dedicate or transfer Common Area for drainage and utility easements reasonably necessary for the continuing development of the Property and any allowable additional property, and additional sections to be incorporated into the Development.
- e. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use



of the Common Area.

f. There shall be no outside clothes lines, or similar facilities, in or on any common area or limited common areas, balconies, railing, or stairwells.

g. All furniture, artwork, chimes, or other items visible in or on any common area, limited common areas, balcony or stairwell shall be approved by the Unit Owners Association. The Association may require any item to be removed at their discretion, for any reason, including but not limited to aesthetic reasons and auditory reasons. Fines may be imposed for failure to remove any item after requested in writing.

h. There shall be no tile, slate, or similar flooring used in any second or third floor unit without Unit Owners Association approval. Any such flooring shall be installed with adequate sound dampening sub flooring so as prevent increased noise levels in the unit beneath.

2. Assignment of Use. Owner may assign, in accordance with the By-Laws, his or her right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants, or contract purchasers who reside on the property. However, no such assignment shall effect any owner's obligation to pay all assessments and to otherwise or perform under these covenants.

3. Rights of Enforcement;further restrictions regarding storm-water management. Any Unit Owner, and, if and where applicable, the State of North Carolina, is entitled to enforce the provisions contained in these covenants, which are not the exclusive powers of the Association or Declarant. The said Association shall solely enforce any powers, which, by their terms, must necessarily be enforced by the said Association. All such rights may be enforced by legal or equitable means. These covenants are reciprocal in nature and are mutually binding on all unit owners.

All unit owners further acknowledge and agree to the following:

(i) with respect to any and all storm-water control regulations, all owners acknowledge that the State of North Carolina has issued a storm-water control permit (Permit No. SW 8 980508) which relates to the Property and that no portion of this Declaration regarding such control, and/or any term or provision of said permit, may be changed without the express written permission and approval of the said State of North Carolina.

(ii) The maximum built-upon area per lot is 4,748 square feet, inclusive of that portion of the right-of-way between the lot line and the edge of the pavement, structures, pavement, walkways of brick, stone, or slate, but not including open wood decking.

(iii) No alteration of any drainage area shown on the plan approved by the said State may take place without the concurrence of the said State.

(iv) Lots within the CAMA's Area of Environmental Concern may be subject to a reduction in their allowable built-upon area due to CAMA regulations.

(v) All run-off on each lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain into the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into a pond or the street. Lots that naturally drain into the system are not required to provide these measures.

## 9. COVENANTS FOR ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

1. An initial assessment equal to two months assessments as initial working capital, which shall be payable upon closing of the purchase of the Unit; and

2. Annual assessments or charges, which may be collected monthly, quarterly or biannually at the discretion of the Board of Directors; and

3. Special assessments for capital improvements, such assessments to be established and

collected as hereinafter provided; and

4. All assessments levied by the Master Association.

5. Any and all fines assessed per the terms of this declaration shall be an assessment on the unit owned by the person so fined.

The annual assessments, special assessments and fine or other levies, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No owner shall be permitted to exempt himself from the conditions of these covenants by waiver of any right or the right to use any of the common areas.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area, including but not limited to the following:

1. Maintenance of the private roads, parking area and walkways constructed within the development shall be the responsibility of the Association until such time as the South Harbour Master Association assumes responsibility for the roads. Maintenance of the public roads and streets constructed within the development shall be the responsibility of the South Harbour Village Master Association until accepted for maintenance by the Town of Oak Island, or other municipal or governmental organization. The purpose of maintenance of the public roads and streets shall automatically terminate upon such roads and streets being taken over by the Town of Oak Island, or similar entity for maintenance; however, provision shall continue for maintenance of walkways, sidewalks, and parking areas within a development.

2. Payment of all water and sewer bills for the units and Common Areas.

3. Maintenance of the exterior (and, to extent of insurance coverage purchased by the Association, all interior areas) of the buildings, units and other common area improvements situated on the properties.

4. Payment of taxes and other municipal charges and fees assessed on the Common Areas.

5. Maintenance of all drainage easements, water lines and sewer lines located in the Common Area.

6. To keep all amenities in the Common Area clean and free from debris, and to maintain all amenities in an orderly condition. Further, to maintain the landscaping in accordance with reasonable standards for residential rental communities, including any necessary removal and replacement of landscaping.

7. To provide garbage removal services for all units; Declarant reserves the right to enter contracts for the removal of trash and garbage for all such units in the development, which contracts can call for payments for such service either directly for the Unit Owner, or by the Unit Owners Association; any such contract shall have a maximum duration of three years.

8. To pay the premiums on all insurance carried by the Owners Association as required by this Declaration.

9. To pay all legal, accounting and other professional fees, incurred by the association in carrying out its duties as set forth herein or in the Bylaws or Rules and Regulations.

10. To accumulate and maintain and a Contingency Reserve Fund for unanticipated expenses and capital improvement or repair to the Units or Common Area.

11. To pay all obligations of the Association to the Master Association.

C. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be Twelve Hundred Dollars (\$1,200.00) per Unit.

1. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than five percent (5 %) above the maximum assessment for the previous year without a vote of the membership. w/o a vote

2. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above five percent (5 %) by a vote of two-thirds (2/3) of all members who are voting in person or by proxy, at a meeting duly called for this purpose.

3. The Board of Directors may fix the initial assessment provided for above at an amount not in excess of the maximum, provided that the Board of Directors may increase the amount of the initial annual assessment to a maximum of Two Thousand Four Hundred and 00/100 Dollars (\$2,400.00) per Unit notwithstanding the provisions of subparagraphs a and b above, and thereafter the limitations set forth in said subparagraphs shall apply to any annual increase.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the roads and Common Area, including maintenance of water or sewer lines and other elements of the water or sewer system as required by government permits or as needed, and to fixtures, and personal property related thereto.

E. Declarant's obligation to pay assessments. Declarant shall be obligated to pay assessments on any unit once a certificate of occupancy has been issued for that unit.

F. Insurance. Amount and Scope of Insurance. All insurance policies upon the property, and all buildings and units, including Limited Common Areas (except personal property within a unit) shall be secured by the Board or by the Managing Agent, if so designated by the Board, who shall have the authority to, and shall, obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and for such amounts as the responsible authority shall determine. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas and legal liability arising out of lawsuits related to employment contracts of the Owners Association. In obtaining such coverage the responsible authority shall consider the reasonable requirements of holders of first liens on individual units.

