

## DECLARATION OF UNIT OWNERSHIP

FOR

HARBOUR MASTER VILLAS

CONDOMINIUM 508-509

*Prepared by  
Fairfield Harbour,  
Inc.*

This Declaration is made on November 7, 1984, by FAIRFIELD HARBOUR, INC., hereinafter called the "Declarant" and/or the "Developer", a North Carolina corporation, pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, as amended, entitled the "Unit Ownership Act".

Preliminary Statement

The Developer is the owner in fee simple of the property described on Exhibit "A" attached to this Declaration and made a part hereof, sometimes hereinafter called "the Property"; and

The Developer desires to subject the Property to the provisions of the North Carolina Unit Ownership Act.

The Developer also desires to subject the Property to each and every provision of an instrument entitled "Master Declaration of Fairfield Harbour" as recorded in Book 951, page 55, et seq, in the Office of the Register of Deeds of Craven County, North Carolina, hereinafter called the "Master Declaration".

FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC., a non-profit corporation organized under the laws of the State of North Carolina, hereinafter called the "P.O.A.", is the Property Owners Association which is charged with the management of the development known as "Fairfield Harbour", located in New Bern, Craven County, North Carolina. The Property is located within Fairfield Harbour. The P.O.A. has agreed that the Property is acceptable as an addition to Fairfield Harbour and joins in the execution of this Declaration to agree to the terms and conditions set forth herein, including the terms and conditions of the membership of Unit Owners in the P.O.A.

HARBOUR MASTER VILLAS CONDOMINIUM ASSOCIATION, INC., hereinafter called the "Association", has been organized as the operating entity of the condominium complex and joins in the execution of this Declaration to agree to the terms, conditions and responsibilities set forth herein.

Submission

The Developer submits the Property to the provisions of Chapter 47A of the North Carolina General Statutes, as amended. The Developer also submits the Property to each and every provision of the Master Declaration. The Developer by this Declaration publishes its plan as to the division of the Property, the imposition of restrictive and protective covenants, conditions, restrictions, reservations, liens, agreements and charges

510

on the Property, and the individual ownership of the Property. The Developer specifies that this Declaration shall constitute restrictive and protective covenants, conditions, restrictions and reservations which shall run with the Property and shall bind and inure to the benefit of the Developer, its successors and assigns, and all subsequent owners of any interest in the Property, their heirs, successors and assigns.

# ARTICLE I

## DEFINITIONS

As used in this Declaration and Bylaws and Exhibits attached to this Declaration, and all amendments of the Declaration, unless the context otherwise requires, the following definitions shall prevail:

(a) The Act shall mean and refer to Chapter 47A of the North Carolina General Statutes, as it exists on the date of recording of this Declaration. It is the intent of the Developer that the provisions of the Act shall control the creation of the Condominium Complex. If there is any conflict between the Act and this Declaration, the Act shall control only to the extent that the Act applies to this Condominium and does not allow variances. If any clause contained in this Declaration violates the Act, then such clause shall be severed from the remaining provisions of this Declaration, and the remaining provisions of this Declaration shall continue in full force and effect.

(b) Association shall mean HARBOUR MASTER VILLAS CONDOMINIUM ASSOCIATION, INC., a North Carolina non-profit corporation. The Association is responsible for the operation of the Condominium Complex.

(c) Association Properties shall mean real and personal property owned by the Association from time to time in accordance with the terms of this Declaration.

(d) Board of Directors shall mean the Board of Directors of the Association.

(e) Building shall mean a structure containing two (2) or more units comprising a part of the Condominium Complex.

(f) Bylaws shall mean the Bylaws of the Association, as they exist from time to time.

(g) Common Areas shall mean and include all of the property of the Condominium Complex with the exception of Condominium Units as defined below. Common Areas include general Common Areas and Limited Common Areas, if any.

(h) Common Surplus shall mean the excess of all receipts of the Association including, but not limited to, assessments, rents, profits and revenues on account of the Common Areas, over and above the amount of common expenses.

(i) Condominium Complex shall mean the Property as described on Exhibit "A" and delineated on the plat attached as a portion of Exhibit "B" and such portions of the "Future Development" property developed and subjected to this Declaration pursuant to Article VIII.

(j) Condominium Unit or Unit shall mean those Individual units within the Condominium Complex as delineated on the plat and plans of the Condominium Complex attached to this Declaration as Exhibit "B" and any unit within the Condominium Complex as expanded pursuant to Article VIII of this Declaration. The physical boundaries of each existing Unit are delineated on the plans and are more particularly defined in this Declaration. The arrangement and location of all Units and areas occupied by Units are shown on the plat and plans.

(k) Developer shall mean Fairfield Harbour, Inc., its successors and assigns.

(l) Limited Common Areas shall mean and include those Common Areas, if any, which are reserved for the use of a certain Unit or Units to the exclusion of all other Units.

(m) Management Agreement shall mean that certain agreement between the Association and any entity providing for the management of the properties within the Condominium Complex.

(n) Management Firm shall mean the entity identified as the Management Firm in the Management Agreement attached to this Declaration, its successors and assigns, or such other firm or entity which shall be responsible for the management of the Condominium Complex.

(o) Occupant shall mean any person or persons in possession of a Unit.

(p) Person shall mean an individual, firm, corporation, partnership, association, trust, or any other legal entity, or any combination thereof.

(q) Unit Owner or Owner shall mean any person or other legal entity owning one or more Units, including those Owners under purchase contract, but shall not include a mortgagee unless such mortgagee has acquired title pursuant to foreclosure or other process in lieu of foreclosure.

## ARTICLE II

### NAME

The name by which this Condominium Complex is to be identified shall be "The Harbour Master Villas Condominiums", which term shall be synonymous with the term "Harbour Master Villas Condominium Complex".

## ARTICLE III

### IDENTIFICATION OF UNITS

There presently are two (2) buildings in this Condominium Complex, denoted as Building 1 and Building 2, located as shown on the site plat attached as a part of Exhibit "B". Each building has two (2) stories. There are twenty (20) flat apartment Units within each building.

Each building contains five (5) Unit types. Ten (10) Units are located on the ground floor and separated by one (1) or two (2) common walls. The second floor of each building contains ten (10) identical Units stacked above the ground floor Units which are also separated by one (1) or two (2) common walls. A, B and D Units within this Condominium Complex contain approximately three hundred twenty-four (324) square feet, and C and E Units within this Condominium Complex contain approximately six hundred eighty-four (684) square feet. The Unit configuration within each building is the same.

For the purpose of identification with reference to this document only, Units within this Condominium Complex are referred to as Type A, B, C, D, and E Units. Such designation not only includes the walled confines of the Unit but also all exterior decking associated with the Unit, which decking is Limited Common Areas for the Unit with which it is associated. Such Unit configuration and attached decking are designated on the plans attached as a part of Exhibit "B".

Unit Numbers 6110-6119 and 6120-6129 are located in Building 1.

Unit Numbers 6210-6219 and 6220-6229 are located in Building 2.

Unit Numbers 6113, 6213, 6116, 6216, 6123, 6223, 6126, and 6226 are Type A Units.

Unit Numbers 6114, 6214, 6115, 6215, 6124, 6224, 6125, and 6225 are Type B Units.

Unit Numbers 6112, 6212, 6117, 6217, 6122, 6222, 6127, and 6227 are Type C Units.

Unit Numbers 6111, 6211, 6118, 6218, 6121, 6221, 6128, and 6228 are Type D Units.

Unit Numbers 6110, 6210, 6119, 6219, 6120, 6220, 6129, and 6229 are Type E Units.

The approximate area and configuration of each Unit is shown on the plat and plans attached as a part of Exhibit "B". The plat and plans show the number of rooms in each Unit and the common elements to which each Unit has access.

For purposes of identification, all Units located in said Condominium Complex are given identification numbers as stated above and as delineated on Exhibit "B". No Unit bears the same identifying number as any other Unit. All Common Areas associated with this Condominium Complex are designated on Exhibit "B". Such designation, together with this Declaration, is in sufficient detail to identify the location, dimensions and size of the Common Areas and each Unit.

Each building shall be constructed on concrete footings with a concrete block foundation wall. Each building shall be constructed of wooden building materials consisting of pine or fir framing materials, cedar and stucco or stucco board exterior siding and wood shingled roof.

#### ARTICLE IV

##### OWNERSHIP OF COMMON ELEMENTS

Each of the Unit Owners of Units in the Condominium Complex shall own an initial undivided interest in the Common Areas and Limited Common Areas, if any, and the undivided interest, stated as a percentage, is set forth in Article VII.



The fee title to the condominium property conveyed to the Purchaser shall include both the Unit and its respective undivided interest in the Common Areas. The undivided interest in the Common Areas shall be conveyed or encumbered with its respective Unit. Any attempt to separate the fee title to a Unit from the undivided interest in the Common Areas appurtenant to such Unit shall be null and void.

#### ARTICLE V

##### MEMBERSHIP AND VOTING RIGHTS

(a) Membership and Voting Rights in the Association: There shall be one (1) person with respect to each Unit who shall be entitled to vote at any meeting of the Association. This person is the "Voting Member". If a Unit is owned by more than one (1) person, the Owners of said Unit shall designate one (1) of them as the Voting Member, or in the case of a corporate Owner, a designated officer or employee of the corporation shall be the Voting Member. Each Owner or group of Owners shall be entitled to one (1) vote for each Unit owned. The designation of the Voting Member shall be made as provided in the Bylaws.

Notwithstanding the above, the Developer reserves the right to appoint a majority of the directors on the Association's Board of Directors until the earlier of the following events occurs:

- (1) Four (4) months after seventy-five percent (75%) of the Units in the project have been conveyed to Unit purchasers, or,
- (2) Five (5) years following the first conveyance of a Unit.

(b) Membership and Voting Rights in the P.O.A.: Each Owner of a Unit shall be a member of the P.O.A. There shall be one (1) membership and one (1) vote in the P.O.A. for each Unit owned.

#### ARTICLE VI

##### COMMON EXPENSE AND COMMON SURPLUS

The common expenses of the Condominium Complex shall be shared by the Unit Owners in accordance with the ownership interests specified in Articles VII and VIII. Any Common Surplus of the Association shall be owned by each of the Unit Owners in the percentages specified for sharing common expenses.

#### ARTICLE VII

##### INITIAL PERCENTAGE OF OWNERSHIP

Until the Condominium Complex is expanded as provided in Article VIII, each Type A Unit located within the Condominium Complex shall have a 2.06% interest in and to the Common Area and Common Surplus, and shall be responsible for 2.06% of the common expenses of the Condominium Complex. Each Type B Unit located within the

Condominium Complex shall have a 2.13% interest in and to the Common Area and Common Surplus, and shall be responsible for 2.13% of the common expenses of the Condominium Complex. Each Type C Unit located within the Condominium Complex shall have a 3.01% interest in and to the Common Area and Common Surplus, and shall be responsible for 3.01% of the common expenses of the Condominium Complex. Each Type D Unit located within the Condominium Complex shall have a 2.21% interest in and to the Common Area and Common Surplus, and shall be responsible for 2.21% of the common expenses of the Condominium Complex. Each Type E Unit located within the Condominium Complex shall have a 3.09% interest in and to the Common Area and Common Surplus, and shall be responsible for 3.09% of the common expenses of the Condominium Complex.

The interests in the Common Areas and Common Surplus have been determined as of the date of this Declaration in accordance with the approximate relationship of the fair market value of the Unit to the aggregate fair market value of all Units having an interest in the Common Areas and facilities.

#### ARTICLE VIII

##### EXPANSION

The Developer, as sole owner of the Property and Future Development Property, expressly declares that the Condominium Complex may be expanded, at the sole discretion of the Developer, to include any or all of the land defined on the Harbour Master Villas plat, attached as a part of Exhibit "B", as Future Development. Additional Buildings to be subject to this Declaration may be constructed upon the land described as Future Development from time to time and added to this Declaration by amendment to this Declaration as provided in Article IX. Each portion of the land and each Building added shall be an addition to the Condominium Complex.

The minimum number of additional Buildings, if added, shall be one (1) containing twenty (20) units. The maximum number of additional Buildings shall be three (3) containing twenty (20) units each. Subject to this maximum and minimum, the Developer reserves the right to add as many Buildings, Units and phases to this regime as it sees fit. All additional Buildings added to the Condominium Complex shall be of similar quality, constructed in a workmanlike manner and in the same architectural style as the original Buildings of the Condominium Complex. Construction of such Buildings shall conform generally with the specifications in this Declaration. If additional Buildings are added, each Building will contain five (5) Unit types. Ten (10) Units will be located on the ground floor and separated by one (1) or two (2) common walls. A, B and D Units will contain approximately three hundred twenty-four (324) square feet, and C and E Units will contain approximately six hundred eighty-four (684) square feet. The Unit configuration within each building will be the same.

Such additional Buildings shall be constructed or under construction no later than October 1, 1994, provided that for the purpose of construing this paragraph, recordation of an amendment to this Declaration shall be deemed the commencement of construction.