All insurance policies must contain provisions generally as follows:

1. Amount and Scope of Insurance. All insurance policies upon the Units shall contain insurance against (1) Loss or damages by fire, flood, if applicable, or other hazards normally insured against, and (2) such other risks, including liability insurance, as from time to time shall be customarily required by institutional Mortgage Lenders or Investors for units similar in construction, location and use.

2. Insurance Provisions. The Board shall make reasonable efforts to assure that said insurance policies provide for the following:

(a) A waiver of subrogation by the insurer as to any claims against other Unit Owners, the Association, any officer, director, agent or employee of the Association, the Unit owner and their employees, agents, tenants and invitees.

(b) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(c) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured, all mortgagees and the Association.

(d) Coverage will not be prejudiced by act or neglect of the Unit Owners when said act or neglect is not within the control of the Association, or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

(e) The policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any one or more other individual Unit Owners.

(f) The policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect, and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Unit Owner or any Mortgagee.

(g) All policies shall be for 100% replacement value, and shall contain standard inflation increase coverage provisions.

3. Proceeds. All insurance policies purchased pursuant to these provisions shall name the Association as insured and shall provide that all proceeds thereof shall be payable to the Board of Directors as Insurance Trustee or to such attorney-in-fact or institution with trust powers as may be approved by the Board of Directors.

4. Policies. All insurance policies shall be with a company or companies doing business in the State of North Carolina and holding a rating of "B" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as Insurance Trustee or to such attorney-in-fact or institution with trust powers as may be approved by the Board of Directors.

5. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

a. Expenses of Trust. All reasonable expenses of the Insurance Trustee shall be first paid or provision made therefor.

b. Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairing the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lien holders of record, or retained by the Association for such Common Expenses or purposes, as the Board shall determine. Upon the agreement of 100% of Unit Owners in any damaged building, the building may not be rebuilt; however, the Insurance Trustee is authorized to demolish the remainder of the building, clear the units of all debris, and place, or return, the lot and section upon which the building was located to a safe and attractive condition. In the event any building is not rebuilt, all remaining insurance proceeds shall be used first to pay off all liens or encumbrances upon the units, then for clean up costs, as provided for above, then Insurance Trustee expenses, and the remainder to be divided among the Unit Owners as directed by the Board of Directors.

G. Other Insurance. The Board of Directors of the Association shall obtain, maintain and pay for such other insurance coverage on the Common Areas and Facilities as is normally required by institutional mortgage companies or investors for projects similar in construction, location and use. The Board of Directors shall make its best efforts to assure that there is no coverage "gap" which would result in a loss to the Association, or Unit Owners in the event of damage or destruction to the Common Area, or any improvements located thereon.

H. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of

any meeting called for the purpose of taking any action authorized under Section C and D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

I. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all similar Units and may be collected on a monthly or quarterly basis, as determined by the Declarant or the Board of Directors. Notwithstanding the provision for uniform assessments, if a unit or building is located in a flood hazard area, that unit's assessment may be higher to accommodate flood insurance on the improvements located thereon, as shall be determined at the sole discretion of the Declarant, or the Board of Directors.

J. Date of Commencement of Annual Assessments and Due Dates. As hereinabove is stated, the annual assessments provided for herein shall commence as to each Unit upon the issuance of a certificate of occupancy as to that unit, and shall be prorated for the month of issuance (assuming annual assessments are collected monthly). The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

K. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

L. Effect of Nonpayment of Assessments and Remedies of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. Any assessment, or installment thereof, which is not paid within thirty (30) days after its due date, will be delinquent. In the event that an assessment, or installment thereof, becomes delinquent, or in the event a Default assessment is established in under Article V, Section 1C of this Declaration, the Association, in its sole discretion may take any or all of the following actions:

- a. assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;
- b. charge interest from the date of delinquency at the maximum rate allowed by law;
- c. suspend the voting rights of the Owner during any period of delinquency;
- d. accelerate all remaining assessment installments for the assessment period in question so that unpaid assessments for the remainder of the assessment period will be due and payable at once;
- e. bring an action at law against any Owner personally obligated to pay the delinquent assessment charges; or
- f. file a claim of lien with respect to the Unit and foreclose the lien against the Unit in the same manner as provided for the foreclosure of a mortgage under the statutes of the State of North Carolina.

- g. Collect all reasonable attorneys' fees and court costs incurred.

The remedies provided under Declaration will not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangements for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and may be charged a \$15.00 late fee for monthly assessments not received by the fifteenth (15th) of each month.

M. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments, which thereafter become due, nor from the lien of any such subsequent assessment.

N. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein; (a) all properties to the extent of any easements or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common properties as defined in Article I, Section 1, hereof.

O. Successor's Liability for Assessments. Except as specifically provided herein, all successors, to the fee simple title of a unit will be jointly and severally liable for the prior Owner's or Owners' thereof for any and all unpaid assessments, fines, interest, late charges, costs, expenses, and attorney's (and legal assistants') fees against such unit without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. Any successor will be entitled to rely on a written statement of status of assessments received by such successor from the Association or its managing agent. The Association agrees that it will furnish to any owner of his designate, a written statement setting forth the amount of unpaid assessments then levied against the lot in which the Owner or his designate has an interest. The information contained in such written statement shall be conclusive and binding upon the Association, the Board of Directors, and every owner as to the person or persons to whom such statement is issued and who rely on it in good faith when such statement is signed by an officer of the Association or the managing agent for the Association.

P. Action by Master Association. All unit owners acknowledge and agree that the Master Association, may, in its sole discretion, levy assessments, both regular and as well as special assessments. For such lawful purposes as may be deemed necessary by the Board of Directors of the said Master Association. Any such assessments shall have the same force and legal effect, and shall be collectable in the same manner, as any assessment levied by the Association.

10. PROCESS AGENT TARA ROGERS, located at 5001 O'Quinn Blvd. Unit J, Oak Island, North Carolina 26461, is hereby designated as the person to receive service of process in any action provided for in the Act. The Board of Directors may change the process agent by filing a Declaration of Change in the Office of the Register of Deeds of Brunswick County.

✓ MAINTENANCE. ✓

A. All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the owner. Any replacement or substitution of such fixtures and equipment shall be compatible with any common areas and facilities affected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment.