If additional Buildings are added to this Condominium Complex, upon completion, the prorata ownership of a Unit Owner's interest in the Common Areas will be adjusted downward. If one (1) Building is added, each Type A Unit's interest in the Common Areas and Common Surplus will be  $42/3,072$ ; each Type B Unit's interest in the Common Areas and Common Surplus will be  $44/3,072$ ; each Type C Unit's interest in the Common Areas and Common Surplus will be  $62/3,072$ ; each Type D Unit's interest in the Common Areas and Common Surplus will be  $45/3,072$ ; and each Type E Unit's interest in the Common Areas and Common Surplus will be  $63/3,072$ .

If two (2) Buildings are added, each Type A Unit's interest in the Common Areas and Common Surplus will be  $42/4,096$ ; each Type B Unit's interest in the Common Areas and Common Surplus will be  $44/4,096$ ; each Type C Unit's interest in the Common Areas and Common Surplus will be  $62/4,096$ ; each Type D Unit's interest in the Common Areas and Common Surplus will be  $45/4,096$ ; and each Type E Unit's interest in the Common Areas and Common Surplus will be  $63/4,096$ .

If three (3) Buildings are added, each Type A Unit's interest in the Common Areas and Common Surplus will be  $42/5,120$ ; each Type B Unit's interest in the Common Areas and Common Surplus will be  $44/5,120$ ; each Type C Unit's interest in the Common Areas and Common Surplus will be  $62/5,120$ ; each Type D Unit's interest in the Common Areas and Common Surplus will be  $45/5,120$ ; and each Type E Unit's interest in the Common Areas and Common Surplus will be  $63/5,120$ .

Similarly, a Unit Owner's obligation for common expenses and rights to Common Surplus shall likewise be adjusted.

At the time of each such expansion, an amendment to this Declaration shall be recorded in the Office of the Register of Deeds of Craven County, North Carolina, in accordance with Article IX.

#### ARTICLE IX

##### METHOD OF AMENDMENT OF DECLARATION

This Declaration may be amended at any regular or special meeting of the Association, called and convened in accordance with the Bylaws, by the affirmative vote of Voting Members casting not less than sixty-seven percent (67%) of the total vote of the members of the Association. Such amendment shall not be effective until certified by the President and Secretary of the Association and recorded in the public records of Craven County, North Carolina. Except as provided in this Declaration, no amendment shall change, affect or alter an Owner's percentage interest in the Common Areas, nor a Unit's

## 516

proportionate share of the common expenses or Common Surplus, nor the voting rights appurtenant to any Unit, unless the record Owners of all Units affected by the amendment and all record owners of first mortgages on such Units shall join in the execution of the amendment. No amendment shall be passed which shall impair or prejudice the rights and priorities of any first mortgagee or change the provisions of this Declaration with respect to first mortgages without the written approval of all first mortgagees of record. No amendment shall change the rights and privileges of the Developer without the Developer's written approval so long as the Developer shall own one (1) Unit.

Notwithstanding the above:

(a) The Developer reserves the right to change the interior design and arrangement of all Units and to alter the boundaries between the Units as long as the Developer owns the Units so altered. If the Developer shall make any changes in the Units as provided in this paragraph, such changes shall be reflected by an amendment of this Declaration to which is attached a survey certified as required by the Act, reflecting such authorized alteration of Units, and, except as otherwise provided above, said amendment need only be executed and acknowledged by the Developer and any holders of first mortgages encumbering the said altered Units.

(b) The Developer, as long as it owns one (1) Unit, reserves the right at any time to otherwise amend the Declaration as required by any lending institution or public body or as the Developer may determine to be necessary; provided, such amendment shall not change, affect or alter the proportion of common expenses borne by the Unit Owners or the ownership of Common Areas.

(c) The Developer, at its sole discretion, reserves the right through October 1, 1994, to amend this Declaration for the purpose of expanding the Condominium Complex as provided in Article VIII, and any such amendment shall require execution solely by the Developer. Any such amendment shall designate with particularity the portion or portions of the land for Future Development that is subjected to the provisions of this Declaration and shall contain a plat of such property and plans of each and every Building located on the land. The plans shall conform in all respects to the provisions of the Act. No such amendment shall be effective until duly recorded in the Office of the Register of Deeds in Craven County, North Carolina.

## ARTICLE X

BYLAWS

The operation of the Condominium Complex shall be governed by the Bylaws attached to this Declaration as Exhibit "C".

No modification or amendment of the Bylaws shall be valid unless set forth in a duly recorded amendment to this Declaration. The Bylaws may be amended in the manner

provided for therein, but no amendment to the Bylaws shall be adopted which affects or impairs the validity or priority of any first mortgage covering any Unit, or which changes the provisions of the Bylaws with respect to first mortgages without the written approval of all first mortgagees of record. Further, so long as the Developer owns one (1) Unit, no amendment shall change the rights and privileges of the Developer without the Developer's written approval. Any amendment to the Bylaws shall be executed by the parties, as required in this Article and in Article IX above, and recorded in the public records of Craven County, North Carolina.

#### ARTICLE XI

##### THE OPERATING ENTITY

The operating entity of the Condominium Complex shall be the Association. The Association shall have all of the powers and duties set forth in the Act. The Association shall also have all of the powers and duties granted to or imposed upon it by this Declaration, the Bylaws, and its Articles of Incorporation. A copy of said Articles of Incorporation is attached to this Declaration as Exhibit "D" and made a part hereof. The Association shall have all of the powers and duties necessary to operate the Condominium Complex as set forth in this Declaration and the Bylaws as amended from time to time.

Each Unit Owner, whether he has acquired his Unit by purchase, gift, conveyance, operation of law, or otherwise, shall be bound by the Bylaws and Articles of Incorporation of said Association, the provisions of this Declaration and the Management Agreement.

The Association shall act through and be governed by the Board of Directors.

#### ARTICLE XII

##### ASSESSMENTS: FEES AND LIEN RIGHTS

The Association shall have the power to fix and determine the sums necessary to provide for the common expenses of Harbour Master Villas and any other assessments provided for in this Declaration. The procedure for determining assessments shall be as set forth in the Bylaws and this Declaration.

The common expenses shall be assessed against each Unit Owner as provided in Article VI of this Declaration.

The Association will hold all special and regular assessments collected from Unit Owners in an insured bank account. Each year the Association shall have a budget projection of expenses and income prepared for the upcoming year. The amount of regular and special assessments will be set by the Association's Board of Directors in accordance with such budget. The Board shall structure such assessments so there is an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to Common Areas.