B. All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The owner shall maintain the unit in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the insurance underwriters of the insurance for the common areas and facilities when so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the

Condominium Documents or a determination by the Board of its designated agent that such failure will endanger or impair the value of the common areas and facilities or any unit, or the limited common areas and facilities belonging to another owner, may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association at the expense of the unit owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

12. EASEMENTS.

A. Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Association shall have the right to be exercised by the Board of Directors or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the condominium to inspect the same, to remove violation there from and to maintain, repair or replace the common facilities, if any, contained therein or elsewhere in the building.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subject to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common areas and facilities, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common areas; each unit owner hereby grants to the Board, or its designee, an irrevocable power of attorney to execute, acknowledge, and record, for and in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon any other unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or common elements so encroaching so long as all or any part of the building containing such unit or common elements so encroaching shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the common elements if such encroachment occurred due to the willful conduct of said owner or owners.

E. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved and intended for such purposes, for all unit owners or units in MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

F. In case of any emergency originating in or threatening any unit or the common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

G. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any other owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

H. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the units and Common Areas in the performance of their duties.

I. The Declarant reserves the right to subject the real property in this condominium to a contract with Brunswick Electric and/or Progress Energy Co. for the installation of street lighting.

13. PARTITIONING. The common area and facilities shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof, unless the property has been removed from the provisions of the Act. Nothing herein contained, however, shall be deemed to prevent ownership of a dwelling unit by the entirety, jointly, or in common, or in any other form permitted by law.

14. COMMON EXPENSES/COMMON PROFITS. The unit owners are bound to contribute prorata, in the percentages computed according to Chapter 47C of North Carolina General Statute which percentages are set forth in Exhibit "C" hereto attached, toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. No unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common area and facilities or by the abandonment of the unit belonging to him.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonably necessary and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the Condominium Documents, shall be distributed among the unit owners according to the percentages for each unit set forth in Exhibit "C".

15. TAXES. If there is any unit owner other than a Declarant, each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "C" hereto attached, shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to, ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

16. LIENS.

A. With the exception of liens which may result from the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

B. No labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Condominium Documents or expressly authorized by the Board, in which event, same might be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

C. Unless otherwise provided by law, in the event a lien against one or more condominium units becomes effective, each owner thereof may relieve his condominium unit of the lien by paying the proportionate amount attributable to his condominium unit. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium unit.

D. Assessments against unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed the maximum rate allowed by law, and shall create a lien to the extent of such assessment, together with interest thereon, in favor of the Association against the unit of the defaulting owner and shall be enforced as provided by the North Carolina Condominium Act.

E. To the extent permitted by law, all liens provided for herein shall be subordinate, and are



hereby subordinated, to the lien of any first mortgage given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of Brunswick County prior to the recordation of said first lien mortgage in the Office of the Register of Deeds of Brunswick County, North Carolina.

F. As stated herein, all assessments levied by the Master Association shall have the same legal force and effect as assessments levied by the Association.

17. DAMAGE AND DESTRUCTION. Except as provided elsewhere in this Declaration, damage to or destruction of the common areas and facilities, and to the extent insurance proceeds are available, limited common areas and facilities, shall be promptly repaired and restored by the Board using the proceeds of any insurance available for those purposes, and the unit owners of all units shall be liable for assessment of any deficiency, in accordance with their undivided interests in the common areas and facilities; provided, however, if more than eighty percent (80%) of the owners of the condominium project units and one hundred percent (100%) of the units not to be rebuilt resolve not to proceed with reconstruction or restoration, then in that event, the property shall be either (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants-in-common by the unit owners, and subject to the provisions of Section 47C-2-1 18 (Termination) of the Act as the same exists at the date hereof or as amended hereafter. Any reconstruction or repair shall substantially in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and by eligible holders holding mortgages on units which have at least 51 % of the votes of units subject to eligible holder mortgages.

18. NATURE OF INTEREST IN UNIT.

A. Every unit together with its undivided common interest in the common areas and facilities, shall for all purposes be a separate parcel of real property, and the unit owner thereof shall be entitled to the exclusive ownership and possession of such unit subject only to the Condominium Documents and the covenants, restrictions, easements, regulations, resolutions and decisions adopted pursuant thereto.

B. The owner shall be entitled to use the common areas and facilities in accordance with the purpose for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the owners of other units.

19. EMINENT DOMAIN.

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Unless the condemner acquires the right to use the unit's interest in common elements, that unit's undivided interests are automatically reallocated to the remaining units in proportion to the respective undivided interests of those units before the taking exclusive of the unit taken, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the re-allocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter common area.

B. Except as provided in subsection (A), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and of its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's undivided interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the Declaration, and (2) the portion of the undivided interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective undivided interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced undivided interests.

C. If part of the common area is acquired by eminent domain, the portion of the award not payable to unit owners under subsection (A) must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common area must be apportioned among the owners of the units to which that limited common area was allocated at the time of acquisition.

D. The court decree shall be recorded in every county in which any portion of the

condominium is located.

20. **RIGHTS OF ELIGIBLE MORTGAGE HOLDERS.** To the extent permitted by law, an eligible mortgage holder upon written request to the Owners Association, identifying the name and address of the holder, will be entitled to timely written notice of:

A. Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a first mortgage held by such eligible mortgage holder.

B. Any delinquency in payment of assessments or charges owned by an owner of the unit subject to a first mortgage held, by such eligible holder, which remains uncured for a period of sixty days.

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

D. Any proposed action, which would require the consent of a specified percentage of eligible mortgage holders.

E. In addition to the foregoing rights, the eligible mortgage holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina Condominium Statutes as they now exist or as they may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51 % of the votes of the unit estates subject to eligible mortgage holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible holders holding mortgages on all remaining unit estates whether existing in whole or in part, and which have at least 51 % of the votes of such remaining unit estates subject to eligible holders of mortgages.

21. **FIDELITY BONDS.**

A. **General.** The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

B. **Amounts of Coverage.** The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all units plus reserve funds.

C. **Other Requirements.** Fidelity bonds required herein must meet the following requirements:

(1) Fidelity bonds shall name the Association as obligee.

(2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.

(3) The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

(4) The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association of a condominium project, to any insurance trustee and each eligible mortgage

holder.

22. RECOMMENDATION OF RENTAL AGENTS. At the annual meeting of the Association, or such other meeting of the Association as is designated by the Board, the Board may, upon notice to the owners, recommend for the approval of the Association one or more rental agents for the rental of units during the forthcoming year. Prior to recommending agents for the approval of the Association, the Board shall have authority to require any agent desiring to qualify as an approved agent to submit a copy of the proposed rental agreement to be used by such agent, together with such other information as the Board may reasonably require. The Board may require, as a condition of approval, that all rental agreements incorporate such standard procedures as may be required to minimize problems of security, maintenance, quality and operation of the common areas and facilities of the property. Neither the Association nor the Board shall have, or attempt to impose as a condition of approval, any control over the commission schedule or fees charged by any approved rental agent, or the permissible period of rental, all of which shall be for the sole determination of the approved rental agent and any owner selecting such agent. Each owner shall have the absolute right to enter into any direct rental, lease or sales arrangement with renters, lessees and purchasers which shall be consistent with the Declaration, By-Laws of the Association and such other regulations as may from time to time be promulgated by the Association and/or Board. Nothing herein shall be construed as creating or authorizing any rental pooling or as requiring the rental of a unit by an owner or as restricting the owner's use of his unit. If any court of law, governmental regulatory body having appropriate jurisdiction or approved legal counsel to the Association determine that any portion of this provision is unlawful or would require registration of the offering of any unit as a security, then such portion of this provision shall be invalid until such requirement is eliminated.

23. MANAGEMENT AGENT.

A. Interim Management Agent and Assessments. From the date of the first conveyance of title by the Declarant to a unit owner until the date of the first Association members' annual meeting, CAMS shall serve as the Management Agent with responsibility for coordinating all normal management services of the Association. During the period from conveyance of title by Declarant to an owner of a unit until the first Association members' annual meeting (the time determination by the Association of the new operating budget), the Management Agent shall receive a management fee. During such period, the owner shall pay monthly to the Management Agent the assessment set forth in Exhibit "C" to this Declaration, representing the unit's percentage of the estimated total expenses of the property (said estimated total operating expenses are set forth in Exhibit "D" to this Declaration).

B. Time of Payment. Each unit's monthly assessment as set forth in Exhibit "C" of the common expenses for the month of closing shall be payable at the time of conveyance of title to the owner by the Declarant prorated as of the closing date. Subsequent payment shall be due on the first day of each month. Payments not received when due shall bear interest at the maximum permissible legal rate until paid.

24. WORKING CAPITAL. At the time title is conveyed to an owner (other than the Declarant), each owner shall contribute to the Association as a working capital reserve an amount equal to a two (2) months' assessment. Such funds shall be used solely for initial operating capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities furnishings and equipment, etc. At the time of selection of the regular Management Agent, the interim Management Agent shall pay to the account of the Association all unused funds and shall provide an accounting of all revenue and expenditures. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments.

25. UNITS SUBJECT TO CONDOMINIUM DOCUMENTS. All present and future owners, tenants and occupants of units and their guests or invitees, shall be subject to, and shall comply with the provisions of the Condominium Documents, and as the Condominium Documents may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any dwelling unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of the Condominium Documents shall entitle the Association or any other owner to seek legal and/or equitable relief, including costs and reasonable

attorney's fees incurred in enforcing such compliance.

26. AMENDMENT OF DECLARATION. This Declaration may be amended by vote of not less than 67% in common interest of all unit owners either in person or by proxy at, cast at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for Brunswick County wherein the property is located. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws.

No amendment shall be allowed which acts to the detriment of the Declarant or any right reserved to Declarant by this Declaration, or any concomitant document drawn in connection with this condominium project, without the express written approval of the Declarant.

27. TERMINATION. Except as may herein-above provided, this Declaration may be terminated, and the condominium property removed from the provisions of the North Carolina Condominium Act, only by an instrument meeting the requirements of NCGS 47C-2-1 18 and executed by all of the unit owners and duly recorded, which said instrument shall provide either that the condominium regime is to be sold following termination or is not to be sold following termination. If the condominium is to be sold upon termination, title to the real estate in the condominium vests in the Association upon termination. If the condominium is not to be sold upon termination, title to all the real estate of the condominium vests in the unit owners as tenants in common in proportion to their respective interests as herein provided. While the tenancy in common exists, and during the period between termination and sale of the condominium project, each unit owner and his successors and assigns have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

Following the termination of the condominium, the Association as trustee holds the proceeds of any sale of real estate, together with the assets of the Association, for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the Association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the Association are to be treated as if they had perfected liens on the units immediately before termination.

The respective interests of unit owners referred to are as follows:

A. Except as may be expressly provided otherwise, the respective interest, of unit owners are the fair market value of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements

B. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

In the event it is determined in the manner provided in Section 17 hereof that the property shall not be repaired or reconstructed after fire or other casualty, the condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after fire or other casualty shall be evidenced by a certificate of the Association providing that all liens affecting all of the units are transferred to the percentage of undivided interest of the unit owners as set forth hereinabove, and certifying as to facts effecting the termination, which certificate shall become effective upon being duly recorded in the Brunswick County Register of Deeds.

28. INCORPORATION OF ASSOCIATION. It is the intention of Declarant that all rights of the Association shall be vested in a non-profit or a business corporation known as Marina Club at South Harbour Village Condominiums UOA, Inc., or similar, which shall be or has been, formed, pursuant to the laws of the State of North Carolina and the applicable Federal laws. Such association shall be formed and operated in accordance with this Declaration and the Articles of Incorporation and By-Laws and incorporated herein, and all governing laws, as they shall be amended from time to time.

The homeowner membership list will be comprised of those persons or entities owning units in Marina Club at South Harbour Village Condominiums. The annual meeting of members shall be held at Oak Island, North Carolina, upon the earlier of the following events: at the time specified by the By-Laws of the Association; 120 days after seventy-five percent (75%) of the units have been conveyed to unit purchasers; or five (5) years following conveyance of the first unit in the project; two years after Declarant ceases to sell units or offer units for sale in the ordinary course of business; two years after any development rights to expand the condominium project expire; upon notice by Declarant to unit owners. The first directors and officers will hold office until the initial annual meeting occurs, and new directors and officers are elected.