## 518

Assessments and installments that are unpaid for over ten (10) days after due date shall bear interest at the legal rate of interest under North Carolina law from due date until paid, and at the sole discretion of the Board of Directors, a late charge of Twenty-Five Dollars (\$25.00) may be imposed. Regular assessments shall be due and payable monthly on the first of each month. Monthly bills for regular assessments shall not be mailed or delivered to Unit Owners.

The Association shall have a lien on each Unit for unpaid assessments, late charges, and interest thereon. Such liens shall be subordinate to prior bona fide liens of record. Reasonable attorney's fees incurred by the Association incident to the collection of such assessments or the enforcement of such liens, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances to preserve and protect its lien, shall be payable by the Unit Owner and secured by such lien. The Board of Directors may take any action it deems necessary to collect assessments. This will include personal action and enforcing and foreclosing said lien, or either action. The Board may settle and compromise any action if deemed in the Association's best interest. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien. The Association may apply all sums due and covered by the lien as a cash credit against its bid. In case of foreclosure, the Unit Owner shall pay a reasonable rental for the Unit for the period of time said Unit is occupied by the Unit Owner or anyone by, through or under said Unit Owner. The plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect such sums from the Unit Owner and/or occupant. Delinquent assessments which are extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the Units as a common expense. Any sale or transfer pursuant to a foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any assessments made thereafter.

Any person who acquires an interest in a Unit (except through foreclosure of a first mortgage of record or acceptance of deed in lieu of foreclosure, including without limitation, persons acquiring title by operation of law and purchasers at judicial sales) shall not be entitled to occupy the Unit or enjoy the common elements until all unpaid assessments of the former Unit Owner are paid. The Association may assign its claim and lien rights for the recovery of any unpaid assessments owed to the Developer, any Unit Owner or group of Unit Owners, or any third party.

In addition to the assessment of the Association, the Unit Owners must pay dues to the P.O.A. Every Unit Owner acquiring title, legal or equitable, to any Unit in the Condominium Complex shall be a member of the P.O.A. as long as he is an Owner of such Unit. Membership shall not apply to persons holding an interest in a Unit as security for

the performance of an obligation to pay money; e.g., mortgages or deeds of trust. If a mortgagee realizes upon its security and becomes the Owner of a Unit, such mortgagee will be subject to the requirements and limitations imposed by these restrictions on Unit Owners and members of the P.O.A.

The general purpose of the P.O.A. is to promote the community welfare in the Fairfield Harbour Development.

The P.O.A. shall have all of the powers set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including but not limited to the power to levy annual dues against each member of the P.O.A. Annual dues shall be payable monthly. The amount of annual dues shall be determined by the Board of Directors of the P.O.A., after consideration of current maintenance expenses and future needs of the P.O.A. No such charge shall be made against or be payable by the Developer, the P.O.A., or any corporation or corporations that may be created to acquire title to and operate those facilities presently being operated and maintained by the P.O.A.

If the periodic dues are not paid when due, they shall bear interest at the rate specified in the Master Declaration from the date of delinquency. The periodic dues, if unpaid within thirty (30) days of their due date, shall become a lien upon the Unit. The acceptance of a deed to a Unit or the execution of a contract of sale for the purchase of a Unit shall be construed as a covenant on the part of the grantee or purchaser to pay the charge. The P.O.A. may publish a list of the delinquent members and may record a lien to secure payment of the unpaid dues plus costs and reasonable attorney's fees. Such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the P.O.A. may sue for such unpaid charges, interest, costs and reasonable attorney's fees. Each Unit Owner, whether he has legal or equitable title to the Unit, shall be conclusively held to have covenanted to pay all charges that the P.O.A. makes pursuant to this Declaration, the Master Declaration, or the P.O.A.'s Bylaws. Any Unit acquired is taken subject to the lien for any prior unpaid charges, except as provided for herein.

Upon request of any member, the P.O.A. shall furnish a certificate in writing signed by an officer of the P.O.A. certifying that charges on the specified Unit have been paid or remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the P.O.A. for the issuance of the certificates. Such certificates shall be conclusive evidence of payment of any charges which are stated as paid.

The lien of a mortgage or deed of trust, if a first lien on any Unit for construction and/or permanent financing and recorded in accordance with the laws of North Carolina, shall be from the date of recordation superior to any P.O.A. lien. A lien for common expense assessments is not affected by any sale or transfer of a Unit, except a sale or transfer pursuant to the foreclosure of a mortgage shall extinguish a subordinate lien for



assessments which became payable prior to such sale or transfer. However, any such delinquent assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the Units as a common expense. Any such sale or transfer pursuant to a foreclosure does not relieve the purchaser or transferee of a Unit from personal liability for, nor the Unit from the lien of, any assessments made thereafter.

The Board of Directors of the P.O.A. has the right to suspend the voting rights, if any, of a member and such member's right to use the properties owned, operated or maintained by the P.O.A. (1) for any period during which such member's P.O.A. dues remain unpaid; (2) during the period of any continuing violation of this Declaration after the existence of the violation is declared by the Board of Directors of the P.O.A., and (3) during the period that any utility bill for water or sewer service rendered to the member remains unpaid.

The Association shall collect, in addition to its monthly assessment, the periodic dues for the P.O.A. which are all a part of the common expense. The lien of the Association and the lien of the P.O.A. to secure the payment of the annual dues shall be concurrent and on equal parity.

In addition to the aforementioned assessments, a contribution shall be made at closing to a nonrefundable Working Capital Fund which shall be maintained by the Association or its designee. The amount of such contribution shall be equal to that regular assessment which would be charged by the Association over a two (2) month period. Such funds shall be maintained in an account for the sole use and benefit of the Association. The purpose of the fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund are not to be considered as advanced payment of regular assessments.

#### ARTICLE XIII

##### INSURANCE PROVISIONS

#### I. INSURANCE:

A. Purchase of Insurance: The Association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance insuring all of the insurable improvements within the Condominium Complex, together with such other insurance as the Association deems necessary, for the interest of the Association, all Unit Owners and their mortgagees, as their interests may appear. The amount of insurance shall be equal to the maximum insurable replacement value of the improvements as determined annually. The premiums for said coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as a part of the common



expense. The named insured shall be the Board of Directors of the Association, or their designee, as Trustee for the Unit Owners, without naming them, and as Trustee for their mortgagees.

Provisions shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Insurance policies shall provide that payments for losses by the insurer shall be made to the insurance trustee, and all policies and endorsements on the policies shall be deposited with the insurance trustee. Notwithstanding the foregoing, the provisions for such insurance shall be without prejudice to the right of each Unit Owner to insure his own Unit for his benefit. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses.