29. SEVERABILITY. The invalidity of any provision of this Declaration shall not impair or affect the validity and enforceability of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included.
30. WAIVER. No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.
31. PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON AREAS. The common area and facilities shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of condominium units in the condominium for their use and the use of their immediate families, guests, and invitees, for all proper and normal purposes, and for the furnishings of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of condominium units. Notwithstanding anything above provided in this article, Marina Club Condominiums UOA, Inc., herein identified, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any condominium unit, his family, guests and invitees, may be entitled to use the common areas and facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish rules and regulations concerning the use thereof. The Master Association shall have the rights as are outlined in its charter and as are permitted by law.
32. LAW CONTROLLING. This Declaration and the By-Laws shall be construed under and controlled by the laws of the State of North Carolina.
33. WARRANTIES. Declarant acknowledges that all contractual warranties set forth in the building's construction contract, of material and equipment in the unit, shall accrue to the benefit of the owner of such unit, along with all warranties, if any, provided by the manufacturer or supplier of appliances, air conditioners, heating and utility systems in the unit. **THE CLOSING OF TITLE OR OCCUPANCY OF THE UNIT SHALL CONSTITUTE AN ACKNOWLEDGMENT BY THE UNIT OWNER THAT DECLARANT MAKES NO OTHER IMPLIED OR EXPRESS WARRANTIES RELATING TO THE UNIT, THE COMMON AREAS, THE LIMITED COMMON AREAS, THE SHARED COMMON AREAS, AND/OR THE FACILITIES, EXCEPT FOR SUCH WARRANTIES AS ARE SET FORTH IN THE GENERAL WARRANTY DEED TO THE UNIT.**
34. EXPANSION OF CONDOMINIUM.
- A. Expansion of Marina Club at South Harbour Village Condominiums shall be as provided by the terms of Section 2 of this Declaration and the terms of Section 34 contained herein.
- B. The right and option of Declarant described in Section 2 hereof shall terminate on December 31, 2012, and shall be subject to the conditions, restrictions and limitations set forth in Section 2 and this Section 34.
- C. The Declarant covenants and agrees that all buildings containing units built on any of the expansion sections and made subject to this Declaration shall be similar to in construction and appearance to the buildings previously constructed in Section A and other previous sections.
- D. If any or all of the units contemplated in the proposed expansion to later Sections, are added to and made subject to this Declaration, the percentages of undivided interest in the common areas and facilities of all units shall be determined by ratios based on the square footage of the new units in relation to the total square footage of all units in the development. Similar size units shall have similar percentages.

E. Declarant makes no statement concerning proposed schedule for commencement of additional sections in Marina Club at South Harbour Village Condominiums

F. Every unit owner in MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, by accepting a deed to a unit, therein, thereby agrees for himself and his heirs, successors and assigns, to any expansion of the Property subject to this Declaration in accordance with the provisions of this Section 34 and Section 2 of this Declaration.

G. The Developer also retains the right to add contiguous, or nearly contiguous, tracts to the project at its sole discretion.

35. FURTHER DEVELOPER RIGHTS

A. The Declarant, for itself, its successors and assigns, hereby reserves the right pursuant to the provision hereof to annex and subject to these restrictions other real property in order to extend the scheme of this Declaration to other property to be developed and thereby bring such additional properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon, or to be placed thereon, which is subjected to this Declaration shall be described alphabetically in sequence as "Section B," "Section C," and/or such other similar designations for any additional sections added.

B. The rights reserved by Declarant in Section "A" of the development, and all annexed Sections, include the right to change, alter or redesignate roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the Declarant, be necessary or desirable, except that the Declarant shall have no right to change, alter or redesignate the character of the use of the units within the development which have already been conveyed to third parties.

C. The Declarant reserves the right to subject the real property in this development to a contract with Brunswick Electric Membership Co. and/or Progressive Energy Co. for the installation of street lighting, which requires a continuing monthly payment to said power company by each residential customer. The Developer further reserves the right to subject the real property in this development to easements for the installation of utilities, phone service, cable service, and all related services.

D. The Developer, for itself and its successors and assigns, reserves the absolute right of architectural control for any construction or improvements, interior and exterior, to the property, common area, limited common areas, and units.

36. GOLF FACILITY

A. Golf Facility. The Developer may construct or allow to be constructed a Golf course and related improvements and amenities (hereinafter "Golf Facility") upon lands within two to three miles from the development. All Owners acknowledge that except as may be specifically agreed upon in writing by the Developer, no unit owner shall have a right, solely by virtue of such membership or by payment of assessments to any homeowner's association, whether or not their lands adjoins a boundary of a Golf Facility, to access to or across, entry onto, membership in, or other use or enjoyment of any such Golf Facility. Developer is under no duty or obligation to construct said Golf Facility or to maintain the same if it is constructed.

B. Use Not a Nuisance. Use of any part of a Golf Facility by any person in accordance with the reasonable rules and regulations established by the owner of the Golf Facility, including use of a Golf Facility for golf tournaments or social events shall not constitute a nuisance.

37. DECLARATION AMENDS COVENANTS, CONDITIONS, AND RESTRICTIONS

PREVIOUSLY RECORDED. The Declarant, by the execution and recordation of this Declaration does hereby amend those Covenants, Conditions, and Restrictions as set forth in that Deed from Declarant to Hilla Builders, Inc., recorded in Book 1542 at Page 1349 of the said Brunswick County Registry, as well as those Covenants, Conditions, and Restrictions set forth in that Deed from Hilla Builders, Inc., to Declarant, same also being recorded in the said Brunswick County Registry, by deleting the same in their entirety and substituting in lieu thereof this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this document to be executed in its corporate name by its duly authorized officers this the \_\_\_\_\_ day of \_\_\_\_\_ 2002.

SOUTH HARBOUR VILLAGE ASSOCIATES, LLC

WILMINGTON HOLDING CORP., Member-Manager

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

VIABLE CORP., Member-Manager

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, a Notary Public of \_\_\_\_\_ County, North Carolina, do hereby certify that ALTON Y. LENNON personally appeared before me this day and acknowledged that he is the Vice President of Wilmington Holding Corp., A North Carolina Corporation which, he also acknowledged, is a Member-Manager of SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, that he further acknowledged that the foregoing and annexed instrument was signed by himself as the Vice President of said corporation, attested by \_\_\_\_\_ as its Assistant Secretary, with its corporate seal affixed, all by authority of its Board of Directors, and as a Member of, on behalf of, and as the deed and act of the said SOUTH HARBOUR VILLAGE ASSOCIATES, LLC.

WITNESS my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_ . 2002.

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

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

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, a Notary Public of \_\_\_\_\_ County, North Carolina, do hereby certify that EDWIN L. BURNETT, III personally appeared before me this day and acknowledged that he is the President of Viable Corp., a North Carolina Corporation which, he also acknowledged, is a Member-Manager of SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, that he further acknowledged that the foregoing and annexed instrument was signed by himself as the President of said corporation, attested by \_\_\_\_\_ as its Assistant Secretary, with its corporate seal affixed, all by authority of its Board of Directors, and as a Member of, on behalf of, and as the deed and act of the said SOUTH HARBOUR VILLAGE ASSOCIATES, LLC.

WITNESS my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_ . 2002.

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

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

AYL2002G:MARCLBDEC  
backup#1MARINA



**EXHIBIT "A"**

**TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A"**

**LYING AND BEING IN BRUNSWICK COUNTY, NORTH CAROLINA,  
AND BEING ALL OF LOT 11 AS THE SAME IS SHOWN ON THAT PLAT  
ENTITLED "MAP OF SURVEY FOR MARINA CLUB AT SOUTH  
HARBOUR VILLAGE CONDOMINIUMS, SECTION "A", which plat is  
recorded in Condominium Plat Book 9 at Pages 34 and 35 of the Brunswick  
County, North Carolina, Registry, reference to which plat or map is hereby  
made for a more particular description.**

**Together with and subject to all those easements, rights of way, and all other  
matters and things shown on the above described plat or map.**

**EXHIBIT "C"**

**TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A"**

**UNDIVIDED INTEREST OF EACH UNIT OWNER IN COMMON  
AREAS AND FACILITIES AND EACH UNIT OWNER'S PRO RATA  
CONTRIBUTION TO EXPENSES AND PRO RATA SHARE OF  
ANY PROFITS:**

<b>UNIT NUMBER:</b>	<b>PERCENTAGE OF INTEREST</b>
<b>UNIT A-101</b>	<b>50 %</b>
<b>UNIT A-201</b>	<b>50 %</b>

**EXHIBIT "D"**

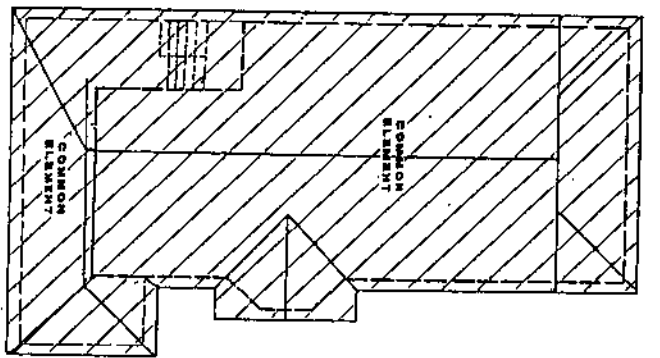
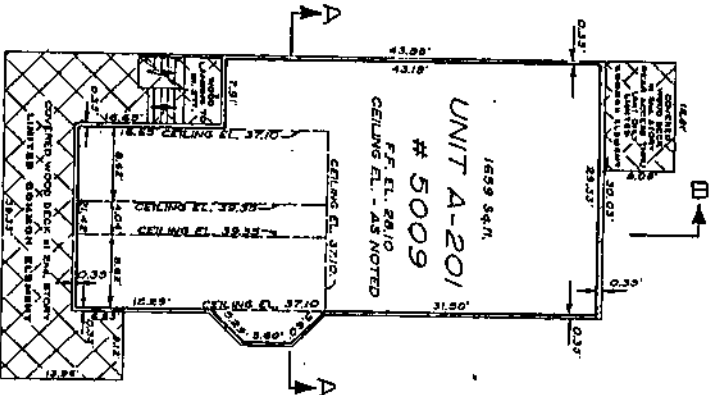
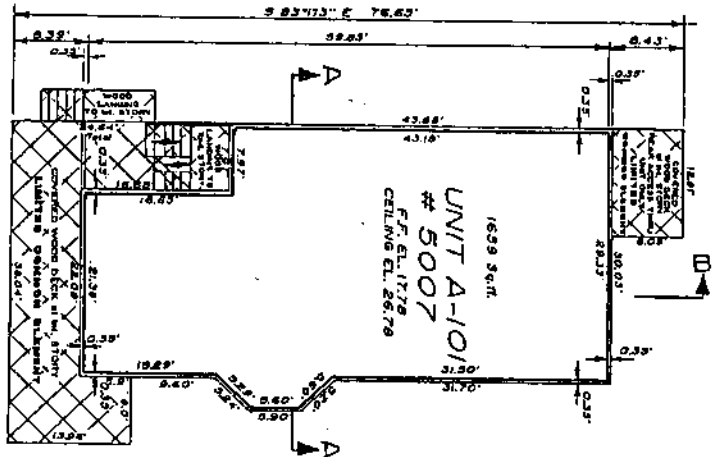
**TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A"**

**LYING AND BEING IN BRUNSWICK COUNTY, NORTH CAROLINA,  
AND BEING :**

**ALL OF LOTS 1, 4, 5, 6, 7, 8, 9, AND 10 AS THE SAME ARE  
SHOWN ON THAT PLAT ENTITLED "MAP OF SURVEY FOR MARINA  
CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A",  
which plat is recorded in Condominium Plat Book 9 at Pages 34 and 35 of the  
Brunswick County, North Carolina, Registry, reference to which plat or map is  
hereby made for a more particular description of said lots.**

**ALSO, ALL THAT TRACT OR PARCEL OF LAND DESIGNATED AS  
"RETAINED BY DEVELOPER" ON THAT MAP DATED JULY 2, 2002,  
AND RECORDED IN MAP CABINET 26 AT PAGE 391 OF SAID  
REGISTRY, SAID TRACT HAVING APPROXIMATELY 215 FEET OF  
FRONTAGE ON FISH FACTORY ROAD (A 60 FOOT RIGHT OF WAY),  
AND SAID TRACT BEING LOCATED AT THE INTERSECTION OF THE  
WESTERN RIGHT OF WAY LINE OF THE SAID FISH FACTORY ROAD  
WITH THE NORTHERN RIGHT OF WAY LINE OF ANNIE MAE'S WAY  
( A 60 FOOT ACCESS EASEMENT), ALL AS ARE SHOWN ON THE SAID  
MAP RECORDED IN MAP CABINET 26 AT PAGE 391 OF THE SAID  
BRUNSWICK COUNTY REGISTRY.**