B. Coverage:

(1) Casualty: All buildings and improvements upon the Property shall be insured in an amount equal to the maximum insurable replacement value. All personal property included in the Common Areas shall be insured for its value. Insurance coverage shall be determined annually by the Association. Such coverage shall afford protection against:

- (a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;
- (b) Loss or damage by flood; and
- (c) Such other risks customarily covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

(2) Public Liability: Public liability insurance shall be obtained in such amounts and with such coverage required by the Association. The amount of such insurance shall not be less than One Million Dollars (\$1,000,000.00), including but not limited to, hired automobile and non-owned automobile coverages, and with cross liability and endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(3) Worker's Compensation: Worker's compensation insurance sufficient to meet the requirements of law shall be obtained.

(4) Fidelity Bond: The Association shall obtain a fidelity bond in an amount it deems reasonable to cover the misfeasance and/or malfeasance within the scope of their employment of any of its officers, directors, agents or employees.

C. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

D. Insurance Trustee and Shares of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their

mortgagees, as their interests may appear. Such policies shall provide that all proceeds covering property losses shall be paid to the Board of Directors as insurance trustee. The duty of the insurance trustee shall be to receive insurance proceeds, to make distribution of such proceeds as provided herein, and in the interim to hold such proceeds in trust for the benefit of the Unit Owners and their mortgagees in the following shares, which shares need not be set forth on the records of the insurance trustee:

(1) Common Areas: Proceeds on account of damage to Common Areas shall be held in undivided shares for each Unit Owner, each such share being in the same proportion as the undivided share in the Common Areas appurtenant to such Owner's Unit.

(2) Condominium Units: Proceeds on account of damage to Units shall be held in the following undivided shares:

(a) When the Building is to be restored — for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(b) When the Building is not to be restored — an undivided share for each Unit Owner, each such share being in the same proportion as the undivided share in the Common Areas appurtenant to such Owner's Unit.

(3) Mortgagee: In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Unit Owner and the mortgagee, as their interests may appear. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired. No mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

E. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(1) Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs of such reconstruction or repair. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittance to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(2) Failure to Reconstruct or Repair: If it is determined that the damage shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial

Owners, remittances to Unit Owners and their mortgagees being made payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such mortgagee.

F. Association as Agent: The Association is irrevocably appointed Agent for each Unit Owner, each mortgagee or lien holder, and for each Owner of any other interest in the Condominium Complex to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

G. Notice of Insurance Coverage: In any legal action in which the Association may be exposed to liability in excess of insurance coverage, the Association shall give notice of the exposure within a reasonable time to all Unit Owners. Such Unit Owners shall have the right to intervene in the action and defend.

H. Inspection of Insurance Policy: A copy of each insurance policy obtained by the Association shall be available for inspection by Unit Owners at any reasonable time.

I. Developer's Interest: All insurance purchased by the Association on behalf of the Unit Owners shall include the Developer, as its interest may appear, and the Developer shall share in the proceeds of any insurance payment.

## II. RECONSTRUCTION OR REPAIR AFTER CASUALTY:

A. Determination to Reconstruct or Repair: If any part of the Condominium Complex shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in accordance with the applicable North Carolina law which is in existence as of the time such casualty occurs, and if not provided for by North Carolina law at such time, then in accordance with North Carolina General Statutes Section 47A-25, which is in effect as of the date of this Declaration.

If the damaged improvement is a part of the Common Area, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium Complex shall be terminated.

B. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans attached to this Declaration as a part of Exhibit "B" or in accordance with the plans recorded as an attachment to any amendment provided in Article VIII.

C. Responsibility: If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Estimates of Cost: Immediately after a determination is made to repair damage to property for which the Association has the responsibility of reconstruction and

repair; the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments: The amount of any deductible shall be assessed against all Unit Owners in proportion to their shares in the Common Areas, provided that the cost of such insurance was a common expense. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner's share in the Common Areas.

F. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held and funds collected from assessments against Unit Owners, shall be disbursed by the Insurance Trustee in payment of such costs in the following manner and order:

(1) Association - Lesser Damage: If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs by the Association; provided, however, that upon request by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(2) Association - Major Damage: If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in North Carolina and employed by the Association to supervise the work.

(3) Unit Owner: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid to the Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and mortgagee jointly, who may use such proceeds as they may deem appropriate.

(4) Surplus: It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; provided, that, the part of a

distribution to a beneficial Owner which is not in excess of assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.

G. If it is determined in accordance with this Declaration that there shall be no reconstruction or repair of a Building (or any portion of a Building or Unit), then all debris shall be promptly removed and the property shall be cleared and restored to the condition that existed prior to the construction of the Building. The Association shall assure that said restoration shall be compatible with the surrounding areas. The Architectural Control Committee for Fairfield Harbour shall have the right to approve the restoration. If the restoration does not meet the approval of the committee, the committee may require whatever reasonable additional action is necessary to restore the property to meet the approval of said committee. The Association shall be required to expend such funds as are necessary to fulfill the requirements of this paragraph.

#### ARTICLE XIV

##### USE AND OCCUPANCY

A. Residential Use Restriction: The Owner of a Unit shall occupy and use his Unit as a single-family private dwelling for himself and the members of his family, his social guests, lessees, licensees and invitees. Such designation shall not prohibit the Owner from renting his Unit to third parties through a rental management agreement with a property management firm. The Developer, so long as it continues to own and promote the sale of a Unit, shall be entitled to utilize Units as sales models and to carry on such other activities in furtherance of its development plan as it deems appropriate.

B. Prohibited Acts: The Unit Owners shall not permit or suffer anything to be done or kept in any Unit which will increase the rate of insurance on the Condominium Property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises, or otherwise. Further, the Unit Owners shall not commit or permit any nuisance or any immoral or illegal act in or about the Property.

C. Restrictions on Alterations: The Owner of a Unit shall not cause anything to be affixed or attached to, or hung, displayed, or placed on the exterior walls, doors or windows of the Units, the Limited Common Areas, if any, or the Common Areas. The Owner of a Unit shall not grow any plant, shrubbery, flower, vine or grass outside such Owner's Unit. The Owner of a Unit shall not cause awnings or storm shutters, screens, enclosures and the like to be affixed to any Units, the Limited Common Areas, if any, or the Common Areas. The Owner of a Unit shall not place any furniture or equipment outside the Unit except on Limited Common Elements or with the prior written consent of the Association and in accordance with the Initial Rules and Regulations adopted by the Association (see Exhibit "E" which is attached and made a part of this document). No

clothes line or similar device shall be allowed on any portion of the Condominium Complex, nor shall clothes be hung anywhere except where designated by the Association.