AYL2002G:MARINACLUB

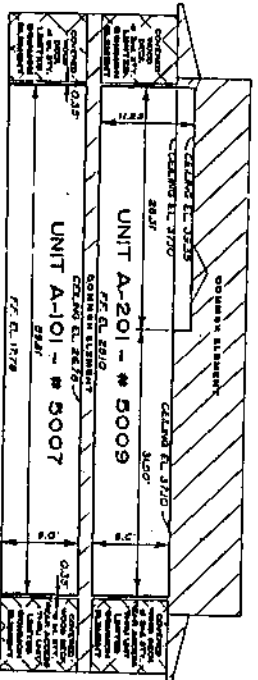
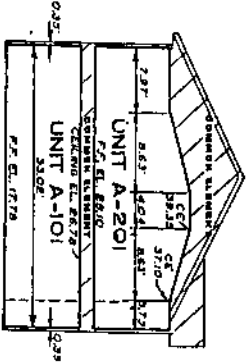


FRONT

FRONT

SECTION A-A

SECTION B-B



LEGEND:  
 COMMON ELEMENT  
 LIMITED COMMON ELEMENT



SCALE: 1" = 10' SEPTEMBER 09, 2002

DEVELOPED BY:  
**SOUTH HARBOUR VILLAGE ASSOCIATES, LLC**  
 1201 PERRON RUN DRIVE  
 WILMINGTON, N.C. 28403  
 (910) 320-3491

SHAWN B. GIBBS  
 N.C. PROFESSIONAL SURVEYOR  
 1144 SHAWNEE BLVD.  
 WILMINGTON, N.C. 28412  
 (910) 791-0080



"AS-BUILT"  
 MAP OF SURVEY  
 FOR  
 MARINA CLUB AT  
 SOUTH HARBOUR VILLAGE  
 CONDOMINIUMS, SECTION "A"  
 (5007 & 5009 NESTER DRIVE)  
 LOT 11 - MARINA CLUB AT SOUTH HARBOUR VILLAGE  
 SOUTH HARBOUR VILLAGE  
 TOWN OF OAK ISLAND  
 BRUNSWICK COUNTY  
 NORTH CAROLINA

RET Kurt Stevens McGhee  
TOTAL 32 REV. \_\_\_\_\_ TC# 38  
REC# \_\_\_\_\_ CK AMT 26 CK# 1500  
CASH 10 REF \_\_\_\_\_ BY JW

Brunswick County--Register of Deeds  
Robert J. Robinson  
Inst #155669 Book 1739Page 1350  
04/30/2003 09:52:59am Rec# 143321

This instrument prepared by Stevens, McGhee, Morgan, Lennon & Toll, LLP

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR MARINA CLUB AT  
SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A"  
(WHICH AMENDMENT INCLUDES THE CHANGE OF THE NAME  
OF THE PROCESS AGENT)**

**WITNESSETH:**

THAT WHEREAS, SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, A North Carolina Limited Liability, as "DECLARANT" (and/or "DEVELOPER") did subject certain real property in Brunswick County, North Carolina, upon which real property is situate a condominium development known as MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A" to a DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for said condominium, said DECLARATION (herein after "Declaration") being recorded in the Office of the Register of Deeds of Brunswick County, North Carolina in Book 1645 at Page 834; and

WHEREAS, the said DECLARANT has determined that in the best interest of the said condominium development, the said Declaration should be amended according to and in the manner provided by the terms, conditions, and provisions of the said Declaration; and

WHEREAS, at a meeting of the MARINA CLUB AT SOUTH HARBOUR VILLAGE UOA, INC. (the "Association"), duly held according to the By-Laws of the said Association, Seventy-Five percent (75%) of the votes (representing more than 67% in common interest of unit owners) were cast in favor of amending the said Declaration in the manner and to the extent recommended by the Declarant, all as is hereinafter set forth;

Now, Therefore, in Consideration of TEN DOLLARS (\$10.00) and other good and Valuable Considerations, the DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS, SECTION "A" is amended by the Declarant and the Association, as follows:

SECTION 2. "DESCRIPTION OF PROPERTY", IS AMENDED BY DELETING THE THIRD PARAGRAPH OF SAID SECTION AND SUBSTITUTING IN LIEU THEREOF THE FOLLOWING :

2. ...

"Any extension shall occur, if at all, by the recordation of one or more supplements to this Declaration and one or more supplementary condominium plats as required by law.

Each such supplement to the Declaration shall be called a "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby shall not require consent or ratification of any unit owner."

The first, second, and fourth paragraphs of Section 2., and all Exhibits referenced therein, shall not be changed or amended in any way.

**SECTION 7. "MEMBERSHIP AND VOTING RIGHTS." SUBSECTION B. 2. Class "B" IS AMENDED BY DELETING THE SAME IN ITS ENTIRETY AND SUBSTITUTING IN LIEU THEREOF THE FOLLOWING :**

B. . . .

" 2. Class "B". The Class B member shall be the Declarant and shall be entitled to three (3) votes for each unit constructed. The Class B membership shall automatically terminate upon the happening of any one of the following three events, whichever shall first occur:

- (a) Upon the closing of the sale by Declarant and/or Developer of a total of twenty-three (23) condominium units, or
- (b) Ten years after the sale of the first unit, or
- (c) December 1, 2012."

**SECTION 9. "COVENANTS FOR ASSESSMENTS." SUBSECTION C. 3., IS AMENDED BY DELETING SAME IN ITS ENTIRETY AND SUBSTITUTING IN LIEU THEREOF THE FOLLOWING :**

C. . . .

" 3. The Board of Directors may fix the initial annual assessment provided for above at an amount not in excess of the maximum, provided that the The Board of Directors may increase the amount of the initial annual assessment to a maximum of Three Thousand (\$3,000.00) Dollars per Unit notwithstanding the provisions of subsections 1. And 2. above, and thereafter the limitations set forth in said subsections shall apply to any annual increase."