D. Common Areas: No person shall use any part of the Condominium Complex in any manner contrary to the Rules and Regulations from time to time promulgated by the Association.

#### ARTICLE XV

##### MAINTENANCE AND ALTERATIONS

A. The Association may contract with any firm, person or corporation, or may join with other condominium associations in contracting for the management, maintenance and repair of the Condominium Complex. The Association may delegate to the Contractor or Manager all such powers and duties of the Association not prohibited by law. Any contract entered into by the Association prior to passage of control of the Association from the Developer to the Unit Owners shall be terminable by either party upon ninety (90) days notice to the other party, without cause or penalty. The contractor or manager may be authorized to determine the budget, make assessments for common expenses, and collect assessments, as provided by this Declaration, by the Bylaws, and by Exhibits hereto. The Association has entered into a Management Agreement attached to this Declaration as Exhibit "F" and made a part hereof.

B. Each Owner of a Unit agrees:

(1) To maintain his Unit and all interior surfaces within his Unit (such as the surfaces of the walls, ceilings and floors), whether or not a part of the Unit or Common Elements, in good condition and repair, to maintain and repair the fixtures in his Unit and to pay for any utilities which are separately metered to his Unit.

(2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change of the Common Areas or to any outside or exterior portion of the Building whether within a Unit or part of the Common Areas without the prior written consent of the Association.

(3) To allow the Association or the agents or employees of any Management Firm to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, Limited Common Areas or the Common Areas, to determine in case of emergency, circumstances threatening Units, Limited Common Areas or the Common Areas, or to determine compliance with the provisions of this Declaration and the Bylaws of the Association.

(4) Not to display signs, advertisements or notices of any type or to erect any exterior antenna or aerials on the Common Areas, Limited Common Areas, or his Unit except as consented to by the Association. The Developer may display any signs as it deems necessary to promote the sale of Units.

C. In the event the Unit Owner fails to maintain his Unit and Limited Common Areas, if any, as required herein or makes any alterations or additions without the required written consent of the Association, or otherwise violates or threatens to violate the provisions of this Declaration, the Association shall have the right to proceed in a court of equity for an injunction to seek compliance with the provisions of this Declaration. In lieu thereof and in addition thereto, the Association shall have the right to levy an assessment against the Owner of a Unit for such necessary sums to remove any unauthorized addition or alteration and to restore the property to good condition and repair.

Said assessment shall have the same force and effect as all other special assessments. The Association shall have the further right to have its employees or agents, or any subcontractors appointed by it, enter a Unit at all reasonable times to do such work as the Association or Management Firm deems necessary to enforce compliance with the provisions of this Declaration.

D. The Association shall determine the exterior color scheme of the buildings and interior color scheme of the Common Areas. No Owner shall paint an exterior wall, door, window, or any exterior surface, or replace anything thereon or affixed thereto without the written consent of the Association.

E. The Association shall be responsible for the maintenance, repair, and replacement of the Common Areas, including but not limited to all property not required to be maintained, repaired and/or replaced by the Unit Owners. Notwithstanding the Unit Owner's duty of maintenance, repair, replacement and the other responsibilities as to his Unit as provided in this Declaration and its Exhibits, the Association at its election may enter into agreements to provide certain regularly scheduled Unit maintenance, pest exterminating, air conditioning service, and other services on behalf of the Unit Owners. Such agreements shall be entered into by the Association on behalf of and as agent for all Unit Owners on terms acceptable to the Association, in its sole discretion. The monthly assessment due from each Unit Owner for common expenses shall be increased by an amount necessary to pay for such services. The aforesaid assessment shall be deemed to be an assessment under the provisions of Article XII of this Declaration.

#### ARTICLE XVI

##### LIMITED COMMON AREAS

Areas may be reserved for the use of certain Unit Owners to the exclusion of other Unit Owners. If so reserved, such areas shall be designated as "Limited Common Areas". Such areas include, but are not limited to, the wooden decking associated with each Unit.



Any expense for the maintenance, repair or replacement relating to Limited Common Areas shall be paid for as part of the common expenses of the Association unless otherwise specifically provided in this Declaration or in an amendment hereto.

#### ARTICLE XVII

##### TERMINATION

If all Unit Owners and holders of all liens and mortgages affecting any of the Units execute and duly record an instrument terminating the Condominium Complex, or upon any other termination of the Condominium Complex, said property shall be thereafter owned in common by the Unit Owners. The undivided interest of each such Unit Owner in the property shall be identical to the undivided interest previously owned by such Owner in the Common Areas.

#### ARTICLE XVIII

##### MANAGEMENT AGREEMENT

Pursuant to the Management Agreement annexed hereto as Exhibit "F", the Association has delegated to the Management Firm the power of the Association to determine the budget, make assessments for common expenses, and collect assessments. Each Unit Owner, his heirs, successors and assigns, by acquiring title to such Unit or executing a contract therefor, shall be deemed to:

- (1) Adopt, ratify, confirm and consent to the execution of said Management Agreement by the Association.
- (2) Adopt, ratify, confirm and approve each and every provision of said Management Agreement and acknowledge that all of the terms and provisions of such agreement are reasonable.
- (3) Covenant and promise to perform each and every covenant, promise and undertaking to be performed by Unit Owners as provided in said Management Agreement.
- (4) Recognize that some or all of the persons comprising the original Board of Directors of the Association are or may be stockholders, officers, and directors of the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible ground to invalidate such management association, nor as possible grounds to invalidate such Management Agreement, either in whole or in part.
- (5) Agree that the persons acting as directors and officers of the Association entering into such an Agreement have not breached any of their duties or obligations to the Association.
- (6) Adopt, ratify, confirm and consent to the acts of the Board of Directors and officers of the Association in entering into the Management Agreement.



## ARTICLE XIX

ASSOCIATION PROPERTIES

All property acquired by the Association, real, personal, or otherwise, shall be held for the use and benefit of all Unit Owners in the Condominium Complex.

## ARTICLE XX

DEVELOPER'S RIGHTS

In addition to each and every right of the Developer as set forth in the Master Declaration of Fairfield Harbour and in other Articles of this Declaration, the Developer specifically reserves the following:

A. The right to use the Common Areas for the purpose of aiding in the sale of Units, including without limitation the right to use portions of the Condominium Complex for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall include the right to display and erect signs, billboards and placards and to store, keep and exhibit same and distribute audio and visual promotional materials upon the Common Areas.