**SECTION 10. "PROCESS AGENT." IS HEREBY AMENDED BY DELETING THE NAME "TARA ROGERS" AND SUBSTITUTING IN LIEU THEREOF THE NAME "REBA ADAMS."**

**SECTION 26. "AMENDMENT OF DECLARATION." IS AMENDED BY DELETING SAME IN ITS ENTIRETY AND SUBSTITUTING IN LIEU THEREOF THE FOLLOWING :**

" 26. AMENDMENT OF DECLARATION. Until such time as the Declarant shall have sold a total of Twenty-Three (23) Units, the Declarant may amend this Declaration at any time without being required to obtain the approval of the Association, any unit owner, or any third party. After the sale by the Declarant of a total of Twenty-Three (23) Condomium Units, this Declaration may be amended only by vote of not less than 67% in common interest of all unit owners either in person or by proxy, cast at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for Brunswick County wherein the property is located. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws."

" However, at no time shall any amendment be allowed which acts to the detriment of the Declarant or any right reserved to Declarant by this Declaration, including specifically, but without limitation, any amendment which affects the Declarant's rights regarding the expansion of the condominium, or any concomitant document drawn in connection with this condominium project, without the express written approval of the Declarant."

Prepared by and Returned to:  
STEVENS, MCGHEE, MORGAN, LENNON & TOLL, LLP

**STATE OF NORTH CAROLINA**

**COUNTY OF BRUNSWICK**

**FIRST SUPPLEMENT TO THE DECLARATION OF MARINA CLUB AT SOUTH HARBOUR VILLAGE CONDOMINIUMS**

WHEREAS, SOUTH HARBOUR VILLAGE ASSOCIATES, LLC (hereinafter referred to as "Declarant") has heretofore executed and caused to be recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Book 1645, Page 834, a Declaration of Condominium for Marina Club at South Harbour Village Condominiums, Section "A" (hereinafter the "Declaration"), and which Declaration has been amended by Amendment recorded at Book \_\_\_\_\_, Page \_\_\_\_\_ in the Brunswick County Registry; and,

WHEREAS, in accordance with Section 2 of the Declaration, the Declarant expressly reserved the right to add certain additional real estate to the condominium described in Exhibit "A" to the Declaration; and,

WHEREAS, Declarant desires to supplement the Declaration in order to expand the Condominium by the addition of a portion of the Additional Real Estate described in the Declaration and to subject said property to the Declaration and its amendments.

NOW, THEREFORE, the Declarant in accordance with the provisions of the Declaration and the North Carolina Condominium Act, does hereby amend and supplement the Declaration in the following respects:

- (1) The declaration of the real property submitted to unit ownership under the Act as described in Exhibit "A" to the Declaration is hereby amended and revised to include the real property as shown and designated as Marina Club at South Harbour Village Condominiums Section "B" on the Plats and Plans recorded in Condominium Plat Book \_\_\_\_\_ Page \_\_\_\_\_ in the Office of the Register of Deeds of Brunswick County, North Carolina (the "Registry"), said real property being included is more fully described in Exhibit "A" attached hereto and made a part hereof by this reference. The real property described in said Exhibit "A" of the Supplement and the real property described in Exhibit "A" to the original Declaration shall be and constitute the Property known as Marina Club at South Harbour Village Condominiums, upon the recordation of this supplement.
- (2) Exhibit "C-1" attached hereto is hereby substituted in the place of Exhibit "C" to the Declaration.

The Condominium known as Marina Club at South Harbour Village Condominiums shall, after the recording of this First Supplement to the Declaration, consist of 4 units, contained in 2 sections of the condominium, with two units each in Section A and Section B respectively. The Plats and Plans of Section B are attached hereto as Exhibit A and incorporated herein by reference.

The common elements of the additional 2 units subjected to the Act by this First Supplement consist of all portions of the Condominiums not encompassed and included within the Condominium units as described in the Declaration and are as shown on the Plats and Plans of Section B attached hereto as Exhibit A. The Limited Common Areas for the exclusive use of the units subjected to the Act by this amendment are also as shown on the Plats and Plans of Section B attached hereto as Exhibit A.

Additional certification pursuant to N.C.G.S. 47C-2-109(d)  
is \_\_\_\_\_

EXCEPT AS SPECIFICALLY supplemented hereby and as amended by the First Amendment referenced above, the aforesaid Declaration shall be and remain in full force and effect and shall apply to Units, Common Areas, Shared Common Areas and Limited Common Areas created by this First Supplement to the Declaration.

IN WITNESS WHEREOF, SOUTH HARBOUR VILLAGE ASSOCIATES, LLC has caused this document to be executed in its name by its duly authorized Member-Managers this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

SOUTH HARBOUR VILLAGE ASSOCIATES, LLC

WILMINGTON HOLDING CORP., Member-Manager

By: \_\_\_\_\_  
Vice-President

Attest:

\_\_\_\_\_  
Asst. Secretary

VIABLE CORP., Member-Manager

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Asst. Secretary



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, a Notary Public of \_\_\_\_\_ County, North Carolina do hereby certify that ALTON Y. LENNON personally appeared before me this day and acknowledged that he is the Vice President of Wilmington Holding Corp., a North Carolina Corporation, which he also acknowledged is a Member-Manager of SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, that he further acknowledged that the foregoing and annexed instrument was signed by himself as the Vice President of said corporation, attested by Jerry Y. Thomason as its Assistant Secretary, with its corporate seal affixed, all by authority of its Board of Directors, and as a Member of, on behalf of, and as the deed and act of the said SOUTH HARBOUR VILLAGE ASSOCIATES, LLC.

WITNESS my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, a Notary Public of \_\_\_\_\_ County, North Carolina do hereby certify that EDWIN L. BURNETT, III personally appeared before me this day and acknowledged that he is the President of Viable Corp., a North Carolina Corporation, which he also acknowledged is a Member-Manager of SOUTH HARBOUR VILLAGE ASSOCIATES, LLC, that he further acknowledged that the foregoing and annexed instrument was signed by himself as the President of said corporation, attested by Alton Y. Lennon as its Assistant Secretary, with its corporate seal affixed, all by authority of its Board of Directors, and as a Member of, on behalf of, and as the deed and act of the said SOUTH HARBOUR VILLAGE ASSOCIATES, LLC.

WITNESS my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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

My Commission Expires:

**Exhibit C-1**

**Marina Club at South Harbour Village Condominiums  
Percentage of Undivided Interest and Votes**

**SECTION A**

<b>Unit</b>	<b>% of Common Expenses</b>	<b>% of Undivided Interest</b>
A-101	1/4	1/4
A-201	1/4	1/4

**SECTION B**

<b>Unit</b>	<b>% of Common Expenses</b>	<b>% of Undivided Interest</b>
B-101	1/4	1/4
B-201	1/4	1/4