B. The exclusive right to contract for or provide water service and sewerage disposal service to the Condominium Complex and Unit Owners. Pursuant to the foregoing, the Developer may contract with a utility company which may include a utility district, property owners association, a municipal or governmental agency, a quasi-governmental authority, or a private company for the furnishing of said services. The Association and Unit Owners agree to pay the charges for utility service and to comply with all of the terms and conditions of said Agreement.

C. The right to grant such easements for utility service, drainage, pedestrian and vehicular traffic, or otherwise, as may be necessary or desirable for the use of the Property or to provide such utility service, drainage, pedestrian and vehicular access to other properties of Developer. Developer expressly reserves a perpetual easement over all driveways and parking areas constituting a part of the Common Areas, plus over any other parts of Common Areas necessary or desirable to connect said driveways and parking areas with other driveways or parking areas within the boundaries of Fairfield Harbour. The location of the easement shall be selected by Developer, but shall not interfere with any Building or Unit. Such easement shall be considered an easement appurtenant to land of Developer within Fairfield Harbour, to run with title to said land.

## ARTICLE XXI

MISCELLANEOUS PROVISIONS

A. The Unit Owners shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, and ceilings surrounding their

respective Condominium Units. The Unit Owners shall not own pipes, wires, conduits, or other public utility lines running between or through their respective Units which serve more than one Unit. These items are a part of the Common Areas. Each Unit Owner, however, shall own non-loadbearing walls and partitions contained within the boundaries of said Unit Owner's Unit. Each Owner shall also own the inner decorated and/or finished surfaces of the perimeter and loadbearing walls, floors, and ceilings, including plaster, paint, wallpaper, etc. All load-bearing walls, subflooring, floor joists and other flooring components other than the finished surface of all floors in each Unit, and the roof of each Building are Common Areas.

B. Each Unit Owner shall have an easement for ingress and egress over such streets, walks and other rights-of-way serving the Units within the Condominium Complex necessary to provide reasonable access to public ways. Such easement shall extend to the invitees and licensees of said Unit Owner. In the event that any of said easements for ingress and egress shall be encumbered by any leasehold or lien other than those on the Condominium Units, such leaseholds or liens shall be subordinate to the use rights or any Unit Owner or Owners whose Unit is not also encumbered by said leasehold or lien.

C. Each Unit Owner shall own as an appurtenance to such Unit a perpetual easement for ingress and egress to and from his Unit over stairs, terraces, balconies, walks and other Common Areas.

D. If any portion of a Unit, Common Areas or Limited Common Areas encroaches upon another, a valid easement for the encroachment and the maintenance of the same shall exist so long as the encroachment exists. In the event any of the Buildings is partially or totally destroyed and then rebuilt, the Owners agree that encroachments on parts of the Common Areas, Limited Common Areas, or Units due to construction shall be permitted. A valid easement for said encroachments and maintenance shall exist so long as such Building as rebuilt stands.

E. The Property is subject to all matters of record, the rights of the United States of America, the State of North Carolina, and any governmental authority or agency having jurisdiction over same. The Developer reserves to itself, its successors and assigns, such easements as it determines in its sole discretion may be necessary for use by any such governmental authority or agency in the exercise of its jurisdiction.

F. Leasing or renting of a Unit is not prohibited.

G. No Unit Owner may exempt himself from liability for contribution toward the common expenses by waiver of the use and enjoyment of any of the Common Areas or the recreational facilities, or by the abandonment of the Unit.

H. For the purposes of ad valorem taxation, the interest of the Owner in his Unit and the Common Areas appurtenant to such Unit shall be considered one parcel. The

value of said parcel shall be equal to the percentage of the value of the entire Condominium Complex, including land and improvements, appurtenant to said Unit as set forth in this Declaration. The total of all said percentages equals one hundred percent (100%) of the value of all the land and improvements in the Condominium Complex.

Each Unit Owner shall be responsible for listing such Unit for the purpose of ad valorem taxes with the Tax Supervisor or with such other future legally authorized governmental officer or authority having jurisdiction over same. Each Unit Owner shall be responsible for the payment of taxes against his Unit.

I. All provisions of this Declaration and any amendments (excluding Exhibits "C", "D", "E" and "F" attached hereto which may be modified from time to time) shall be construed as covenants running with the land. Every Unit Owner and occupant of the Property, or any part thereof, or of any interest therein, and his heirs, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits attached hereto and any Amendments hereof.

J. If any of the provisions of this Declaration, the Bylaws, the Articles of Incorporation, the Management Agreement, or the Act, or any section, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Bylaws, the Articles of Incorporation, the Management Agreement, and the Act, and the application of any such provision, section, clause, phrase, or word, in other circumstances, shall not be affected thereby.

K. Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their place of residence on file with the Association from time to time. Proof of such mailing or personal delivery by the Association or any management firm shall be given by the affidavit of the person mailing or personally delivering said notices. Notices to the Association shall be delivered by mail to the Secretary or the President of the Association. The change of the mailing address of any party as specified herein shall not require an amendment to this Declaration.

Notices to the Developer shall be delivered by mail at: Fairfield Harbour, Inc., 750 Broad Creek Road, New Bern, North Carolina, 28560.

Notices to the initial management firm shall be delivered by mail at: Fairfield Harbour, Inc., 750 Broad Creek Road, New Bern, North Carolina, 28560.

Upon written request to the Association identifying the name and address of any holder, insurer or guarantor of an indebtedness secured by a mortgage on a Unit, and the Unit number or address, any mortgage holder, insurer or guarantor of an indebtedness secured by a mortgage on a Unit, will be entitled to timely written notice of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.
- b. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage.
- c. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owners association.
- d. Any proposed action that requires the consent of a specified percentage of mortgage holders.

All notices shall be deemed received when mailed. Any party may change his or its mailing address by written notice, duly receipted for. Notices required to be given the personal representative or a devisee of a deceased Owner may be delivered either personally or by mail to such party at his address appearing in the records of the court wherein the estate of such deceased Owner is being administered. The change of the mailing address of any party, as specified herein, shall not require an Amendment to the Declaration.

L. Each Unit Owner shall be governed by and shall comply with this Declaration, the Bylaws, and the Act. Failure to do so shall entitle the Association or any Unit Owner to recover sums due for damages or injunctive relief or both. Actions may be maintained by or against a Unit Owner or the Association in a proper case by or against one or more Unit Owners, and the prevailing party shall be entitled to receive reasonable attorney's fees. Such relief shall not be exclusive of other remedies provided by law.

M. Whenever the context so requires, the use herein of any gender shall be deemed to include all genders. The use herein of the singular shall include the plural, and plural shall include the singular. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium Complex.

N. The captions used in this Declaration and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits annexed hereto.

O. Where a first mortgage, by some circumstance, fails to be a first mortgage, but it is evident that it is intended to be a first mortgage, it shall, nevertheless, for the purpose of this Declaration and its Exhibits, be deemed to be a first mortgage.

P. Subject to the provisions of the Act, the Developer specifically disclaims any intent to have made any warranty or representation in connection with the Condominium Complex or the condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein unless otherwise stated. Common expenses, taxes or other charges may vary from time to

533

time and no warranty, guaranty or representation is made or intended, nor may one be relied upon.

Q. The Association, by its execution of this Declaration, approves the foregoing and all of the covenants, terms and conditions, duties and obligations of this Declaration and Exhibits attached hereto. The Unit Owners, by virtue of their execution of a Purchase Contract and/or acceptance of a deed to their Unit, and other parties by virtue of their occupancy of Units, thereby approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration and Exhibits attached hereto.

R. Notwithstanding the fact that the present provisions of the Act are incorporated by reference, the provisions of this Declaration and Exhibits attached hereto shall be paramount to the Act as to those provisions where permissive variances are permitted.

#### ARTICLE XXII

##### PERSON TO RECEIVE SERVICE OF PROCESS

The President of the Board of Directors, who presently is Michael Nicodeme, is hereby designated to receive service of process in any action which may be brought against or in relation to this Condominium Complex. Said person's address and place of business is Fairfield Harbour, Inc., 750 Broad Creek Road, New Bern, North Carolina, 28560, which is located in the County in which the Condominium Complex is located.

#### ARTICLE XXIII

##### COMMON AREAS AND FACILITIES NOT SUBJECT TO PARTITION OR DIVISION

The Common Areas and Limited Common Areas shall remain undivided and no Unit Owner or any other person shall bring any action for partition or division of any part thereof, except as may be provided for in this Declaration, or as may be required under the Act.

IN WITNESS WHEREOF, Fairfield Harbour, Inc., a North Carolina corporation, has caused this instrument to be executed in its corporate name by its Ex. V-President, attested by its Asst.-Secretary and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, this 7th day of November, 1984.

FAIRFIELD HARBOUR, INC.

By [Signature]



Attest [Signature]

534

## STATE OF NORTH CAROLINA

## COUNTY OF CRAVEN

On this day before me, the undersigned Notary Public duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Mike Nicodemus and Travis J. Neal to me personally known, who stated that they are the President and Secretary of Fairfield Harbour, Inc., a North Carolina corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal this 7th day of Nov, 1984.

Kay E. Shields  
Notary Public

My commission expires:

My Commission Expires June 6, 1989

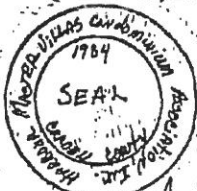
FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which hereby is acknowledged, Harbour Master Villas Condominium Association, Inc., a North Carolina non-profit corporation, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Unit Ownership and exhibits attached hereto.

IN WITNESS WHEREOF, Harbour Master Villas Condominium Association, Inc., a North Carolina non-profit corporation, has caused this instrument to be executed in its corporate name by its President and attested by its Secretary, and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, this the 7th day of Nov, 1984.

HARBOUR MASTER VILLAS  
CONDOMINIUM ASSOCIATION, INC.

By  
Its

President



Attest  
Its

Secretary

## STATE OF NORTH CAROLINA

## COUNTY OF CRAVEN

On this day before me, the undersigned Notary Public duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Mike Nicodemus and Travis J. Neal to me personally known, who stated that they are the President and Secretary of Harbour Master Villas Condominium Association, Inc., a North Carolina non-profit corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal this 7th day of Nov, 1984.

Kay E. Shields  
Notary Public

My commission expires:

My Commission Expires June 6, 1989

11/01/84-Harbour Master

-26-

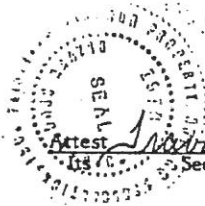
535

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which hereby is acknowledged, Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Unit Ownership and exhibits attached hereto.

IN WITNESS WHEREOF, Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, has caused this instrument to be executed in its corporate name by its \_\_\_\_\_ President and attested by its \_\_\_\_\_ Secretary, and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, this the 7th day of Nov, 1984.

FAIRFIELD HARBOUR PROPERTY  
OWNERS ASSOCIATION, INC.

By [Signature]  
Its President



Attest [Signature]  
Secretary

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

On this day before me, the undersigned Notary Public duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Mike Macodemo and Louise J. Neal to me personally known, who stated that they are the \_\_\_\_\_ President and \_\_\_\_\_ Secretary of Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal this 7th day of Nov, 1984.

[Signature]  
Notary Public

My commission expires:

My Commission Expires June 6, 1989



State of North Carolina, Craven County

The foregoing certificate(s) of the above  
notary public

is/are certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Craven County, NC in Book 509 Page 509  
This 10 day of Feb, 1985, at 4:00 clock P.M.

[Signature]  
Register of Deeds

[Signature]  
Asst./Deputy Register of Deeds

530

EXHIBIT "A"  
LEGAL DESCRIPTION

HARBOUR MASTER VILLAS  
PHASE ONE  
GROUP DEVELOPMENT UNIT OWNERSHIP  
FAIRFIELD HARBOUR, CRAVEN COUNTY, NORTH CAROLINA

BEGINNING at a point, said point being the northeastern most corner of Harbourside - Phase II - Revised, Fairfield Harbour, Township Two, Craven County, North Carolina, as shown on a plat duly recorded in Unit Ownership Map Book 1, page 1, in the Craven County Register of Deeds, North Carolina; thence, from said Point of Beginning North  $88^{\circ}24'28''$  East 218.00 feet to a point; thence, South  $01^{\circ}35'32''$  East 163.30 feet to a point; thence, South  $88^{\circ}24'28''$  West 151.00 feet to a point; thence, South  $01^{\circ}35'32''$  East 198.70 feet to a point; thence, South  $88^{\circ}56'38''$  West 83.72 feet to a point; thence, North  $01^{\circ}03'22''$  East 361.80 feet to the point of beginning, containing 1.193 acres.

October 29, 1984

10/29/84-LRA/rw-Harbour Master



537

EXHIBIT "B"

For Plat and Plans, see Unit Ownership Map Book 2, at  
Pages 60 through 74.